

**AGREEMENT FOR WASTEWATER TREATMENT  
BETWEEN  
CITY OF TAUNTON, MASSACHUSETTS  
AND TOWN OF RAYNHAM, MASSACHUSETTS**

This is an Agreement made and entered unto this 3 day of OCT, 2006, by and between the Town of Raynham, a municipal corporation within the County of Bristol and the Commonwealth of Massachusetts acting through its Board of Selectmen as authorized by a vote of the Town of Raynham Town Meeting, hereinafter referred to as "Raynham," and the City of Taunton, a municipal corporation within the County of Bristol, and the Commonwealth of Massachusetts acting through its Mayor and Municipal Council, hereinafter referred to as "Taunton."

**WITNESSETH:**

**WHEREAS**, Taunton and Raynham have previously executed an intermunicipal Agreement on January 2, 1973, as amended on April 8, 1977, for wastewater treatment service; and

**WHEREAS**, That the January 2, 1973 Intermunicipal Agreement as amended is outdated; and

**WHEREAS**, Raynham has an existing wastewater collection system; and

**WHEREAS**, Raynham has expanded and continues to expand its wastewater collection system within its boundaries; and

**WHEREAS**, Industrial Users located in Raynham currently contribute Wastewater, which includes Industrial Wastes, and

**WHEREAS**, Taunton owns, operates and maintains a Wastewater Treatment Facility and collection system and was required by a series of US Environmental Protection Agency (EPA) Administrative Orders, (#96-04 dated January 29, 1996, #94-31 dated September 23, 1994, #94-01 dated October 14, 1993 and #90-29 dated July 3, 1990) to bring the wastewater treatment plant into compliance with its NPDES discharge permit, and

**WHEREAS**, During the period of August 20, 1998 through March 31, 2004, Taunton, in response to the series of EPA Administrative Orders, constructed new capital improvements to the wastewater treatment plant thereby improving the treatment capabilities and effectiveness, and

**WHEREAS**, Taunton and Raynham still deem it to be economical, in the interest of both parties and the public interest, to enter into a new Intermunicipal Agreement whereby Taunton would receive, treat and dispose of Raynham's wastewater through Taunton's municipal sewer system; and

**WHEREAS**, Taunton has implemented an Industrial Pretreatment Program to control discharges from all Industrial Users of the POTW pursuant to the requirements set forth in the latest version of 40 CFR Part 403 and 314 CMR 7.00, 314 CMR 12.00 and 314 CMR 12.08, and

**WHEREAS**, Taunton's Industrial Pretreatment Program has been designated by the USEPA as an Approved Industrial Pretreatment Program, and

**WHEREAS**, Taunton's current Sewer Use Ordinance, Approved Industrial Pretreatment Program and Local Limits are incorporated herein as Appendix A and made a part of this Agreement,

**WHEREAS**, Taunton and Raynham are authorized by Chapter 40, Section 4A of the General Laws of the Commonwealth of Massachusetts to enter into contracts and Agreements for the purpose of aiding the prevention or abatement of water pollution;

**NOW THEREFORE**, in consideration of these premises and the mutual benefits to be derived by the parties hereto, an Agreement is prepared in the following form:

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## **ARTICLE I. DEFINITIONS**

For the purpose of this Agreement, the following terms are defined: (Where sections of Applicable Law or other regulations that impact this Agreement are quoted, the current versions and amendments apply.)

**"Act"** shall mean Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

**"Administrative Consent Order"** shall mean ACOP-SE-05-R006-1N-SEP between the Commonwealth of Massachusetts and the City of Taunton, effective April 15, 2005.

**"Agreement"** shall mean this Intermunicipal Agreement between Taunton and Raynham.

**"Agreement Date"** means the date following approval by the governing bodies that this Intermunicipal Agreement is executed by Raynham and Taunton.

**"Applicable Law"** shall mean Chapter 40, Section 4A of M.G.L., the March 4, 1997 (or current in force) Taunton Sewer Use Ordinance and Local Limits, as amended from time to time, the ~~Approved Industrial Pretreatment Program, as may be amended from time to time, the Raynham~~ Sewer Use Bylaw, as amended from time to time, and any applicable State (314 CMR) and Federal pretreatment laws (40 CFR Part 403), the Federal Clean Air Act, the Federal Clean Water Act (33 U.S.C. 1251 et seq.) Occupational Safety and Health Administration Act (OSHA) regulations and standards, and other applicable laws, regulations, standards, and requirements, including any such laws, regulations, standards, or requirements that may become effective during the term of this Agreement.

**"Approved Industrial Pretreatment Program"** shall mean the program administered by Taunton, which meets the criteria established in 40 CFR Part 403, Sees. 403.8 and 403.9 and which has been approved by the Region I Administrator of the United States Environmental Protection Agency, in accordance with Sec. 403.11.

**"Authorized Agent"** shall mean Taunton or Taunton Operator for the purpose of enforcing compliance by Raynham users of the Approved Industrial Pretreatment Program

**"Average Daily Flow"** shall mean the total annual Wastewater flow as measured at the metering location, divided by the number of days in one year.

**"Biochemical Oxygen Demand"** (abbreviated BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees centigrade (68 degrees Fahrenheit) expressed in milligrams per liter.

**"Board of Sewer Commissioners"** and **"Board"** shall mean those duly elected Sewer Commissioners of Raynham or the person or persons designated by the Board to act on behalf of the Board.

