JOINT SEWER AGREEMENT

City of Ithaca – Town of Ithaca – Town of Dryden

December 31, 2003

[Original date: December 22, 1981; first amended April 11, 1984]

This Agreement dated this 31st day of December, 2003.

BETWEEN, the City of Ithaca, a municipal corporation of the County of Tompkins and State of New York, and

The Town of Ithaca, a municipal corporation of the County of Tompkins and State of New York, and

The Town of Dryden, a municipal corporation of the County of Tompkins and State of New York,

WITNESSETH:

INTRODUCTION

WHEREAS, before 1987 the City of Ithaca provided sewerage service for portions of the Town of Ithaca and Dryden on a contract basis, providing for the conveyance of sewage through its sewers and the treatment and disposal of the sewage at its then-existing wastewater treatment plant, and

WHEREAS, the pre-1987 City of Ithaca treatment facilities became inadequate to meet the effluent quality requirements of the New York State Department of Environmental
Conservation and the U.S. Environmental Protection Agency, and the plant did not have adequate capacity to meet future requirements of the municipalities, and

WHEREAS, the New York State Department of Environmental Conservation and U.S. Environmental Protection Agency ordered the facilities be improved and provided grant funds to assist in carrying out the necessary improvements, and

WHEREAS, benefits of a new plant included improvement of the environment of not only the service area but also of Cayuga Lake and the streams of Tompkins County, and

WHEREAS, the respective legislative bodies of said municipalities determined it to be in the best interests of their respective municipalities to construct, own and operate a single wastewater treatment and disposal facility, and they jointly constructed the Ithaca Area Wastewater Treatment Facility, which began operating in 1987, and

WHEREAS, the City of Ithaca, Town of Ithaca, and Town of Dryden now jointly own and operate the Ithaca Area Wastewater Treatment Facility pursuant to a Joint Sewer Agreement dated December 22, 1981, and amended on April 11, 1984, and

WHEREAS, by this document, the Parties hereby further amend the Joint Sewer Agreement to update its provisions, amend the service area, and resolve outstanding disputes over its implementation;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained and pursuant to Article 5-G of the General Municipal Law, it is hereby agreed by and between the Parties as follows:
Section 1. Definitions and Scope

1.1 These words and phrases shall have the following meanings:

A. **Agreement.** This Joint Sewer Agreement.

B. **Effective Date of this Agreement.** The date on which this Agreement is fully executed by all the Parties.

C. **Excess Capacity.** A Party shall be deemed to have Excess Capacity if its allocation of Permitted Capacity exceeds One Hundred Ten percent of its maximum monthly average flow over the previous five (5) years. Notwithstanding the foregoing, no Party shall be deemed to have Excess Capacity if its maximum monthly average flow over the previous five-year period is within Two Hundred Thousand (200,000) gallons of its allocation of Permitted Capacity.

D. **Flow meter.** A device that measures the flow rate and volume of sanitary sewage and provides a record of the flow data on a continuous basis.

E. **O&M.** Operation and maintenance.

F. **Party and Parties.** "Party" means one of the Parties. "Parties" means the three municipalities that are signing this Agreement, collectively. "Party" shall always refer to a municipality, not the Special Joint Committee or a municipality’s representatives to the Special Joint Committee.

G. **Permitted Capacity.** The maximum 30-day average flow that the Parties’ SPDES Permit allows the Treatment Plant to accept.

H. **SPDES Permit.** The State Pollutant Discharge Elimination System Permit issued to the Parties by the New York State Department of Environmental Conservation.
I. **Treatment Plant.** The Ithaca Area Wastewater Treatment Facility, including all related jointly used equipment and facilities, regardless of where such are located, but excluding jointly used interceptors and jointly used sewer lines.

1.2 The Parties jointly constructed and operate the Treatment Plant to meet their needs. Wastewater will be accepted from the designated service area that is shown in the map in Appendix I. This service area is hereby amended to include the entire area of the Town of Ithaca (including the Village of Cayuga Heights), the entire area of the Village of Lansing, and the areas in the Towns of Lansing and Dryden as shown in the map in Appendix I. Flows originating from the Village of Cayuga Heights, which lies wholly within the Town of Ithaca, shall be deemed to be Town of Ithaca flows. Flows originating from the Village or Town of Lansing may be accepted at the Treatment Plant and paid for by one of the Parties under the concept of “equivalent flows” described in the Intermunicipal Wastewater Agreement dated December 31, 2003. The Parties agree to provide for the operation and maintenance of the Treatment Plant pursuant to the terms and conditions hereinafter set forth, and as set forth in the Sewer Use Ordinance adopted by each of the Parties, as it may be amended from time to time.

