

JULY 26, 2024 DUHAIME DRAFT

Cost-Sharing Agreement for Sewer Project

[DRAFTING NOTE: To be finalized by the Associations and the Town of Old Lyme upon the Town’s completion of the Conditions Precedent to the Town becoming a party to the CSA as provided in the “Agreement to Add Town of Old Lyme to Beach Associations’ Cost-Sharing Agreement for Sewer Project” between the Town and the Associations dated as of July ___, 2020]

This Cost-Sharing Agreement for Sewer Project (this “Agreement”), with an effective date of _____, 2024, is hereby entered into by and among The Miami Beach Association, a private beach association, located in the Town of Old Lyme, Connecticut, and The Miami Beach Association Water Pollution Control Authority, located in the Town of Old Lyme, Connecticut (collectively, “Miami Beach”); Old Lyme Shores Beach Association, a private beach association, located in the Town of Old Lyme, Connecticut, and Old Lyme Shores Beach Association Water Pollution Control Authority, located in the Town of Old Lyme, Connecticut (collectively, “Old Lyme Shores”); and The Old Colony Beach Club Association, a private beach association, located in the Town of Old Lyme, Connecticut, and The Old Colony Beach Club Association Water Pollution Control Authority, located in the Town of Old Lyme, Connecticut (collectively, “Old Colony”); and Old Colony together with Miami Beach and Old Lyme Shores, collectively, the “Associations”); and the Town of Old Lyme, a municipal corporation, having its Town Hall located at 52 Lyme Street, Old Lyme, Connecticut 06371, and the Town of Old Lyme Water Pollution Control Authority, located in the Town of Old Lyme, Connecticut (collectively, the “Town”); and the Associations and the Town each a “CSA Member” and collectively, the “CSA Members”).

RECITALS

WHEREAS, pursuant to the February 14, 2018 Consent Order of the Commissioner of the State of Connecticut Department of Energy and Environmental Protection issued to the Associations and the June 16, 2015 Administrative Order of the Commissioner of the State of Connecticut Department of Energy and Environmental Protection issued to the Town, the CSA Members wish to have constructed a shared sewerage system to serve each respective Association and the Sound View and Miscellaneous Area B areas of the Town, such shared sewerage system to include certain devices, equipment, appurtenances, plant facilities, pump stations and methods of collecting, transporting, receiving, disposing of or discharging sewage in and for the Associations and the Town all as more particularly set forth on Exhibit A attached hereto (collectively, the “Wastewater System”), and wish to address preliminarily the Operation and Maintenance (as defined below) of the constructed Wastewater System to and for the Associations and the Town;

WHEREAS, pursuant to resolutions or referendums duly approved and adopted by the Governing Board (as defined below) of each CSA Member, the CSA Members have appropriated funds and authorized the issuance of obligations under the Clean Water Fund Program (as defined below) for: the planning, acquisition, financing, design and construction of

the Wastewater System, including all connection fees for the conveyance of sewage to a Sewerage Facility (as defined below), all costs associated with connecting to the Sewerage Facility, pump stations, shared force mains and gravity sewers, odor control facilities, all costs associated with acquisition of real property as may be required for the Wastewater System, all costs associated with the engineering, land surveying, geophysical and corrosion studies, rights of way and easements, storm drainage improvements, road reconstruction, bridge crossing, and all costs associated with all other tasks related to the planning, acquisition, design and construction of the Wastewater System, all to be completed in accordance with the Plan (as defined below), and as more particularly set forth on Exhibit A attached hereto (all of the foregoing, collectively, the “Project”; and for the avoidance of doubt, the Project includes shared elements only and does not include non-shared devices, equipment, gravity sewers or other elements particular to the territorial boundaries of a CSA Member);

WHEREAS, Old Colony has, for itself and for Miami Beach and Old Lyme Shores, entered into a loan and grant agreement with the State of Connecticut through the Clean Water Fund Program (the “CWF 720-D Agreement” or “Joint Interim Funding Obligation”) for financing their respective Costs (as defined below) during the construction period;

WHEREAS, pursuant to a letter dated November 6, 2023 from the State of Connecticut, on or before [Insert Date], the CSA Members expect they will receive supplemental funding in the form of a forgivable loan/grant for the Project from the State of Connecticut in an amount up to \$15,000,000 million dollars; **[Update when receive additional details from Shipman and Goodwin]**

WHEREAS, upon completion of the Project, each Association and the Town may separately enter into a post-construction loan agreement with the State of Connecticut under the Clean Water Fund Program to permanently finance the remaining balance (if any, after receipt of said supplemental funding) of each Association’s and the Town’s respective share of the Costs pursuant to the Project Cost-Sharing Schedule set forth on Exhibit B attached hereto;

WHEREAS, the Associations entered into a Cost-Sharing Agreement with an effective date of April 25, 2016;