**"Capital Modification"** shall mean any material alteration, improvement, addition, upgrade or modification of the WWTF or Common Sewer System or any installation of new equipment or systems, including any of the foregoing that results from a replacement of any part of the WWTF or Common Sewer System or the installation of new equipment, machinery, systems or other property of the WWTF or Common Sewer System. A "Capital Modification" shall not include any routine maintenance of the WWTF or Common Sewer System.

**"Categorical Pretreatment Standards"** or **"Categorical Standards"** shall mean any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307 (b) and (c) of the Clean Water Act, as amended (33 U.S.C. 1317) which apply to a specific category of Users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

**"City Operator"** or **"Taunton Operator"** shall mean the private company that is under contract to Taunton to provide operation and maintenance, asset management services, and Capital Modifications for the POTW.

**"Collection System"** shall mean facilities for collecting, conveying, pumping and transporting wastewater to a treatment plant or facility.

**"Combined Sewer"** shall mean a drain or sewer receiving storm water run-off, groundwater, and sanitary sewage and/or industrial wastes.

**"Commissioner"** shall mean the Taunton Commissioner of Public Works.

**"Contract for Operation Sanitary Sewer Collection System"** shall mean the Service Contract for Operation and Maintenance, City of Taunton, Massachusetts Sanitary Sewer Collection

System, By and Between the City of Taunton, Massachusetts and Veolia Water North America – Northeast, LLC, dated July 1, 2006.

**"Common Sewer System"** shall mean that portion of the Taunton sewer system, including piping, pumping stations, equipment and structures, all in Taunton, that will be used by Raynham. Appendix D presents a map of the existing Common Sewer System as of the date of execution of this Agreement.

**"Common Sewer System Flow Capacity"** shall mean 8.4 MGD, Average Daily Flow.

**"Composite Sample"** shall mean a Wastewater sample resulting from the combination of individual Wastewater samples taken from a source at specific selected intervals based on an increment of time, flow or both.

**"Control Authority"** shall mean the Taunton Mayor and Municipal Council.

**"Existing Contract"** shall mean the Service Contract for Design, Construction, Operation, Maintenance and Asset Management relating to the City of Taunton, Massachusetts Wastewater System by and between the City of Taunton, Massachusetts and Professional Services Group, Inc., dated as of August 20, 1998, as amended.

**"Federal"** shall mean the government and agencies of the United States.

**"Future Capital Improvements"** shall mean all capital improvements to the WWTF and Sewer System as further described in Section 7A.8, and not included as Initial Capital Improvements in the Existing Contract (i.e., for debt serviced by City Bond Accounts 5910 and 5936), and not included as capital improvements to the Sewer System made by the City after the Existing Contract and prior to execution of this Agreement (i.e., for debt serviced by City Bond Account 5937).

**"GPD"** is the abbreviation for gallons per day.

**"Indirect Discharge"** shall mean the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

**"Industrial User" or "User"** shall mean any source of Indirect Discharge.

**"Industrial Discharge Permit"** shall mean a permit issued by Taunton for the specific purpose of discharging Industrial Wastewater to the Taunton POTW.

**"Industrial Wastes" or "Industrial Wastewater"** shall mean the liquid wastes, other than sanitary sewage, resulting from manufacturing and/or industrial operations or processes and classified as Indirect Discharge.

**"Initial Capital Improvements"** shall mean the capital improvements defined as Initial Capital Improvements in the Existing Contract and provided for under City Bond Accounts 5910 and 5936.

**"Interference"** shall mean a discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of Taunton's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant

to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

**"Local Sewer System"** shall mean the sewer systems located in Raynham and Taunton and used exclusively by Raynham and Taunton.

**"Local Limits"** shall mean Wastewater discharge limitations established by Taunton for certain pollutants as presented in the current in-force version of the Taunton Sewer Use Ordinance.

**"MGD"** is the abbreviation for million gallons per day.

**"National Pretreatment Standard", "Pretreatment Standard", or "Standard"** shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to Section 403.5.

**"Net Capital Cost"** shall mean the total cost of planning, surveys, design, procurement, construction and equipment costs, engineering, resident observation, construction inspection, legal costs, cost of acquiring real or personal property in Taunton, fiscal costs, financing costs and all other costs related to WWTF and Common Sewer System additions or improvements, including the cost of borrowing funds, less any Federal or State grants allocated and received specifically for the WWTF and Common Sewer System.

**"NPDES"** is the abbreviation for National Pollutant Discharge Elimination System.

**"NPDES Permit"** shall mean the National Pollutant Discharge Elimination System Permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

**"Pass Through"** shall mean a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of Taunton's NPDES permit (including an increase in the magnitude or duration of a violation).

**"Pollutant"** shall mean dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

**"POTW"** is the abbreviation for Publicly Owned Treatment Works. A "treatment works" as defined by Section 212 of the Clean Water Act (33 U.S.C. 1292), as related to this Agreement which is owned and operated by Taunton. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. With regard to this Agreement, POTW means the Taunton Wastewater Treatment Facility, collection system pump stations and Common Sewer System, owned and operated by Taunton.

**"Pretreatment"** shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR Part 403, Sec. 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated

wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Part 403, Sec. 403.6(e). ~~rural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.~~

**"Raynham"** is the Town of Raynham, a municipal corporation of the Commonwealth of Massachusetts acting by and through its Board of Selectmen or its Board of Sewer Commissioners, as the case may be.

**"Raynham Monitoring Stations"** shall mean the flow measuring and sampling stations that measure the Wastewater flows from Raynham to Taunton.