1.3 The Parties are not unmindful of and do acknowledge the interest of certain other entities which have a special interest in this Agreement and the Treatment Plant, as follows: (1) The County of Tompkins requested that consideration be given to include facilities in the Treatment Plant to provide for the receipt, treatment, and disposal of septage produced within the County. The STEP I Facilities Plan included such facilities and the STEP II Design included the septage facility. The Parties have entered into a separate joint agreement with the County of Tompkins to construct, operate and maintain this service; (2) Under the present rules of the U.S. Environmental Protection Agency,
wastewater from certain industries within the service area of this Agreement may require special permits. The Parties adopted the Sewer Use Ordinance and implemented the Industrial Pretreatment Program set forth in the adopted Pretreatment Report prepared under Federal Project No. C-36-1095-01-2 in June 1983, and hereinbefore approved by the Parties in May 1983. The Sewer Use Ordinance and Industrial Pretreatment Program have been modified since their initial adoption and will continue to be modified as necessary. (3) All Parties agree that no other public wastewater collection and treatment system shall be activated by any Party to serve the service area until the bond issues for the Treatment Plant’s phosphorus treatment upgrade project referenced in Section 2 have been paid in full, without the consent of all Parties.

Section 2. Duration

2.1 The terms of this Agreement shall be for a period equal to the terms of the Serial Bonds which are to be issued in connection with the financing of the New York State Environmental Bond Act phosphorus treatment upgrade project at the Treatment Plant, unless otherwise modified and amended by the Parties to the Agreement.

2.2 This Agreement, as it may have been modified from time to time, shall be renewed by the Parties on such terms as they may agree upon. If any of the Parties wishes to terminate its participation in the Agreement and Treatment Plant at the expiration of the original or renewal term, it must give written notice to the other Parties at least four (4) years prior to the expiration of such term, which notice shall contain the reason for such termination.
2.3 In the event that the election to terminate is exercised as above provided, the
assets of the joint operation shall be disposed of by agreement of the Parties hereto upon
agreed valuation on the basis of ownership interests as herein provided.

Section 3. Title to Property

3.1 Title to all real property and improvements thereon, including the Treatment Plant
site location and other facilities, shall vest in the Parties hereto as tenants in common in
the same proportions as their respective Treatment Plant ownership interests.

Section 4. Right-of-way and Tax Exemption

4.1 It is specifically agreed during the duration of this Agreement that the real
property and improvements, including any intermunicipal interceptor, trunk line or lines,
located within each Party's jurisdiction shall be entirely exempt from real property
taxation by said Party and each Party agrees to said exemption, and each Party has
adopted a Tax Exemption Resolution provided under Section 406 of the Real Property
Tax Law.

Section 5. Type of Treatment Plant and Improvements

5.1 This Section 5 and Section 6 below are included in this Agreement for historical
purposes. The Parties acknowledge that the design, type, size, and specification of the
Treatment Plant, including site development, trunk lines, improvements and other
equipment were built as recommended by the Consulting Engineers Stearns and Wheler
and as approved by the respective governing bodies of the Parties and by the New York
State Department of Environmental Conservation and the U.S. Environmental Protection
Agency.
Section 6. The Facilities Plan

6.1 The Parties acknowledge that they substantially accepted the STEP I Facilities Plan prepared by Consulting Engineers Stearns & Wheler as approved by the U.S. Environmental Protection Agency and the New York State Department of Environmental Conservation and the fees paid to the Consulting Engineers and others (as a part of the STEP I facilities planning) were included in the capital costs of the project as herein mentioned. The cost of the STEP I Sewer System Evaluation Survey was covered in a separate agreement.

6.2 The Parties thereafter proceeded with the STEP II Design and designated the Consulting Engineering firm of Stearns and Wheler to carry out the work. The legitimate costs of said work were included in the capital costs of the project.

Section 7. Capital Costs

7.1 It is mutually agreed between the Parties that capital costs for the Treatment Plant and other jointly owned facilities as hereinafter set forth, shall be allocated, borne and paid by the respective Parties in proportion to the Parties’ respective allocations of Permitted Capacity as set forth in the SJC’s records and Appendix II of this Agreement.

7.2 Capital costs shall include all of the following:

A. Planning fees and costs.

B. Professional Engineering fees.

C. Cost of land acquisition for plant site and other joint facilities.

D. Construction and reconstruction costs of the Treatment Plant including site preparation, demolition, and existing facility deactivation of all eligible reimbursable items.
E. Remaining debt on original plant equipment and facilities owned by the City of Ithaca whether or not included in the new Treatment Plant as listed in Appendix III.

F. Flow meters for determining operational cost allocation hereinafter set forth.

G. Attorney and legal fees, administrative expenses.

H. Such other expenses ordinarily connected with the construction, establishment, and reconstruction of a joint wastewater treatment facility but specifically excluding the respective laterals and internal sewer systems of the Parties.

I. Financing and interest costs.

J. Cost of equipment required to implement the Industrial Pretreatment Program.

7.3 Capital improvements and equipment with a useful life in excess of five years shall be subject to the approval of each of the Parties prior to initiation of such improvements or acquisition of such equipment.

7.4 Notwithstanding the foregoing, capital costs shall not include costs related to jointly used interceptors and sewer lines. Those costs are dealt with in a separate agreement between the City of Ithaca and Town of Ithaca dated December 31, 2003.