WHEREAS, the Associations and the Town entered into a July __, 2020 “Agreement to Add Town of Old Lyme to Beach Associations’ Cost-Sharing Agreement for Sewer Project,” and the Town has met each condition precedent set forth in said July __, 2020 agreement;

WHEREAS, the CSA Members desire to enter into a new, replacement cost-sharing arrangement for that portion of the Costs directly attributable to each CSA Member pursuant to the cost apportionment schedules set forth on Exhibit B and Exhibit C; and

, the CSA Members desire to enter into this Agreement to memorialize their mutual **WHEREAS** understandings, rights and obligations regarding the cost-sharing arrangement for the Project and Operation and Maintenance;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, representations, warranties and agreements contained herein, and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. Certain Definitions

For purposes of this Agreement, the following terms shall have the following meanings:

“*Annual Settlement Statement*” shall have the meaning given to such term in Section 2.2(b) hereof.

“*Clean Water Fund Program*” shall mean funding provided by the State of Connecticut Department of Energy and Environmental Protection under Section 22a-475, *et. seq.*, of the Connecticut General Statutes, as the same may be amended from time to time.

“*Contribution*” shall have the meaning given to such term in Section 2.2(a) hereof.

“*Costs*” shall mean the aggregate amount of all costs, expenses or other financial obligations of CSA Members, including directly incurred and paid for materials, supplies, labor, overhead, financing, and services, provided by third parties in connection with the Project or Operation and Maintenance, minus any costs, expenses or financial obligations in connection with the Project or Operation and Maintenance that were paid or funded by or through a public or private grant or other source which does not require repayment.

“*Committee*” shall have the meaning given to such term in Section 2.1(a) hereof.

“*CSA Member*” shall have the meaning given to such term in the first paragraph hereof.

“*CWF 720-D Agreement*” shall have the meaning given to such term in the Recitals hereof.

“*Disputed Costs*” shall have the meaning given to such term in Section 2.3 hereof.

“*EDU*” shall mean equivalent dwelling unit for the purposes of allocating Costs for the Wastewater System directly attributable to each CSA Member pursuant to the cost apportionment schedules set forth on Exhibit B and Exhibit C.

“*Governing Board*” shall be an Association’s Board of Governors or Board of Directors of each separate Association, or the Board of Selectmen for the Town, operating under their respective Charters or other governing documents.

“*Initial Term*” shall have the meaning given to such term in Section 4.1(a) hereof.

“*Joint Interim Funding Obligation*” shall have the meaning given to such term in the Recitals hereof.

“*Law*” shall mean all applicable federal, state, local, foreign or other laws, rules, regulations, consent decrees, consent orders, consent agreements, judgments, actions, determinations or orders of, federal, state, local, foreign or other authorities, and all orders, writs, decrees, and

consents of any governmental or political subdivision or agency thereof, or any court or similar entity established by any such governmental or political subdivision or agency thereof.

“*O&M Contribution*” shall have the meaning given to such term in Section 2.2(a).

“*Operation and Maintenance*” shall mean any or all of the following activities after completion of the Project - emergency, predictive, preventive, corrective or ongoing maintenance, repair or replacement of that portion of the Wastewater System to keep it in good working order, and in safe, neat and orderly condition, including general pump station property maintenance (e.g., real property building and site maintenance and repairs, performed in accordance with Prudent Industry Practices (as defined below). **[Per the 4-16-2024 and 7-23-2024 OLSSPA meetings, OLSSPA is currently working to obtain the creation of a regional WPCA legal entity comprised of the CSA Members, to assume, among other things, responsibility for: managing Operation and Maintenance or engaging a third party Operation and Maintenance provider; conducting business and making decisions according to its governing documents; and establishing rules for creating and maintaining a capital reserve fund. Keep in mind CT DEEP reporting requirements. The Operation and Maintenance terms in this Agreement would remain in effect until such time as a legal entity assumes responsibility for Operation and Maintenance (in which case, this Agreement would be amended accordingly).]**

“*Operation Year*” shall mean July 1 through June 30.

“*Party*” or “*Parties*” shall mean, individually or collectively, as the case may be, the CSA Members (all CSA Members are signatories to this Agreement).

“*Payment Notice*” shall have the meaning given to such term in Section 2.1(e) hereof.

“*Plan*” shall mean the plans and specifications for the Project, prepared by Fuss & O’Neill, Inc., to design and construct the Wastewater System attached hereto as Exhibit A, as the same may be amended by the unanimous consent of all of the Parties from time to time.

“*Project*” shall have the meaning given to such term in the Recitals hereof.

“*Project Contribution*” shall have the meaning given to such term in Section 2.1(c) hereof.

“*Project Cost-Sharing Schedule*” shall mean the certain apportionment of Costs associated with the Project prepared by Fuss & O’Neill, Inc., as set forth in Exhibit B attached hereto.

“*Project Cost Statement*” shall have the meaning given to such term in Section 2.1(d) hereof.