**"Representative Samples"** shall mean Wastewater samples that are representative of the typical volume and nature of Taunton, Raynham, System Users, and Industrial Users and shall conform to procedures established by the USEPA pursuant to Section 304(g) of the Act.

**"Sanitary Sewage"** shall mean sewage discharging from sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, small laundries and from kitchens, restaurants, cafeterias and floor drains essentially free of Industrial Wastes or toxic materials.

**"Sewer System"** shall mean facilities for collecting, conveying and pumping of sanitary sewage and/or Industrial Wastes. It may also include Combined Sewers.

**"Sewer Use By-law"** shall be as defined in the Taunton Sewer Use Ordinance.

**"Shall"** is mandatory, "may" is permissive.

**"State"** shall mean the Commonwealth of Massachusetts.

**"System User"** shall mean Raynham and any municipality, individual, firm, company, association, society, corporation or group having a connection to and deriving a benefit (either actual or potential) from the POTW.

**"Taunton"** shall mean the City of Taunton, a municipal corporation of the Commonwealth of Massachusetts acting by and through its Mayor and Municipal Council.

**"Term"** shall mean the period of time this Agreement is in effect and is for twenty five (25) years from the date of execution.

**"Total Flow"** shall mean the total amount of Wastewater received at the Taunton WWTF during any calendar day, measured in MGD, including the Wastewater contributed to such system by Raynham and any other municipalities.

**"Total Operation and Maintenance Cost"** shall mean the total expense incurred in operating, supervising and maintaining the Wastewater Treatment Facility and the Common Sewer System in Taunton.

**"Total Suspended Solids" or "TSS"** shall mean solids that either float on the surface of, or are in suspension in water, or sewage, or wastewater, or other liquids and which are removable by laboratory filtering, expressed in milligrams per liter.

**"Wastewater"** shall mean the spent water of Taunton or Raynham and may be a combination of the liquid and liquid borne wastes from residences, commercial buildings, industrial facilities, and institutions, together with any groundwater and surface water that may enter the Sewer System.

**"Wastewater Treatment Facility" or "WWTF"** shall mean the wastewater treatment plant owned by Taunton, operated by the City Operator and located at 825 West Water Street in Taunton.

**"WWTF Permitted Design Flow Capacity"** shall mean 8.4 MGD, Average Daily Flow.

**"WWTF Design Capacity for BOD"** shall mean 11,060 lbs/day, average 24-hour limit.

**"WWTF Design Capacity for TSS"** shall mean 13,772 lbs/day, average 24-hour limit.

**"USEPA"** shall mean the United States Environmental Protection Agency.

**"User Charges"** shall mean charges levied on users of the Sewer System and Wastewater Treatment Facility for the cost of operation and maintenance as further defined for Raynham in Section 6A.1.

#### ARTICLE IIA. OBLIGATIONS OF TAUNTON

- 2A.1 Taunton shall receive, treat and dispose of Raynham's Wastewater up to an Average Daily Flow of 1.3 MGD provided that said wastewater characteristics are in conformance with the discharge standards established in Taunton's Sewer Use Ordinance, Approved Industrial Pretreatment Program, or other Applicable Law.
- 2A.2 Taunton, as the legal owner and party responsible under the NPDES Permit issued by the US EPA for operation of the WWTF, shall periodically review its Industrial Pretreatment Program and Sewer Use Ordinance for their effectiveness in administering and enforcing its pretreatment responsibilities under its NPDES permit. Taunton shall revise and update the provisions of these regulations, as appropriate, and forward to Raynham any revisions or changes in Taunton's Sewer Use Ordinance or Approved Industrial Pretreatment Program within 30 days of such changes.
- 2A.3 Taunton, as Raynham's Authorized Agent, shall:
- Conduct inspections, sampling and analysis of Raynham's Industrial Users as required by the IPP program,
  - Take enforcement action against Raynham's non-compliant Industrial Users when necessary, and
  - Perform any other technical or administrative duties that Raynham requests and Taunton is willing to perform and is compensated for by Raynham.
- 2A.4 Taunton may take emergency action to stop or prevent any Wastewater discharge, which:
- presents (or may present) an imminent threat to the health and welfare of humans,
  - reasonably appears to threaten the environment,
  - threatens to cause a violation of the WWTF NPDES permit,
  - threatens to impede treatment or to cause Interference and/or Pass Through at the WWTF, or
  - threatens to contaminate residuals and bio-solids from the WWTF.
- 2A.5 Taunton shall be liable for all costs and damages that result from Taunton Wastewater that causes NPDES violations or damage to the WWTF.
- 2A.6 In accordance with the ACO number ACOP-SE-05-R006-1N-SEP, Section V6, Taunton recognizes the need for and has begun a program to eliminate the cost-effective sources of inflow and infiltration. Taunton shall continue to take reasonable action to reduce inflow and infiltration into its wastewater collection system.
- 2A.7 Taunton shall exercise due diligence and exhaust all statutory, regulatory and contractual options to ensure that all Taunton users of the POTW act in conformance with any and all Applicable Law, the Taunton Sewer Use Ordinance and applicable regulations.