Section 8. Pre-Agreement Costs

8.1 This Section 8 is included in the Agreement for historical purposes. The City of Ithaca received a credit adjustment towards its share of capital costs for the land and rights-of-way which it acquired and owned, and for the buildings thereon (including
equipment and apparatus), which were transferred from the facilities solely owned and operated by the City of Ithaca, to the project and the facilities which are jointly owned under this Agreement.

8.2 The amount of the credit adjustment for land, buildings, equipment, and apparatus was in the amounts set forth in Item 4 under the heading, "Anticipated Local Capital Costs" of Appendix III.

8.3 In addition to the aforementioned credit to the City for its contribution of land, equipment, buildings and apparatus toward the project, further credit was allowed to the City for expenses that it incurred for the Plan of Study, the Maximum Efficiency Evaluation for Wastewater Treatment Facilities Report, and STEP I work (exclusive of SSES which is covered by a separate agreement) which had not otherwise been shared in by the other Parties.

8.4 The Town of Ithaca provided a recording secretary and received credit for such costs in support of the Sewer Service Planning Committee.

Section 9. Financing – Capital Costs

9.1 Each respective Party shall be responsible for financing its respective share of the capital costs. The Parties may jointly or individually apply for Federal or State grants for all or a portion of their share of capital costs, whichever may be most advantageous to said Party.

9.2 These respective amounts, or such portion thereof as may be needed during construction or reconstruction, shall be provided by each respective Party upon warrants
issued therefore by the Project Fiscal Officer hereinafter designated and charged with the expenditure of funds for capital projects under the terms of this Agreement.

9.3 It is mutually agreed that the Chief Fiscal Officer of the City of Ithaca or his/her Deputy be and he/she hereby is designated Fiscal Officer for capital projects for the Parties for the purpose of receiving and paying out funds pursuant to this Agreement upon his/her filing with the Towns of Ithaca and Dryden, in addition to his/her official bond filed with the City of Ithaca, a bond in the penal sum of $300,000 in favor of the Parties, conditioned upon his/her faithful performance and discharge of the trust imposed upon him/her. The Fiscal Officer shall deposit all moneys received from the respective Parties in separate accounts in one or more banks or trust companies authorized by law to receive deposits of funds on behalf of the respective Parties. No expenditures shall be made from said special account or accounts except after an audit according to normal auditing and payment procedures of the Parties and in accordance with provisions of Section 119-o of the General Municipal Law of the State of New York.

Section 10 – Operation and Operating Expenses

10.1 The Parties agree that the City of Ithaca through its Department of Public Works shall operate and maintain the Treatment Plant in a manner consistent with parameters defined in the SPDES Permit. Matters pertaining to the selection, appointment, direction and administration of employees or personnel matters, collective bargaining or labor negotiations are the sole prerogative of the City of Ithaca, and appropriate expenses relating to same are covered below. Procedures for the selection of the Chief Operator are specified in Section 13 below.
10.2 All the Parties to this Agreement shall be named as permittees on the SPDES Permit for the Ithaca Area Wastewater Treatment Plant.

10.3 Operation and maintenance ("O&M") costs shall include operating costs for managing, repairing and maintaining all jointly used facilities and equipment at the Treatment Plant, and other operating costs related to the Treatment Plant, including insurance, legal, engineering, bookkeeping and auditing expenses; salaries and benefits for personnel assigned to work at the Treatment Plant; expenses for services that may be contracted out; utility costs, fuel, supplies, parts, and materials; all incidental expenses for operation, management, inspection, maintenance, and repair; SPDES Permit fees and costs of monitoring Cayuga Lake required by the SPDES Permit; and the operating costs of the Industrial Pretreatment Program.

10.4 Notwithstanding the foregoing, O&M costs shall not include costs related to jointly used interceptors and sewer lines. Those costs are dealt with in a separate agreement between the City of Ithaca and Town of Ithaca dated December 31, 2003.

10.5 For the Treatment Plant's 2004, 2005 and 2006 fiscal years, the O&M budget shall be increased each year by ten percent (10%) to account for the indirect expenses City departments incur in providing services to the Special Joint Committee (see Section 13 below) and the Treatment Plant. No other City department expenses or overhead may be charged to the O&M budget without the written agreement of the Parties. The cost of repair and maintenance performed by City personnel will be charged as a direct actual expense. Beginning with the Treatment Plant's 2007 fiscal year budget, the Parties shall agree in writing on a new overhead percentage rate or other method of reimbursement, with such agreement to be based on the results of the Operations Review Committee's
review of City department services (see Section 13.6(16) below). It is the Parties’ intent
to determine the overhead rate for fiscal year 2007 and subsequent years well in advance
of the preliminary budget presentation for fiscal year 2007. If the Parties do not agree on
a rate for fiscal year 2007 and beyond, then the 10% rate shall apply. The actual
overhead charge each year will be based on the applicable percentage (as set forth above)
of actual approved O&M expenses net of overhead and debt service.

10.6 The Parties agree that the O&M expenses for the operation of the Treatment
Plant, including the operating costs of the Pretreatment Program, shall be apportioned
based on annual sewage flow as described below, in Appendix IV and as projected by the
annual budget.