“*Prudent Industry Practices*” shall mean the practices, methods and acts engaged in or approved by the wastewater treatment industry for comparable projects that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Law, and consistent with standards regarding reliability, safety, environmental protection, reasonable economy and expedition. Prudent Industry Practices include providing (i) adequate materials, resources and supplies necessary to meet operation, maintenance, repair and replacement obligations, (ii) properly performed preventative,

routine and corrective maintenance and repairs; (iii) appropriate monitoring and testing to ensure that equipment is functioning as designed, will function properly under normal conditions and will function in accordance with design parameters under emergency conditions, and (iv) equipment that is not operated in a careless or imprudent manner or in a manner unsafe to workers, the general public or the environment.

“*Refund*” shall have the meaning given to such term in Section 2.4 hereof.

“*Returned Funds*” shall have the meaning given to such term in Section 2.4 hereof.

“*Sewerage Facility*” shall mean a wastewater collection or treatment facility in East Lyme, Waterford, New London, or such other location as may be mutually agreed upon in writing by the Parties, which facility is utilized for conveyance or treatment of sewage generated by the CSA Members.

“*Useful Life*” shall mean the period of time during which the CSA Members consider the Wastewater System useful and usable by the CSA Members in accordance with Prudent Industry Practices.

“*Wastewater System*” shall have the meaning given to such term in the Recitals hereof.

“*WPCA*” shall mean Water Pollution Control Authority.

2. Cost Sharing

2.1 Cost-Sharing Arrangement for the Project

(a) Any portion of the Project that has not yet been designed and constructed shall be designed and constructed jointly as determined by a committee comprised of one (1) representative from each CSA Member (the “Committee”). Each Association representative to the Committee shall be nominated by their respective WPCA for a three (3) year term and appointed with majority approval by their respective Governing Board. Each representative to the Committee shall be entitled to one (1) vote on all matters related to the Project, Operation and Maintenance, or any other matter related to this Agreement. Any action taken by the Committee with respect to Operation and Maintenance, or any other matter related to the Project or this Agreement, shall be by unanimous vote of the Committee (subject to Section 3, Dispute Resolution), and such unanimous vote of the Committee shall be deemed to be approval by each CSA Member of any such action, except when such vote shall be related to location(s) of sewerage system infrastructure and pump station, or the granting of rights of way or real estate transactions of any kind which, in such case, shall require the prior approval of each CSA Member’s Governing Board. The CSA Members agree that the Committee will meet on a periodic basis, as is necessary and no less than two (2) times per year, to discuss the Project, Operation and Maintenance, or such other matters as the CSA Members individually desire. Notice of such Committee meetings shall be given the Committee President (or, if there is no Committee President, by the then-current Chair of the Miami Beach WPCA) to the CSA members at least five (5) days prior to the date of such meeting to the addresses set forth in Section 6.3 hereof.

(b) The Committee shall complete the Project in accordance with the Plan and any amendments thereto approved by each and every CSA Member. The CSA Members shall amend Exhibit A hereto to reflect the Plan as amended.

(c) On the terms of and subject to the conditions set forth in this Agreement, each CSA Member agrees to pay for the Costs related to the Project attributable to each such CSA Member based on the percentage of EDU's (each a "Project Contribution"), as determined in accordance with the Project Cost-Sharing Schedule attached hereto as Exhibit B. For any portion of the Project that has not yet been designed and constructed, the Committee shall seek bids and award the business to the lowest responsible qualified bidder for services related to the design or construction of the Project, subject to and in accordance with Section 2.1(a) hereof. Any and all agreements to be entered into with such bidders shall be subject to the prior written approval of each CSA Member in accordance with each CSA Member's governing documents.

(d) All Costs related to the Project shall be approved by the Committee in accordance with Section 2.1(a) hereof. Pursuant to the terms of the Joint Interim Funding Obligation, each CSA Member shall make, or cause to be made on its behalf, all payments for Costs on a timely basis, and each CSA Member shall provide the other CSA Members with a statement of Costs together with reasonable supporting documentation of such Costs within twenty (20) days after the end of each calendar month for the preceding calendar month's Costs (each a "Project Cost Statement").

[Which CSA Member is currently providing these monthly Project Cost Statements?]

(e) The Joint Interim Funding Obligation shall be used to pay for the loan eligible Costs of the Associations related to the Project pursuant to the Clean Water Fund Program, with each CSA Member responsible for its respective share in accordance with the Project Cost-Sharing Schedule attached hereto as Exhibit B. Upon completion of the Project and placement in service of the Wastewater System for one or more CSA Members, each Association and the Town may separately enter into a post-construction loan agreement with the State of Connecticut under the Clean Water Fund Program to permanently finance each CSA Member's respective remaining balance of the Costs related to the Project in accordance with the Project Cost-Sharing Schedule set forth on Exhibit B attached hereto. Upon issuance of each Association's permanent project loan obligation under the Clean Water Fund Program, the associated Costs permanently financed shall reduce the amount of the Joint Interim Funding Obligation and each such Association issuing such project loan obligation shall provide the other CSA Members with written notice evidencing same (the "Payment Notice"). The Payment Notice shall set forth in sufficient detail (i) the total Costs paid by such Association and financed through the Joint Interim Funding Obligation, (ii) all amounts permanently financed for the Project through the Clean Water Fund Program by such Association, (iii) a certificate of the project engineer certifying to the CSA Members that the Project has been completed and placed into service for such Association, and (iv) any other information or certificates reasonably requested by any other CSA Member.