## ARTICLE IIB. OBLIGATIONS OF RAYNHAM

- 2B.1 Raynham shall ensure that its wastewater discharge to the Taunton collection system conforms at all times with Article IV – Flow and Loadings Allocation, the provisions of Taunton's Sewer Use Ordinance and Approved Industrial Pretreatment Program requirements and other Applicable Law. Raynham shall take all reasonable actions to reduce infiltration and inflow to its sewer system. Raynham shall not discharge the contents of any Combined Sewer to the POTW.
- 2B.2 The provisions of Raynham's Sewer Use Ordinance and Approved Industrial Pretreatment Program shall at all times be at least as stringent as those adopted by Taunton.
- 2B.3 Raynham shall, in a timely manner, but no longer than 180 days upon receipt of notice from Taunton of a change in its Sewer Use Ordinance or Approved Industrial Pretreatment Program, amend its Sewer Use By-law and/or Approved Industrial Pretreatment Program to adopt provisions which are at least as stringent as Taunton's. Raynham shall forward to Taunton within 30 days of approval a copy of its amended Sewer Use By-law and/or Approved Industrial Pretreatment Program.
- 2B.4 Raynham agrees to designate Taunton as its Authorized Agent for the purposes of conducting inspections, sampling and analysis of Raynham's Industrial Users and enforcement of Raynham's Industrial Pretreatment Program.
- 2B.5 The cost incurred by Taunton to act as Raynham's Agent for conducting inspections, sampling and analysis of Raynham's Industrial Users and for the enforcement of Raynham's Industrial Pretreatment Program shall be paid in full by Raynham if such services are not the responsibility of the City Operator and additional costs are billed by the City Operator for such services. Such costs will be billed quarterly with Raynham's proportional share of the Total Operation and Maintenance Cost, in accordance with Article VI of this Agreement.
- 2B.6 Raynham shall, when notified by Taunton of a need to modify or amend this Agreement, act in a timely and good faith manner to revise this Agreement, as necessary, to ensure compliance with Applicable Law.
- 2B.7 Raynham shall, if Taunton's authority to act is questioned by an Industrial User, court of law or otherwise, take whatever action is necessary to enforce its Sewer Use By-law and/or Industrial Pretreatment Program and provide all other services previously provided by Taunton.
- 2B.8 Raynham shall exercise due diligence and exhaust all statutory, regulatory and contractual options to ensure that all Raynham users of the POTW act in conformance with any and all Applicable Laws, Raynham by-laws and regulations.
- 2B.9 Raynham shall abide by any State or Federal regulatory provisions or requirements imposed on Taunton regarding the POTW or the Approved Industrial Pretreatment Program.
- 2B.10 With the exception of Raynham accepting wastewater flow from its customers described in Raynham's existing agreements, which agreements Raynham shall have the right to extend and/or renegotiate and execute subject to Section 8.1 of this Agreement, Raynham shall not re-sell or reallocate any of the capacity allocated by Taunton to Raynham, to any other municipality or other non-Raynham party, public or private, without prior written approval from Taunton, said approval not to be unreasonably withheld.
- 2B.11 Raynham shall be liable for all costs and damages that result from Raynham Wastewater that causes NPDES violations or damage to the WWTF.



## ARTICLE IIC. LEGAL REQUIREMENTS

- 2C.1 If any term of this Agreement is held to be invalid by any court or agency of competent jurisdiction, the remaining terms will be unaffected.
- 2C.2 The most recent edition of the Taunton Sewer Use Ordinance, Local Limits and the Approved Industrial Pretreatment Program shall be incorporated by reference into and its terms included as a part of this Agreement. Any subsequent revisions to the Taunton Sewer Use Ordinance, Local Limits and the Approved Industrial Pretreatment Program shall be incorporated into the terms of this Agreement without further negotiation between the parties. Appendix A presents the Taunton Sewer Use Ordinance, Local Limits and the Approved Industrial Pretreatment Program in effect at the time of the execution of this Agreement.
- 2C.3 Chapter 40, Section 4 and Chapter 83, Section 1 of the Massachusetts General Laws permits Taunton and Raynham to enter into this Intermunicipal Agreement for the purposes described herein and permits Taunton, upon authorization by Raynham, to act as Authorized Agent to provide specific services designated in this Agreement by Raynham. Execution of this Agreement by Raynham shall authorize Taunton to act as Raynham's Authorized Agent. Neither Taunton nor Raynham shall be exempt from liability for each municipality's obligations under this Agreement.

## ARTICLE III. TERM OF AGREEMENT

- 3.1 The Term of this Agreement shall run for a period of twenty-five (25) years from October 1, 2006 through September 30, 2031.

## ARTICLE IV. FLOW AND LOADINGS ALLOCATION

- 4.1 Taunton and Raynham agree that during the term of this Agreement, Raynham shall have the right to discharge no more than and Taunton shall receive in its collection system for treatment at its WWTF an Average Daily Flow of up to 1.3 MGD as further prescribed in Article II of this Agreement. The parties further agree that Raynham's flow is presently discharged to Taunton at two locations, as follows:
- from Raynham's Route 44 pumping station via a connection to Taunton's Dean Street interceptor; and
  - from Raynham's South Street East pumping station via a connection to the East Taunton collection system.
- The combined Average Daily Flow from the two points of interconnection and any other point of interconnection approved by Taunton shall not exceed the 1.3 MGD Average Daily Flow allocated to Raynham under the terms of this Agreement.
- 4.2 Raynham shall have the opportunity, subject to Taunton's review and approval, to additional points of interconnection and/or additional flow and loading allocation for Raynham at any time throughout the Term of this Agreement. Taunton will consider Raynham's requests for additional flow and loading allocation provided that requested capacity is available at the WWTF and Common Sewer System and Raynham is willing to pay its fair, proportional cost, including any amount agreed to for compensation for any additional allocation granted. Further, Taunton will consider Raynham's requests for additional points of interconnection provided that Raynham shall pay the costs to create the interconnection and that the interconnection is technically feasible and acceptable to Taunton, said acceptance not to be unreasonably withheld.