10.7 The flow shall be measured in so far as feasible by means of flow meters on the
trunk lines from the Towns of Ithaca and Dryden as provided in Section 18.3 below.

10.8 The measurement of strength of the sewage, if and when required, shall be
determined by accepted engineering standards. The formula, frequency of sampling and
means of measuring the strength of the sewage shall be as agreed upon by the governing
bodies of the Parties.

10.9 The Chief Fiscal Officer shall collect O&M charges by means of an annual
prospective budget and assessing each Party on the ratio as hereinabove provided and
under the formula thereafter promulgated.

10.10 Nothing herein shall prevent the respective Parties from raising, in addition to
said O&M assessment, such amounts in addition thereto sufficient to amortize their
respective capital costs or to assess a surcharge to pay for the maintenance of their individual systems.

10.11 Each Party agrees to pay its share of the annual budget in four equal installments, payable January 15th, April 15th, July 15th and September 15th of each year. Quarterly assessments not paid by a Party by the due date will bear interest, compounded monthly, at the quarterly rate set by the Internal Revenue Service and in effect on the date the payment was due, until paid. In the event a Party shall fail to pay its respective assessment for O&M costs, or any installment thereof when due, the other Parties shall have the right to compel payment of same under provisions of law.

10.12 The annual budget of the Treatment Plant shall include an item for contingencies. If during any year the assessment shall be insufficient to defray the O&M costs during said year, the Chief Fiscal Officer shall recommend an amended budget and assessment which shall be reviewed, adopted and paid in the same manner as the yearly assessment.

10.13 The Parties agree that they will maintain an unappropriated O&M fund balance equal to 20% of the previous year’s actual expenses, but in no case less than $400,000.00.

Section 11. Responsibility for Damages and Claims

11.1 In the event any liability is asserted against any of the Parties hereto arising out of the construction, operation, or maintenance of the Treatment Plant, the Parties shall be jointly and severally liable for the defense and payment of any such claims.

11.2 The liability shall be apportioned among the Parties in proportion to the interests of each Party in the Treatment Plant or in accordance with such other methods as the Parties may agree. Insurance against any such possible liability for protection and benefit
of the Treatment Plant and each separate Party shall be procured and maintained, and the premiums for any such insurance coverage shall be included in the cost of the operation and maintenance of the Treatment Plant and included in the budget assessed against each Party each year in the manner set forth in Appendix IV.

Section 12. Outside Users

12.1 The use of the Treatment Plant provided for in this Agreement shall be limited to the area defined in the amended service area (see Appendix I). No modification of the service area or the connection to the Treatment Plant of new sewer service outside the amended service area shown in Appendix I shall be permitted without the approval of an amendment to this Agreement providing for the service area modification. The amendment shall require the consent of all the governing bodies of the Parties hereto. Such joint consent of the governing bodies of the Parties hereto shall be by a majority vote of the voting strength of the respective governing bodies.

Section 13. Special Joint Committee

13.1 Oversight of the joint Treatment Plant operation will be by a committee established by the Parties. This committee shall be called the Special Joint Committee ("SJC").

13.2 The SJC will have eight members. The City shall appoint four (4) members, at least two (2) of whom shall be Common Council members. The Town of Ithaca shall appoint three (3) members, and the Town of Dryden shall appoint one (1) member. The Town of Ithaca in its sole discretion may from time to time choose to appoint only two (2) members and allocate its remaining appointment to the Town of Dryden, so that the
Town of Dryden will appoint a total of two (2) members. At least one of each Town’s appointees must be an elected official from its governing body.

13.3 The SJC will elect its own chairperson annually and shall establish scheduled monthly meeting dates to provide for timely referrals to the Parties’ respective boards or governing bodies. No chairperson shall serve for more than two consecutive one-year terms but may be re-elected after a minimum of a one-term period has elapsed since that person last served as chairperson.

13.4 The charge of the SJC shall be to oversee operations of the Treatment Plant, including budget as described in Section 14 below. The SJC shall refer matters to the Parties’ respective boards or governing bodies upon a majority (5 votes for) recommendation of the SJC. Matters so referred to the Parties’ boards or governing bodies shall be acted on within 30 days of referral. Those recommendations that are accepted by the Parties’ boards or governing bodies shall then be implemented accordingly. Those recommendations that are either rejected or not acted upon within 30 days, or that reach an impasse in the SJC, shall then be referred to the Chief Fiscal Officer who shall convene a meeting of the Mayor, City Superintendent of Public Works, the Town of Ithaca Supervisor, and the Town of Dryden Supervisor, who shall attempt to resolve the matter. The matter shall be so resolved by a unanimous agreement of these officials. Where there is not unanimity, the matter shall be referred to the Parties for resolution.

13.5 One member of the SJC or another person so designated by the SJC shall serve as Secretary for the purpose of providing meeting notices, recording and distributing
minutes of the meetings, and other administrative duties. Each member shall have the right to present agenda items for discussion.