(f) In the event that any Costs of the Project are not eligible for loans or grants through the Clean Water Fund Program, then the CSA Members shall be responsible for such non-eligible Costs, as applicable, and in accordance with the Project Cost-Sharing Schedule attached hereto as Exhibit B.

2.2 Cost-Sharing Arrangement for Operation and Maintenance

(a) The CSA Members agree to (i) engage a third party to perform all Operation and Maintenance, (ii) manage or oversee such third party's performance of Operation and Maintenance, and (iii) share the Costs of Operation and Maintenance that is allocable to each CSA Member as set forth on Exhibit B, subject to and in accordance with this subsection (a). The CSA Members agree that the Committee will endeavor to hire a third party to oversee (or pay for) Operation and Maintenance, and to reimburse (or deposit monies in advance with) such third party according to each CSA Member's share of the Costs of Operation and Maintenance as set forth on Exhibit B. The Committee shall seek bids and award the Operation and Maintenance business to the lowest responsible qualified bidder, subject to and in accordance with this subsection (a). Any and all agreements to be entered into with such bidders shall be subject to the prior written approval of each CSA Member in accordance with each CSA Member's governing documents. On the terms of and subject to the conditions set forth in this Agreement, each CSA Member agrees to pay for the Costs related to the Operation and Maintenance attributable to each such CSA Member based upon the flow apportionment data for the prior Operations Year as prepared by an independent consultant (each an "O&M Contribution," and collectively with a Project Contribution, a "Contribution"). Each of the CSA Members agree to budget, on an annual basis, the anticipated annual Costs for Operation and Maintenance allocable to each such CSA Member. Each CSA Member shall be invoiced within twenty (20) days after the end of each calendar month for the following month's Costs related to Operation and Maintenance. Each CSA Member shall make payment to the agreed upon party of each invoiced O&M Contribution amount within ten (10) days of receipt thereof.

(b) Within sixty (60) days after the end of each Operations Year, each CSA Member shall be provided with an annual settlement statement **[which CSA Member will provide these annual statements?]**, which shall show the computation, together with reasonable supporting documentation, of the Costs for Operation and Maintenance (and a reconciliation in reasonable detail of such Costs so computed) with the amounts paid during the Operations Year (the "Annual Settlement Statement"). If the reconciliation in the Annual Settlement Statement is such that one or more CSA Member has underpaid or overpaid, such CSA Member shall, within thirty (30) days after receipt of such Annual Settlement Statement, be refunded the overpayment **[Which CSA Member will provide the Refunds?]** or pay the additional amount due to the other CSA Member, as applicable.

2.3 Disputed Costs

Notwithstanding the foregoing Sections 2.1 and 2.2, if any CSA Member disputes the payment, validity or reasonableness of all or any portion of the Costs set forth on a Project Cost Statement or Annual Settlement Statement (the "Disputed Costs"), all of the CSA Members shall resolve such Disputed Costs pursuant to the terms of Section 3, Dispute Resolution, of this Agreement; provided, however, that in a timely manner and in accordance with Section 2.2(a) or 2.2(b), as applicable, any CSA Member, as the Party disputing the Costs, shall pay its share of the undisputed portion of the Costs set forth on the Payment Notice or Annual Settlement Statement and shall pay the amount of the Disputed Costs into an escrow account established for such purpose and maintained by an entity mutually agreed upon by the Parties (which entity may be a Party hereto), and the amount of the Disputed Costs shall remain in escrow with such entity pending resolution of the Disputed Costs. The prevailing Party in any such dispute shall be

entitled to reimbursement of reasonable legal and escrow fees and costs incurred by such Party in relation to the resolution of the Disputed Costs pursuant to the terms of this Agreement.

2.4 Return of Funds

If at any time any CSA Member receives from a payee a refund, rebate or other return of payment of all or any portion of Costs (the “Returned Funds”), such CSA Member shall promptly refund the allocable portion of the Returned Funds to each of the other CSA Members **[How will the CSA Member receiving the Returned Funds know what to allocate to the other CSA Members?]**, as applicable, in immediately available funds (the “Refund”), provided, however, that no Refund shall be due unless such Party previously paid a Contribution toward such Returned Funds **[Why is it necessary to state “unless such Party previously paid a Contribution toward such Returned Funds?” Will the Refund be provided without setoff against any monies owed by the CSA Member receiving the Refund?]**.