## ARTICLE V. MEASUREMENT OF FLOW AND SAMPLING OF WASTEWATER

Taunton and Raynham both agree as follows:

- 5.1 Taunton has constructed and operates an automatic flow metering and temperature controlled sampling station at the Wastewater Treatment Facility headworks area. The general arrangement, equipment, maintenance and operation of this metering station shall be subject to Raynham's periodic inspection. Any costs incidental to the operation and maintenance of the WWTF metering station, including the wastewater sampling and analysis described in this Article V, shall be borne by Taunton and be included as a part of the operation costs of the Wastewater Treatment Facility, as described in Article VI.
- 5.2 The volume and pollutant strength characteristics of the influent to the Taunton WWTF shall be determined by Taunton and the City Operator based on continuous flow monitoring and on the average of the pertinent analytical data required to be completed in accordance with the WWTF NPDES Permit.
- 5.3 Raynham shall provide automatic flow measuring and temperature controlled sampling stations at its own expense to monitor Raynham wastewater discharges to the Taunton collection system. The stations shall be constructed and maintained so as to provide safe and ready access to and use of sampling and monitoring equipment.
- 5.4 Raynham shall be responsible for the operation and maintenance of its automatic flow measuring and temperature controlled sampling stations and pay for all maintenance, service, calibration and repair costs.
- 5.5 The general arrangement of and equipment used at Raynham's flow monitoring and sampling stations shall be subject to Taunton's and the City Operator's review and approval, said approval not to be unreasonably withheld.
- 5.6 Raynham shall be responsible to obtain and to provide to Taunton the results of an annual calibration by a certified test firm of its flow metering equipment. Raynham agrees to keep such equipment functional, operational and accurate. Raynham shall allow Taunton access to said flow monitoring station upon reasonable notice.
- 5.7 Raynham agrees to maintain its flow metering and sampling equipment in good condition at all times to reasonably and properly characterize the flow and pollutant strength of its wastewater. If at any time Taunton disputes the accuracy of flow or pollutant loading data generated by the Raynham flow monitoring stations, the parties shall designate a mutually acceptable independent consultant to evaluate and report its findings and recommendations, which shall be adopted and implemented by Raynham. Taunton and Raynham shall share equally in the cost of the third-party analysis.
- 5.8 The volume and pollutant strength characteristics of Raynham's Wastewater shall be determined based on the average of continuous flow monitoring and flow proportional, 24-hour composite Representative Samples taken on at least one day in each month during each calendar quarter. Taunton or its Authorized Agent shall use the same analytical laboratory used to characterize the Taunton Wastewater (5.1 above). Taunton shall furnish to Raynham within seven days of its availability a copy of the analytical laboratory's results. Taunton shall furnish to Raynham by the seventh day of each month the cumulative flow data recorded at each of the flow monitoring stations during the preceding month.
- 5.9 BOD and Suspended Solids for Raynham and Taunton shall be determined from flow proportional composite, 24-hour Representative Samples obtained at the respective measuring locations and the Representative Samples shall be collected as coincidentally as possible at each measuring location.
- 5.10 In the event that Raynham's or Taunton's flow metering equipment is temporarily out of order or not in service for any reason, the equipment shall be repaired within 96 hours or at the earliest possible time in circumstances beyond Taunton's or Raynham's reasonable control.
- 5.11 Both municipalities agree that all handling and preservation of collected Representative Samples and laboratory analyses of those samples shall be performed in accordance with

- 40 CFR Part 136 and amendments thereto unless any other method is mutually agreed upon by Raynham and Taunton. All laboratory testing shall be in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association, the American Water Works Association and the Water Environment Federation.
- 5.12 The collection of composite Representative Samples and determination of the character and concentration of Raynham's Wastewater for the purpose of computing the charges for and compliance to the terms of this Agreement shall be the responsibility of Taunton or the City Operator. Any sampling and analysis, not the responsibility of the City Operator in its contract with Taunton and for which additional costs are billed by the City Operator for such services, shall be billed in full to Raynham as part of the quarterly billing to Raynham for operation and maintenance costs described in Article VI of this Agreement.
- 5.13 Raynham may conduct, at its own expense, its own sampling and analytical program and submit copies of the results relating to the character and concentration of the Wastewater to Taunton. Wastewater samples collected by Raynham as part of an independent sampling and analytical program shall be split with Taunton at no cost and in adequate quantities. If differences are found in the results, Taunton will review the information provided by Raynham to determine if a correction is needed. If Raynham and Taunton cannot agree that a correction is needed, the issue will be reviewed by an independent engineer or other qualified third party whose findings shall be accepted by Taunton and Raynham. The cost of such third party shall be born equally by Raynham and Taunton.

#### ARTICLE VI - OPERATION AND MAINTENANCE COSTS

- 6A.1 Taunton shall maintain an adequate cost accounting system, which shall be the basis for the determination and allocation of costs for the operation, maintenance and repair of the WWTF and the Common Sewer System. The accounting system shall be available for inspection by Raynham during normal business hours.