13.6 The SJC shall have the following authority, power and duties:

(1) Establish the administrative procedures for administration of the Agreement and for the billing of charges to the Parties.

(2) Discuss and audit the billings prior to submission for payment.

(3) Discuss and negotiate any matters of mutual interest in relation to this Agreement.

(4) From time to time, make recommendations to the Parties regarding the Agreement.

(5) Administer the Reserve Capacity set-aside.

(6) Negotiate equitable charges for services rendered to each other or jointly.

(7) Review applications for new service connections as appropriate to assure accomplishment of the primary objectives of the Pretreatment Program.

(8) Monitor master flow meters.

(9) Arrange for the enforcement of Sewer Use Laws and Regulations and the Pretreatment Program.

(a) It shall be the responsibility of the SJC to review the effectiveness of the Sewer Use Laws and Regulations and the Pretreatment Program and their enforcement by the duly authorized municipal officials. It shall report periodically on the foregoing matters to the City’s Board
of Public Works and to the respective Town Boards of the Towns of Ithaca and Dryden and shall furnish such information and data as may be required by the Board of Public Works or the Town Boards.

(b) The City and the Towns have the primary responsibility for monitoring industrial wastewater and enforcing applicable laws and regulations within the jurisdiction of each such municipality, within their respective areas. In order to provide an orderly, effective monitoring and enforcement program, the City's Sewer Superintendent of the Treatment Plant or his duly authorized representative shall have the authority (1) to sample and monitor industrial discharges throughout the sewer service area in collaboration with the City Superintendent of Public Works (in those cases where the discharge into the sewer collector system originates in the City) and the municipal engineer of the other respective municipalities where such discharge originates; and (2) to enforce the Sewer Use Laws and the Pretreatment Program and regulations in collaboration with the municipal officials as provided in the preceding subparagraph (1).

(c) The status of all violations shall be immediately reported to the SJC, which shall promptly recommend whatever further action may be required to correct or stop any violation, to the Mayor or the Town Supervisor of the
municipality in which the violation occurred. If legal action is required, the matter shall be promptly referred to the attorney of the municipality in which the violation occurred, or to such other attorney duly authorized to take such action. The municipal attorney concerned shall have the authority to initiate proceedings when immediate action is required.

(10) Submit periodic and annual reports to the Parties.

(11) Notify the governing bodies in relation to any claims, demands, disputes, differences, controversies and misunderstandings which cannot be resolved by arbitration and negotiation.

(12) Administer the agreement with Tompkins County on the financing of the capital cost of the septage facility and the methods of the recovery of the capital and operating and maintenance costs for same.

(13) From time to time hold public hearings as necessary.

(14) From time to time review the Operating and Maintenance Manual.

(15) Whenever the Chief Operator position becomes vacant, establish a Chief Operator selection committee comprised of representatives from the SJC. The selection committee shall review, and may interview, candidates for the position and make recommendations to the full SJC as to a preferred candidate. If the candidate is acceptable to the SJC, the SJC shall transmit this recommendation to the City's appointing officer, who shall have the sole discretion to make the final hiring decision. If the City does not hire the SJC's recommended candidate, the City shall provide the SJC with a written justification of why it did not do so.
(16) Establish an Operations Review Committee (ORC) consisting of one representative from each Party to inform and educate the SJC about the services City departments provide to it and the Treatment Plant. Documentation from the ORC will include estimates of the allocation of City department time spent on work related to SJC and Treatment Plant matters. The ORC shall review the services provided by two selected City departments in each of the fiscal years 2004, 2005 and 2006. Thereafter the ORC shall review one City department each year. A plan for the review of the designated departments shall be prepared by the ORC, and presented to and approved by the SJC, prior to the review taking place. Such reviews could include, among other things, site visits to the offices of the relevant departments, receipt of information from City departments about work performed for the SJC and Treatment Plant, and reviews of operating structures and costs for services provided by the City for the Treatment Plant. City departments are not expected to maintain or provide to the ORC formal time records for time spent on work related to SJC and Treatment Plant matters. All reports presented by the ORC shall be subject to approval by the SJC.

(17) Recommend to the governing bodies of the Parties the adoption of regulations to implement any of the foregoing powers and duties.

Section 14. Budgets, Audits and Reports

14.1 Budget estimates for the joint Treatment Plant operation for the next fiscal year will be submitted by the Superintendent of Public Works to the SJC by July 1 of each year. By September 1 of each year, the SJC will submit a recommended budget to the
Parties’ respective governing bodies. The City’s Common Council will hold a public hearing on the Treatment Plant’s proposed budget each year as part of the City’s budget process. The Treatment Plant’s budget will be separately stated from the rest of the City’s budget. The governing bodies for all Parties will thereafter vote on whether to approve the Treatment Plant budget. If all Parties do not approve a budget, the Treatment Plant will operate under the previous year’s budget, except monetary amounts shall be shifted among budget lines as necessary to assure the Treatment Plant meets all permit and other legal requirements.