2.5 Commercially Reasonable Efforts

The Committee and CSA Members shall at all times act in good faith and use commercially reasonable efforts to complete the Project, perform, obtain performance or oversee the performance of Operation and Maintenance, in an economically efficient manner without the waste of time or funds, and comply with all terms and conditions of this Agreement, including Section 3, Dispute Resolution.

3. Dispute Resolution

3.1 Negotiation

The Parties shall, in accordance with this Section 3, attempt in good faith to resolve any dispute arising out of or relating to this Agreement (including, for example, a claim by the majority of the Parties that a Party has violated Section 2.5, Commercially Reasonable Efforts, in withholding its approval for a particular action) arising out of or relating to this Agreement. A Party (the “Initiating Party”) shall give one or more of the other Parties written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after receipt of the initial notice, the Receiving Party shall (jointly with one or more of the other Receiving Parties, or individually) submit a written response to the Initiating Party and the other Receiving Parties. The notice and response shall each include (a) a statement of that Party’s position in reasonable detail (e.g., include relevant dates, documents, dollar amounts) and a summary of arguments supporting that Party’s position, and (b) the name, title and contact information (e.g., phone, email address, mailing address) of the individual who will represent that Party and of any other individual who will accompany the representative. Within fifteen (15) days after the receipt of said written response, the representatives of the Parties shall meet at a mutually acceptable time and place (or via a video or audio teleconference at noon on the fifteenth (15th) day after the Initiating Party’s receipt of said written response if the Parties are not able to mutually agree on the time or place), and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party related to the dispute will be honored by the other Parties. All deadlines specified in this Section 3.1 may be extended by unanimous written agreement of the Parties to the dispute.

3.2 Arbitration

Any and all disputes arising under or in connection with this Agreement that are not resolved within forty-five (45) days after the Receiving Party's receipt of said initial notice from the Initiating Party (or any mutually agreed upon extension to said forty-five day period), will be finally and exclusively resolved by arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect. **[Why did the prior draft CSA state: "Arbitration shall be governed by the Federal Arbitration Act"?)** The arbitration will be held within ten (10) miles of 52 Lyme Street, Old Lyme, CT 06371 before a single arbitrator mutually acceptable to the Parties. If the Parties cannot agree on a single arbitrator within ten (10) days after the date of written demand for the appointment of an arbitrator is made, one shall be appointed by the AAA. In no event will the arbitrators have the authority to make any award that provides for punitive or exemplary damages. Any decision rendered by the arbitrators will be binding, final and conclusive upon all Parties, and a judgment thereon may be entered in, and enforced by, any court having jurisdiction over the Party (or over the assets of the Party) against which an award is entered, and the Parties hereby irrevocably waive any objections to the jurisdiction of such court based on any ground, including improper venue or forum non conveniens. The fees of the arbitrator shall be borne equally by the Parties. The prevailing Party shall be entitled to recover from the other Party (jointly and severally), all other expenses, including reasonable attorneys' fees and costs, incurred in connection with the arbitration and the enforcement of any arbitration award. No information concerning an arbitration, beyond the names of the Parties and the relief requested, may be unilaterally disclosed to a third party by any Party unless the Party is required to do so by law or by a competent regulatory body, and then only by (i) first affording the Party opposed to the disclosure an opportunity to oppose the disclosure; (ii) furnishing to the arbitrator details of the disclosure and an explanation of the reason therefor; and (iii) disclosing no more than what is legally required. Except where clearly prevented by the subject matter of the dispute, the Parties will continue performing their respective obligations under this Agreement while the dispute is being resolved.

4. Term and Termination; Survival; Warranty; Limitation of Liability

4.1 Term

(a) This Agreement shall commence as of the date first written above and shall continue in effect until twenty-one (21) years after the completion of the Project and placement in service of the Wastewater System for all CSA Members (the "Initial Term"), unless sooner terminated in accordance with the terms of this Agreement. The Initial Term shall automatically renew for one (1) year terms (each a "Renewal Term") with this Agreement remaining in full force and effect and continuing for such period of time equal to the remainder of the Useful Life of the Wastewater System, unless sooner terminated in accordance with the terms of this Agreement.

4.2 Termination and Withdrawal

This Agreement may be terminated only as follows:

4.2.1 at any time upon unanimous written consent of all CSA Members; or

4.2.2 following the expiration of the Initial Term, by the withdrawal of any CSA Member for any reason or no reason upon one hundred eighty (180) days written notice to the other CSA Members; provided, however, that the withdrawing CSA Member shall, prior to the expiration of said one hundred eighty (180) days, have already paid to the remaining CSA Members an early termination fee in an amount equal to three times the total Costs for the Project and total Costs for Operation and Maintenance directly attributable to the withdrawing CSA Member for the immediately preceding Operation Year pursuant to the cost apportionment schedules set forth on Exhibit B and Exhibit C. Within ten (10) days after receipt of any such written withdrawal notice, the other CSA Members shall calculate said early termination fee and provide the withdrawing CSA Member with the early termination fee amount to be paid in US dollars by the withdrawing CSA Member to each of the other CSA Members (itemized for each CSA Member according to the cost apportionment schedules set forth on Exhibit B and Exhibit C).