The allocation of operation and maintenance costs to Raynham shall include:

- its proportional share of Total Operation and Maintenance Cost as described in Sections 6A.2, 6A.3, 6A.4, and 6A.5; which includes its proportional share of the cost for administration of this Agreement by Taunton, such administrative costs defined as 5% of the Total Operation and Maintenance Cost;
- the cost for Taunton acting as Authorized Agent for Raynham for services not the responsibility of the City Operator in its contract with Taunton and for which additional costs are billed by the City Operator for such services;
- the cost for sampling and analysis required by Section 5.12 of this Agreement not the responsibility of the City Operator in its contract with Taunton and for which additional costs are billed by the City Operator for such services;
- additional capital and operation and maintenance costs for treating Raynham Wastewater of a special character;
- liquidated damages as may be incurred (as described in Appendix C); and
- other costs as may be incurred and agreed to by Taunton and Raynham.

Appendix B1 presents example calculations illustrating computation of Raynham's operations and maintenance quarterly payment.

- 6A.2 Raynham shall be responsible to share in any Total Operation and Maintenance Cost increases and other costs as described in Section 6A.1 required by Applicable Law, or the Existing Contract or subsequent contracts between Taunton and the City Operator, or if such costs increase as a result of a required higher degree of treatment or WWTF or Common Sewer System expansion, upgrade or modification. The increased cost shall be apportioned between Raynham and Taunton as described in Section 6A.1 unless further or additional treatment is caused by Wastewater of a special character, in which case the added cost shall be borne by the municipality in which such Wastewater of special character originates.

- 6A.3 Raynham's proportionate share of the Total Operation and Maintenance Cost shall be determined by:
- for the Existing Contract, its contribution of flow and the load of its Wastewater relative to BOD, TSS and other applicable parameters that enters the WWTF compared to Taunton's total flow, load of BOD, TSS and other applicable parameters monitored at the WWTF,
  - for the Existing Contract, its contribution of flow and the load of its Wastewater relative to BOD, TSS and other applicable parameters that enter the Common Sewer System compared to the total flow, load of BOD, TSS and other applicable parameters monitored (including Raynham's, Taunton's and infiltration and inflow flow) in the Common Sewer System, and
  - for the Contract for Operation Sanitary Sewer Collection System, its contribution of flow of its wastewater that enters the Common Sewer System compared to the total flow monitored in the Common Sewer System.
- 6A.4 For the Existing Contract for the WWTF, the cost allocation shall be apportioned among flow, BOD load and TSS load at 40%, 27% and 33%, respectively. The cost allocation formula shall be reviewed for reasonableness of parameters included and relative weight of apportionment factors whenever requested by either party or when a major change in operation occurs. If a major change in operation occurs, Taunton will initiate a review of the cost allocation formula, its parameters and apportionment factors and present its findings to Raynham. If the parties cannot agree on formula parameters or factors, the parties may submit any dispute to arbitration per Section 12.2 of this Agreement.
- 6A.5 For the Existing Contract for the Common Sewer, the cost allocation shall be apportioned among flow, BOD load and TSS load at 80%, 7% and 13%, respectively. For the Contract for Operation Sanitary Sewer Collection System, the cost allocation shall be apportioned by flow only. The cost allocation formula shall be reviewed for reasonableness of parameters included and relative weight of apportionment factors whenever requested by either party or when a major change in operation occurs. If a major change in operation occurs, Taunton will initiate a review of the cost allocation formula, its parameters and apportionment factors and present its findings to Raynham. If the parties cannot agree on formula parameters or factors, the parties may submit any dispute to arbitration per Section 12.2 of this Agreement.
- 6A.6 User Charges to Raynham shall be due and payable on November 15, February 15, May 15, and August 15 of each year for fiscal year Quarters 1, 2, 3, and 4 respectively, based on actual flow and loadings and budget costs for the WWTF and Common Sewer System. Taunton shall invoice Raynham by the 15th of the month preceding each payment due date. An annual adjustment shall be made based on actual flow and loadings and actual WWTF and Common Sewer System costs. Taunton shall provide Raynham with the findings of the annual adjustment by October 1 of each year. Any overpayment shall be credited to Raynham in the November 15 payment. Any underpayment by Raynham shall be made to Taunton by November 15. Any delay in invoicing by Taunton shall extend the due date for payment by Raynham by the length of said delay.
- 6A.7 Taunton shall submit to Raynham its estimated proportional share of Total Operation and Maintenance Costs and other costs as described in Section 6A.1 for the next fiscal year, in writing, by March 31st of each year so that Raynham can budget accordingly.

#### **ARTICLE VIIA PAYMENT – PROPORTIONAL SHARE OF CAPITAL COSTS FOR IMPROVEMENTS, EXPANSION**

- 7A.1 Raynham agrees to pay Taunton its proportional share of the Net Capital Cost of the WWTF and Common Sewer System. Raynham's proportional share of Net Capital Cost shall include:
- A proportional share of Net Capital Cost for Initial Capital Improvements made to the WWTF and Common Sewer System by the City Operator as part of its Existing

Contract with Taunton (in accordance with Sections 7A.3, 7A.4, 7A.5 and 7A.6 of this Agreement), which includes a proportional share of the cost for administration of this Agreement by Taunton, such administrative cost defined as 5% of the debt service (this Net Capital Cost element accounts for capital improvements for which debt is serviced by City Bond Accounts 5910 and 5936);

- A proportional share of Net Capital Cost for improvements made by the City to the Common Sewer System after execution of the Existing Contract with the City Operator and prior to execution of this Agreement (in accordance with Section 7A.7 of this Agreement), which includes a proportional share of the cost for administration of this Agreement by Taunton, such administrative cost defined as 5% of the debt service (this Net Capital Cost element accounts for capital improvements for which debt is serviced by City Bond Account 5937); and
- A proportional share of Net Capital Cost for Future Capital Improvements, including repairs, replacements, modifications, additions or expansions to the WWTF and Common Sewer System as described in Section 7A.8.