14.2 The books and records for the joint Treatment Plant operation will be audited annually by an auditor selected by the SJC in consultation with the City Controller. The auditor shall submit a copy of the audit report to the SJC for information and for use in future budget discussions. The City Controller will submit the audit and required reports regarding the joint Treatment Plant operation to the New York State Department of Audit and Control. To the extent permitted by the State, the City Controller will submit the audit and reports separately from those submitted for City operations. The costs of the annual Treatment Plant audit shall be included in the O&M budget as a separate line item.

Section 15. Approvals Required

15.1 This Agreement shall be effective upon its full execution by the Parties. Notwithstanding the foregoing, the portions of this Agreement which represent changes in the governance structure from the 1984 version of the Joint Sewer Agreement shall be effective upon full execution of the Parties and approval by the U.S. Environmental Protection Agency.
Section 16. Concurrence of Parties

16.1 Unless otherwise provided herein, whenever the agreement of each Party is required under this Agreement, such agreement shall be required to be approved by a majority vote of the voting strength of the respective governing bodies of said Parties.

Section 17. Amendments

17.1 This Agreement may be modified or amended by an instrument in writing, duly executed and acknowledged by the duly authorized representatives of each Party, upon approval by majority vote of the voting strength of the respective governing bodies of said Party.

Section 18. Capacity

18.1. As of the Effective Date of this Agreement, the Treatment Plant's Permitted Capacity and Excess Capacity will be allocated among the Parties as set forth in Appendix II. The SJC shall keep track of purchases and sales of capacity after the Effective Date of this Agreement. As the Parties do not intend to amend Appendix II each time there is a purchase and sale of capacity, they agree that the SJC's figures shall be the official record of each Party's allocation of Permitted Capacity and Excess Capacity and shall supersede Appendix II once there has been a purchase and sale of capacity. At a minimum, the SJC shall review each Party's usage of capacity and the amount of each Party's Excess Capacity each year as part of the budget process for the joint operation and agree on a new Appendix II. No Party shall use more than its allocation of permitted capacity.

18.2. A Party shall be deemed to need additional capacity if its allocation of Permitted Capacity is less than One Hundred Ten percent (110%) of its maximum monthly average
flow over the previous five (5) years. Each Party shall determine its maximum monthly average flow by using data from master flow meters maintained by the SJC and, if necessary, information from other appropriate system monitoring. The SJC shall ensure that flow meter readings are updated by June 1 of each year as budgets are being prepared for the joint operation. Any Party deemed to need additional capacity shall purchase it pursuant to the terms of Section 18.4.

18.3. At a minimum, flow meters shall be placed, where feasible and practical, on the Parties’ trunk lines and diversion mains where they enter the City of Ithaca’s system. The flow meters shall be used for determining maximum monthly average flows under this Section. It is the intent of the Parties also to use these flow meters to determine annual flows for O&M allocation purposes under Section 10 above. The Parties shall estimate flows through those interconnecting sewers where flow meters are not available. The estimates may be based on the use of water meter readings, plus a factor for infiltration and inflow where applicable. Appendix V shows the location of the flow meters the Parties will use as of the Agreement’s Effective Date. The Parties anticipate the methodology and flow meter locations may change as technology changes and as collection system owners reduce infiltration and inflow, which will reduce peak flows to the Treatment Plant. As methodologies, flow meter locations and infiltration/inflow contributions change, the Parties’ Excess Capacity allocations will change and will be reflected in the SJC’s records and Appendix II. The SJC shall review the methodology and flow meter locations at a minimum on an annual basis as part of the budget process for the joint operation and shall agree on a new Appendix when the methodology or flow meter locations need to be changed. Flow meters at new locations will be paid for by the Party extending the sewer lines. Existing flow meter replacement will be scheduled by
the SJC as part of the annual budget process. A separate line item will be established for flow meter replacement. Cost sharing for repairs and replacement will be on the basis of shares of plant ownership. Specifications for new flow meters and flow meter replacements will be approved by the SJC.

18.4. A Party that needs additional capacity may purchase it from Parties that have Excess Capacity if the purchasing Party and selling Party or Parties can reach agreement on the price for the capacity. All Parties with Excess Capacity have the right to participate in the sale but are not obligated to do so.

18.5. A Party that does not need additional capacity may nonetheless purchase it from other Parties if the selling Parties have Excess Capacity and are willing to sell it to the purchasing Party at an agreed-upon price. All Parties with Excess Capacity have the right to participate in the sale but are not obligated to do so. Each participating Party shall sell the purchasing Party a proportion of the requested capacity, which proportion shall be equal to that Party's Excess Capacity divided by the total Excess Capacity of all of the participating selling Parties.

18.6. Excess Capacity may be purchased and sold in blocks of any size.

18.7. A Party requesting the purchase of capacity shall submit its request in writing to the SJC. The SJC shall notify the Parties' respective municipal clerks of the pending request within ten (10) business days of receipt of the request. Before the purchase of capacity by a Party that needs additional capacity, the purchasing Party shall submit to the SJC an engineering report and Tompkins County Health Department approval, where Health Department approval is necessary, that demonstrate to the SJC's satisfaction that the purchasing Party is buying enough capacity for its projected needs.
18.8. The Party purchasing the capacity shall pay each Party selling the capacity a lump sum payment equaling the value of the capacity provided by that Party, which shall be calculated by using the purchase price voluntarily agreed upon. The purchasing Party shall make the payments before using any of the capacity it is purchasing.