4.3 Survival

In the event of any termination of this Agreement, the provisions of this Agreement which are specified herein as surviving, or the provisions which by their nature contemplate effectiveness beyond the termination of this Agreement, shall survive any such termination.

4.4 Warranty; Limitation of Liability

4.4.1 Each Party represents, warrants and covenants that the execution and delivery of this Agreement and the performance of its obligations under this Agreement have been duly and validly authorized, and will not (a) conflict with or violate any provision of its charter, bylaws, or other governing documents; (b) violate any applicable laws, rules, regulations or ordinances; or (c) violate any provision of any other agreement to which it is a party.

4.4.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY ANY PARTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITH THE EXCEPTION OF THE PAYMENT OBLIGATIONS REQUIRED BY A PARTY PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN NO EVENT WILL ANY PARTY HAVE ANY LIABILITY TO ANOTHER PARTY OR TO ANY THIRD PARTY RELATING TO OR ARISING OUT OF THE EXISTENCE OF THIS AGREEMENT OR THE PERFORMANCE OF A PARTY'S OBLIGATIONS UNDER THIS AGREEMENT.

4.4.3 The provisions of this Section 4.4 shall survive any termination of this Agreement.

5. Project

The Project shall be an asset owned by the CSA Members in direct proportion to the percentage of each CSA Member's Project Contribution. The CSA Members shall execute and deliver **[to whom? when?]** any and all recording or conveyance documents reasonably necessary **[according to whom?]** to evidence ownership of such interest. The CSA Members may allow additional parties to use or access the shared portion of such Project in any manner as may be determined by the voting method described in Section 2.1(a).

6. Miscellaneous Provisions

6.1 Construction

Words, as employed in this Agreement, shall have their normally accepted meanings, unless otherwise specified in this Agreement. The words "shall," "agree" and "will" are mandatory, the word "may" is permissive. References to the plural include the singular, references to the singular include the plural, references to any gender include the other gender, the terms "include" or "including" are not limiting and has the respective inclusive meaning represented by such phrases as "include without limitation" and "including without limitation;" and the term "or" has the inclusive meaning represented by the phrase "and/or." The word "days" shall mean consecutive calendar days, excluding New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. The terms "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The terms and conditions of this Agreement shall be construed, whether by a mediator, arbitrator, court, or any third party, as if all Parties had drafted them, without regard to the origin of any or all of the language, words, phrases, numbers, figures, or diagrams used herein.

6.2 Amendment

Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented or waived except by a written instrument signed by all of the Parties hereto.

6.3 Notices **[PLEASE REVIEW AND PROVIDE ADDRESS UPDATES (IF ANY)]**

All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (i) upon delivery if delivered by hand; (ii) upon receipt if mailed by express, certified or registered mail, with postage prepaid, in the continental United States; or (iii) upon receipt if sent by a nationally recognized overnight courier service that regularly maintains records of items picked up and delivered; and addressed to:

If to Miami Beach:

Miami Beach Association
P.O. Box 91
Old Lyme, CT 06371
Attn: President

Cc: Miami Beach Association Water Pollution
Control Authority
P.O. Box 91
Old Lyme, CT 06371
Attn: Chairman of the Miami Beach
Association Water Pollution Control Authority

If to Old Lyme Shores:

Old Lyme Shores Beach Association
P.O. Box 80
South Lyme, CT 06376
Attn: President

Cc: Old Lyme Shores Beach Association
Water Pollution Control Authority
Old Lyme Shores Beach Association
P.O. Box 80
South Lyme, CT 06376
Attn: Chairman of the Old Lyme Shores Beach
Association Water Pollution Control Authority

If to Old Colony:

Old Colony Beach Club Association
P.O. Box 10
Old Lyme, CT 06371
Attn: Chairman of the Board of Governors

Cc: Old Colony Beach Club Association Water
Pollution Control Authority
P.O. Box 10
South Lyme, CT 06376
Attn: Chairman of the Old Lyme WPCA

If to the Town:

Town of Old Lyme
52 Lyme Street
Old Lyme, CT 06371
Attn: First Selectman

Cc: Town of Old Lyme Water Pollution
Control Authority
52 Lyme Street
Old Lyme, CT 06371
Attn: Chairman

In all cases, with copies to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
Attn: Danielle Braun, Esq.

Suisman Shapiro
2 Union Plaza, Suite 200
P.O. Box 1591
New London, CT 06320
Attn: Michael P. Carey, Esq.

Any Party may at any time change its address for notices by sending written notice to the other Parties of such change in the manner for sending notices provided for herein.