Appendix B2 presents example calculations of Raynham's proportionate share of Net Capital Cost.

- 7A.2 Taunton shall maintain an adequate cost accounting system, which shall be the basis for the determination and allocation of costs for the Net Capital Cost of the WWTF and Common Sewer System. The accounting system shall be available for inspection by Raynham during normal business hours.
- 7A.3 Raynham shall be responsible to share in any WWTF and Common Sewer System Initial Capital Costs required by the Existing Contract between Taunton and the City Operator in accordance with the provisions of Sections 7A.4, 7A.5 and 7A.6 of this Agreement.
- 7A.4 Raynham's proportionate share of the Net Capital Cost for the WWTF for the Initial Capital Improvements resulting from the Existing Contract between Taunton and the City Operator shall be determined by its contribution of flow and BOD and TSS loading of its Wastewater compared to WWTF Permitted Design Flow Capacity, WWTF Design Capacity for BOD and WWTF Design Capacity for TSS. The allocation of Net Capital Cost for the WWTF shall be apportioned among flow, BOD load and TSS load at 24%, 57% and 19%, respectively. Raynham's flow shall be based on an Average Daily Flow of 1,300,000 GPD and Raynham's TSS and BOD loads based on Raynham's Wastewater concentrations determined as described in Article V for the prior fiscal year and using an Average Daily Flow of 1.3 MGD.
- 7A.5 The allocation of Net Capital Cost for the Common Sewer System for the Initial Capital Improvements resulting from the Existing Contract between Taunton and the City Operator shall be by Raynham's contribution of flow based on a Raynham Average Daily Flow of 1,300,000 GPD that enters the Common Sewer System compared to the Common Sewer System Flow Capacity.
- 7A.6 Raynham's payment for its share of Net Capital Cost for the Initial Capital Improvements required by the Existing Contract between Taunton and the City Operator shall be due on October 15 of each year based on the ratio of Raynham's flow based on an Average Daily Flow of 1,300,000 GPD and loads based on an Average Daily Flow of 1,300,000 GPD and TSS and BOD concentrations determined as described in Article V for the prior fiscal year compared to the WWTF Permitted Design Flow Capacity, WWTF Design Capacity for TSS and WWTF Design Capacity for BOD and on the ratio of Raynham's annual flow (based on Average Daily Flow of 1,300,000 GPD) to the Common Sewer System Flow Capacity times the actual debt service payment(s) made by Taunton during the same fiscal year for the WWTF and Common Sewer improvements. Taunton shall invoice Raynham by September 15th.
- 7A.7 The allocation of Net Capital Cost for the Common Sewer System for improvements made by the City after execution of the Existing Contract with the City Operator and prior to execution of this Agreement shall be by Raynham's contribution of flow that enters the Common Sewer System based on a Raynham Average Daily Flow of 1,300,000 GPD compared to the Common Sewer System Flow Capacity times the actual debt service

- payment(s) made by Taunton during the same fiscal year. Taunton shall invoice Raynham by September 15<sup>th</sup>. Payment from Raynham shall be due by October 15<sup>th</sup>.
- 7A.8 ~~In the event Taunton must undertake major repairs, replacement, modification, add to or expand the WWTF and Common Sewer System, or is directed or ordered by a regulatory agency to expand or provide a higher degree of treatment or make Capital Modifications, then the total capital cost related thereto shall be apportioned between Raynham and Taunton on the basis of an allocation payment and/or a flow and loading allocation as specified by Taunton and agreed to by Raynham, unless said further or additional treatment is caused by Wastewater of a special character, in which case the added cost shall be borne by the municipality in which said Wastewater of special character originates. A reasonable payment schedule shall be established by Taunton prior to the completion of said replacement, repairs or additional facilities. If the parties cannot agree on the costs, the parties may submit any dispute to arbitration per Section 12.2 of this Agreement.~~

Within 30 days of acceptance by Taunton of a report that recommends a capital modification to the WWTF that exceeds \$500,000, Taunton shall provide to Raynham a copy of said report for its review.

At the time of execution of this Agreement, Taunton has entered into an Administrative Consent Order with DEP which requires additional capital repair, replacement or rehabilitation to its Common Sewer System. Certain work has been completed, but the extent of future work and its cost is being evaluated by the City, and the exact nature, scheduling and cost for such work will not be determined until inspection of the Common Sewer System is completed. Consistent with the methodology described in Sections 7A.5 and 7A.7 for earlier debt issued by Taunton, Raynham's proportional share of Net Capital Cost for this work is to be based on its flow allocation of 1.3 MGD divided by the Common Sewer System Flow Capacity, defined as 8.4 MGD.

- 7A.9 Taunton shall submit to Raynham its estimate of Raynham's proportional share of Net Capital Costs of the WWTF and Common Sewer System as described in Section 7A.1 for the next fiscal year, in writing, by March 31<sup>st</sup> of each year so that Raynham can budget accordingly.

#### **ARTICLE VIIB. PAYMENT - INFILTRATION/INFLOW REDUCTION COSTS**

- 7B.1. Raynham agrees to make payment of \$1,400,000 in principal (plus interest) over a period of 20 years in accordance with the attached schedule of payments for Inflow and Infiltration elimination for the purpose of sharing in the costs of creating extra wastewater treatment capacity for Raynham.