18.9. Unless the Parties unanimously agree otherwise, and subject to Section 18.10 below, the Parties shall expand the capacity of the Treatment Plant when the SJC projects that ninety-five percent (95%) of Permitted Capacity will be used by the end of a three-year period. Once this threshold is actually reached, no capacity sales or extension of sewer lines shall take place until the Permitted Capacity is expanded or modified to accommodate the additional flows. The SJC may also recommend, and the Parties may agree, to prohibit increases in flows from users to the Treatment Plant until Permitted Capacity is expanded or modified to accommodate the increased flows.

18.10. Notwithstanding the foregoing, a Party may elect not to participate in a capital project to expand the Permitted Capacity, in which case it shall not be required to pay for the project or co-sign any related financing, including bonds. The non-participating Party shall not have any ownership interest in, nor utilize, the expanded capacity unless and until the non-participating Party buys some of that capacity from another Party or Parties.

18.11. If a Party uses more than its allocation of capacity, any other Party may seek relief in the Supreme Court of the State of New York in Tompkins County, New York, to enjoin such use and/or to compel the purchase of additional capacity, consistent with the terms and conditions of this Agreement.
Section 19. Disputes Resolved

19.1 If a Party violates any term of this Agreement, any other Party may seek injunctive relief, damages and/or other appropriate relief in the Supreme Court of the State of New York in Tompkins County, New York.

19.2 The Parties agree that this Agreement resolves, and the Parties hereby release each other from, all issues, claims, demands, causes of action, damages and costs that may have arisen before the Effective Date of this Agreement regarding matters related to the 1984 Joint Sewer Agreement, including but not limited to O&M charges, O&M payments, and service area extensions.

In Witness Whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized officers and sealed with their corporate seals the day and the year first aforementioned.

City of Ithaca

Date: 12/31/03

By: 

Alan J. Cohen, Mayor
City of Ithaca, New York

Town of Ithaca

Date: 12/31/03

By: 

Catherine Valentino, Supervisor
Town of Ithaca
Date: ___________________________  By: ___________________________
Will Burbank, Councilperson
Town of Ithaca

Date: 12/31/03  By: ___________________________
Carolyn Grigorov, Councilperson
Town of Ithaca

Date: 12/31/03  By: ___________________________
David Klein, Councilperson
Town of Ithaca

Date: 12/31/03  By: ___________________________
William Lesser, Councilperson
Town of Ithaca

Date: 12/31/03  By: ___________________________
Thomas Niederkorn, Councilperson
Town of Ithaca

Date: 12/31/03  By: ___________________________
Mary Russell, Councilperson
Town of Ithaca

Town of Dryden

Date: 12/30/03  By: ___________________________
Mark Varvayanis, Supervisor
Town of Dryden

26
Date: ____________

By: __________________________
Deborah Grantham, Councilperson
Town of Dryden

Date: 12/30/07

By: Charles Hatfield
Charles Hatfield, Councilperson
Town of Dryden

Date: 12/30/03

By: __________________________
Christopher Michaels, Councilperson
Town of Dryden

Date: 12/30/63

By: __________________________
Stephen Stelick, Jr., Councilperson
Town of Dryden
STATE OF NEW YORK)  
COUNTY OF TOMPKINS) ss.:  

On the 31st day of December in the year 2003 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan J. Cohen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

STATE OF NEW YORK)  
COUNTY OF TOMPKINS) ss.:  

On the 31st day of December in the year 2003 before me, the undersigned, a Notary Public in and for said State, personally appeared Catherine Valentino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

STATE OF NEW YORK)  
COUNTY OF TOMPKINS) ss.:  

On the 31st day of December in the year 2003 before me, the undersigned, a Notary Public in and for said State, personally appeared Will Burbank, Carolyn Grigorov, David Klein, William Lesser, Thomas Niederkorn and Mary Russell, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

[Signature]
Notary Public
STATE OF NEW YORK
COUNTY OF TOMPKINS) ss.:

On the 30th day of December in the year 2003 before me, the undersigned, a Notary Public in and for said State, personally appeared Mark Varvayannis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK
COUNTY OF TOMPKINS) ss.:

On the 30th day of December in the year 2003 before me, the undersigned, a Notary Public in and for said State, personally appeared Deborah Grantham, Charles Hatfield, Christopher Michaels and Stephen Stelick, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public
APPENDIX I

SERVICE AREA MAP

(Attached)
Appendix II

Permitted Capacity and Excess Capacity Allocations

Distributed Excess Capacity (MGD)

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>IAWWTP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Ithaca</td>
<td>65%</td>
<td>5.80</td>
<td>57.14%</td>
<td>7.48</td>
<td>1.68</td>
</tr>
<tr>
<td>Town of Ithaca</td>
<td>33.3%</td>
<td>2.97</td>
<td>40.88%</td>
<td>5.36</td>
<td>2.39</td>
</tr>
<tr>
<td>Town of Dryden</td>
<td>1.7%</td>
<td>0.15</td>
<td>1.98%</td>
<td>0.26</td>
<td>0.11</td>
</tr>
<tr>
<td><strong>100%</strong></td>
<td><strong>8.92</strong></td>
<td><strong>100%</strong></td>
<td><strong>13.10</strong></td>
<td></td>
<td><strong>4.18</strong></td>
</tr>
</tbody>
</table>

Check: $8.92 + 4.18 = 13.10$ O.K.