6.4 Binding Effect; Assignment

This Agreement, including all exhibits attached hereto, and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective administrators, legal representatives, successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or assignable **[why state “or assignable”?]** by any of the Parties hereto without the prior written consent of the other Parties. In the event of a conflict between the terms and conditions of this Agreement and any exhibit to this Agreement, the terms and conditions of **[insert one of the following: this Agreement/the exhibit]** shall govern and control. In the event all of the Parties agree in writing to an assignment by a Party, such assignor Party shall remain contingently liable for its obligations hereunder to the extent that such obligations are not fulfilled by the assignee; provided, however, that the remaining CSA Members shall first be required to use commercially reasonable efforts to obtain remedy, collection or relief from the assignee. Any attempted assignment of this Agreement, in whole or in part, without the prior written consent of all other Parties, shall be void *ab initio*.

6.5 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut, without regard to its principles of conflict or choice of law.

6.6 Counterparts

This Agreement may be executed in two or more counterparts, including by way of facsimile, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

6.7 Headings

The headings in this Agreement are for convenience only and shall not constitute a part of, or affect in any way the meaning or interpretation of, this Agreement.

6.8 Entire Agreement

This Agreement sets forth the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein, and supersedes all prior and contemporaneous agreements, promises, letters of intent, covenants, arrangements, communications, representations or warranties, whether oral or written, by any Party hereto or by any officer, director, agent, or representative of any Party hereto.

6.9 Third Parties

Nothing in this Agreement shall be construed or implied to confer upon or give to any person, entity or governmental authority (other than the Parties hereto, and their respective successors or permitted assigns), any benefit, right or remedy under or by reason of this Agreement.

6.10 Severability

In the event that any provision of this Agreement shall for any reason be determined to be void, invalid, illegal or otherwise unenforceable in any respect by any court of competent jurisdiction, then, to the full extent permitted by law: (a) all other provisions hereof will remain in full force and effect and will be liberally construed in order to carry out the intent of the Parties hereto as nearly as may be possible; (b) such determination will not affect the remaining provisions of this Agreement; and (c) any court of competent jurisdiction is hereby granted by the Parties the power to reform such provision to the extent necessary for such provision to be enforceable under applicable law. The Parties' rights and remedies are cumulative and not exclusive and are in addition to all rights and remedies at law or in equity. **[Discuss preceding sentence; whether to include the right to injunctive relief.]**

6.11 Waiver of Compliance

Any failure of any of the CSA Members to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing by all of the other CSA Members, but such written waiver or any failure to insist upon strict compliance with any such obligation, covenant,

agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Moreover, no delay or failure by any Party in exercising or enforcing any of its rights or remedies hereunder, in whole or in part, and no course of dealing or performance with respect thereto, shall constitute a waiver thereof in any other instance.

THE NEXT PAGE IS THE SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed, this Agreement on the date first written above.

THE MIAMI BEACH ASSOCIATION

THE MIAMI BEACH ASSOCIATION
WATER POLLUTION CONTROL
AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

OLD LYME SHORES BEACH
ASSOCIATION

OLD LYME SHORES BEACH
ASSOCIATION WATER POLLUTION
CONTROL AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

THE OLD COLONY BEACH CLUB
ASSOCIATION

THE OLD COLONY BEACH CLUB
ASSOCIATION WATER POLLUTION
CONTROL AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

THE TOWN OF OLD LYME

THE TOWN OF OLD LYME WATER
POLLUTION CONTROL AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit A

Shared Components of The Wastewater System

As of February 2020

[Same as Exhibit A to the Agreement to Add Town of Old Lyme to Beach Associations' Cost-Sharing Agreement for Sewer Project] [RP put in sample]

Exhibit A

Shared Components of The Wastewater System

As of February 2020

Also included in the shared infrastructure but not depicted here, a Bioxide station to be located within Old Lyme. In addition, the project description below includes the Town of Old Lyme.

Exhibit A - Shared Components of the Wastewater System (i.e. "The Project")

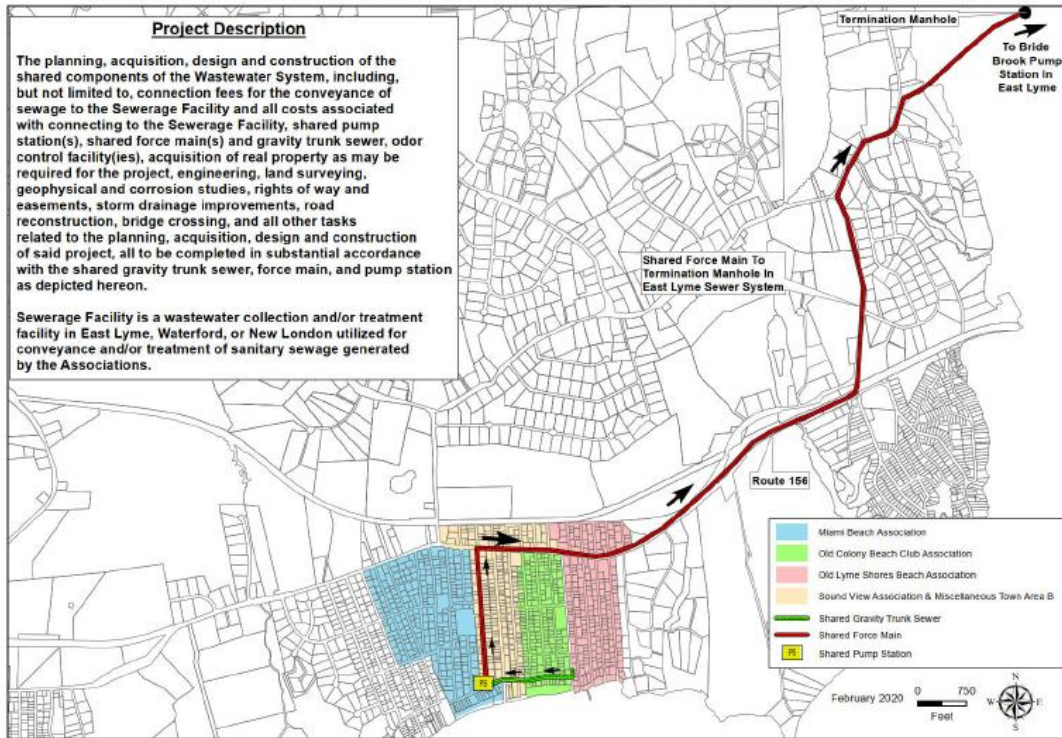


Exhibit B

Project Cost-Sharing Schedule

Old Lyme Beach Association	# of EDUs *	Percent (%) of Total EDUs
Miami Beach Association	226	24.9
Old Colony Beach Club Association	221	24.3
Old Lyme Shore Beach Association	192	21.1
Soundview and Miscellaneous Area B	270	29.7
Total	909	100.0

EDU -	Equivalent Dwelling Unit
* MBA -	EDU value based on existing development. Existing includes 219 single family residences, four multiple units (and 8 undeveloped lots meeting R-10 Zoning not included in the apportionment herein). Existing: 226 EDU Source – April 2015 MBA Wastewater Facilities
* OCBCA -	EDU value based on existing development. Existing includes 196 single family residences, 5 multifamily, 18 condominium, and 22 boarding rooms (Future development consists of an additional 15 single family residences not included in the apportionment herein). Existing: 221 EDU Source – OCBCA Draft Wastewater Management
* OLSBA -	EDU value based on existing development. Existing includes 192 single family residences (Future development consists of an additional 4 single family residences for vacant lots meeting R-10 Zoning not included in the apportionment herein). Existing: 192 EDU Source – July 2012 Addendum to Wastewater Facilities Planning Report for OLSBA and OCBCA by F&O
* Sound View and Miscellaneous Area B -	EDU value based upon Coastal Wastewater Management Plan dated 2017, Table 3-1 by Woodward and Curran.

Exhibit C

Table 1 - Operation and Maintenance Apportionment of Costs

Cost Item	Responsible Party	Payment Based on:
Pump Station and Collection System Mechanical and Electrical Operation and Maintenance (includes pump system, valve chamber, generator building, odor control system, meters and collection system)	All CSA Members	Metered Flow*
Operating budget and Capital Reserves Fund for future equipment	All CSA Members	EDU Percentage for 1st 2 years and 3 year average of following years metered flow
Management Fee for Billing and Collection - Payments to Downstream Municipalities (Conveyance and Treatment)	All CSA Members	EDU Percentage for 1st 2 years and 3 year average of following years metered flow
20 Year bi-annual initial connection costs (East Lyme conveyance) and (New London treatment) Charges	Each CSA Member	As Negotiated in IMAs
Bi-annual (East Lyme Conveyance) and (New London Treatment) costs	All CSA Members	Metered Flow as negotiated in IMAs*
Annual New London and East Lyme Plant Capital Expenses	Each CSA Member	As Negotiated in IMAs
Cost Sharing Agreement Modifications – Legal and Administrative for the Town of Old Lyme to join the CSA	Town of Old Lyme	NA
		for 1st year and following years metered flow
Intermunicipal Agreements – Legal and Administrative for the Town of Old Lyme to Join the CSA	Town of Old Lyme	NA
Future Intermunicipal Agreements – Coordination	All CSA Members	EDU Percentage for 1st year and following years metered flow Per IMA agreement
General Pump Station Property Maintenance – Real Property i.e. Building and Site Maintenance and Repairs (Excluding O&M for the pump system, valve chamber generator building, odor control equipment, meters and collection system)	All CSA Members	EDU Percentage for 1st 2 years and 3 year average of following years metered flow for 1st year and following years metered flow

*** [TBD - See “O&M Contribution” in Section 2.2(a) for discussion purposes.]**