Notes:  
1) Plant usage numbers are based on several years of recent plant billings, e.g. city billings for plant operations: 2002, 63.4%; 2001, 65.3%; 2000, 64.7%; 1999, 65.5%; 1998, 65.7%.
2) It is assumed that plant billings for operational expenses are derived from figures for plant usage and that usage is proportional to flows. Any user that was being surcharged for special loadings (chemical, biological or solids) is not reflected here.
3) Peak flow estimates are based on plant usage estimates and the total peak flow of 8.92 MGD. The peak flow is the average of the peak month flow for each of the last five years. In this case, the years 1996 to 2000 produced a peak flow of 8.92 MGD.

WJG 12/03
APPENDIX III

TITLE OF PROPERTY AND CAPITAL COST APPORTIONMENT

All costs associated with new plant and site for the hypothetical first year NO-GROWTH PLANT will be apportioned by fixed percentages based on the previous year flow records of contributions from respective municipalities and load factors for major industry and septage. The reserve capacity of the new plant and proportionate share of the site would be apportioned by fixed percentages based on growth projections for the respective municipalities for the year 2005 as indicated in the Facilities Plan and on additional load factors for major industry and septage. At the time the fixed percentage of reserve capacity is reached by any municipality or industry, additional capacity shall be made available as needed from the remaining reserve capacity. Each municipality or industry with remaining reserve capacity shall provide the needed capacity by a proportion equal to their remaining reserve capacity over the total remaining reserve capacity and be reimbursed for same in "dollars of that year" i.e., future worth by the municipality requiring the additional capacity. Any reduction of flow values from any entity, while not affecting the fixed percentages paid for the first year plant, will act as a credit for capacity to that entity and always be used before additional reserve capacity. (See Scheme III for a more detailed explanation.) Scheme III is made a part of this Agreement.

ANTICIPATED LOCAL CAPITAL COSTS

1. 30 YEAR BONDING PERIOD
2. INTEREST RATE – 9 1/2%

3. LOCAL LENDING FOR NEW CONSTRUCTION - $4,300,000

4. LOCAL EXPENSES FOR EXISTING PLANT AND LAND
   a. Based on Edward W. Austin 6/80, Land Appraisals
      Parcel IV..........................$206,500
      LAND................................$206,500

   b. Based on Edward W. Austin 6/80, Land Appraisals
      American Appraisal 6/79, and Federal Funding
      $286,000 x .50 = Facilities
      on Parcel IV.......$143,000
      Remaining Debt non-
      Reusable Parts.............50,500
      BUILDINGS...............193,500
      LAND PLUS BUILDINGS TOTAL $400,000

5. PROJECT LOCAL COST TOTAL........$4,700,000
APPENDIX IV

FINANCING OPERATION AND MAINTENANCE COSTS

Each of the Parties agrees to pay to the Chief Fiscal Officer an amount for sewage conveyed to the system from their own municipality in accordance with a uniform sewer rate schedule to be established prior to the approval of each year's operating budget. The amounts so derived are hereinafter referred to as "Sewer Rent Revenues." Each Party shall have the option of raising such amounts by charging ultimate users in accordance with such sewer rate schedule or by assessments or by any other manner permitted by law. However, regardless of the method chosen by each Party to actually raise their share due, the amount payable shall be computed as if each Party had adopted the uniform sewer rate schedule and charged the ultimate users thereunder. All of the Sewer Rent Revenues derived from Town of Dryden, Town of Ithaca, and City of Ithaca shall be delivered to the Chief Fiscal Officer for application toward the operation and maintenance costs of the Treatment Plant. Any surplus of revenues shall be budgeted toward the operation for the following year. If such revenues are insufficient to pay such costs, the Parties shall make up the deficit by each contributing a portion of such deficit; the portion applicable to each Party to be determined by multiplying the total deficit by a fraction, the denominator, of which is the amount of sewage conveyed to the system by all the Parties during the immediately preceding four billing quarters as determined by the SJC, and the numerator of which is the amount of sewage conveyed to the system in such period by the individual Party whose share is being determined. Except as hereinafter provided, the uniform sewer rate schedule may not be changed without the written agreement to such change of all of the Parties. Unless the SJC determines
otherwise, the payments required hereunder shall be made to the Chief Fiscal Officer or its delegate quarterly.
APPENDIX V

FLOW METER LOCATIONS

(Attached)