#### **ARTICLE VIIC. FLOW RESTRICTION**

- 7C.1 So long as Raynham is in full compliance with all other applicable provisions of this Agreement and a moratorium has not been imposed by the Commonwealth of Massachusetts or the United States Government restricting additional sewer connections or flows to be treated at the WWTF, it shall have the right to discharge up to an Average Daily Flow of 1.3 MGD during the Term of this Agreement. In the event that the MADEP, another administrative agency of the Commonwealth of Massachusetts or United States Government, or a court issues a moratorium or other ruling limiting flows to be treated at the WWTF and which results in Taunton's need to limit Raynham's Average Daily Flow to less than 1.3 MGD, Taunton shall take such action as is practical to provide Raynham an Average Daily Flow equal to the Average Daily Flow in the previous fiscal year plus 25%. In the event that Taunton is unable to provide Raynham said Average Daily Flow, until the flow restriction is rescinded, the infiltration/inflow payment stipulated in Section 7B.1 shall be suspended on a prorated basis for the same period. In such an event, the

infiltration/inflow payment made shall be based on the ratio of Raynham's actual Average Daily Flow for the previous fiscal year divided by 1.3 MGD. Any adjustments to the infiltration/inflow payment, either a credit or reimbursement, shall be made as part of the annual adjustment process described in Section 6A.6.

#### **ARTICLE VIII. NOTICE OF CHANGES**

- 8.1 Raynham agrees to notify Taunton (for purposes of providing information) of any significant planned changes of discharges to the Raynham sewer system, proposed by public or private entities, by forwarding to Taunton within ten days of Raynham's endorsement and recommendation said notice, evidenced by a copy of any Application for a Permit for Sewer Extension or Connection to be filed with MADEP. Approval of any modifications to any existing industrial permit, or any new industrial connections, or any modifications or new connections that are of a special character, shall not be granted by Raynham without prior review and approval by Taunton, which approval will not be unreasonably withheld. In no case shall Raynham discharge Wastewater into the POTW that does not comply with the flow and load allocation requirements of Articles II and IV of this Agreement.

#### **ARTICLE IX. CONTRACT ADMINISTRATION**

- 9.1 Except as set forth above, Taunton, by and through its chief executive officer, is responsible for administering this Agreement.
- 9.2 Raynham agrees to cooperate with Taunton to ensure user compliance with Applicable Law pertaining to the use of the POTW.
- 9.3 Taunton shall have the right to require Raynham to take appropriate legal action against any System User in Raynham to enforce compliance with the provisions of this Agreement. Taunton, upon ample notice, shall have the right to request Raynham to terminate wastewater collection service and Raynham shall take action to seek to legally terminate such service to any System User in Raynham who is in violation of Applicable Law or this Agreement.
- 9.4 Any changes to the terms of this Agreement must be approved in the same manner as the Agreement itself.

#### **ARTICLE X. TERMINATION; LIQUIDATED DAMAGES**

- 10.1 For any repeated or continuous material breach of this Agreement continued for four (4) months after notice thereof in writing by the other party, and after a reasonable opportunity to cure, either party may terminate this Agreement by giving written notice thereof to the other party with an effective date which shall include the time necessary for the Town of Raynham to permit and construct alternative disposal facilities.
- 10.2 For the purposes of this Article, a material breach shall include nonpayment by Raynham, an exceedance of flow and loadings allocations by Raynham, and Taunton not receiving and treating Raynham Wastewater that meets the requirements of this Agreement.
- 10.3 In the event of termination of this Agreement for any material breach caused by Raynham, Raynham shall not be entitled to a refund of capital cost payments made under Articles VIIA and VIIB, shall meet its capital payment obligations under Articles VIIA and VIIB until the debt payment for the capital improvement is fully discharged and all Infiltration/Inflow Reduction Costs are made, and shall be responsible for payment of operation and maintenance charges (Article VI) up to the date that said termination becomes effective.
- 10.4 In the event of termination of this Agreement for any material breach caused by Taunton, Raynham shall not be entitled to a refund of capital cost payments made under Articles VIIA and VIIB, shall make capital cost payments under Articles VIIA and VIIB for the full fiscal year that said termination becomes effective, and shall be responsible for

payment of operation and maintenance charges (Article VI) up to the date that said termination becomes effective.

10.5 ~~In the event of nonperformance of its obligations in this Agreement, Raynham shall make~~ payment to Taunton and Taunton to Raynham as liquidated damages the amounts described in Appendix C of this Agreement. Said payments shall be made in accordance with quarterly payments for operations and maintenance described in Article VI of this agreement.

10.6 Subject to the requirements contained in Sections 10.3 and 10.7, Raynham may terminate this Agreement upon 180 days notice to the City of Taunton. Upon termination under this provision, Raynham must provide to Taunton an effective date of termination and no flow from Raynham will be permitted into the Taunton system after the date indicated unless a mutually agreed upon extension of that date is made.

10.7 Termination under the provisions contained in Section 10.6 of this article shall not excuse Raynham from continued payment of its capital obligations under Articles VIIA and VIIB, which obligations shall continue until the debt payment for the capital improvement is fully discharged, and the full payment of all Infiltration/Inflow Reduction Costs is made. Raynham shall also be responsible for payment of operation and maintenance charges (Article VI) up to the date that said termination becomes effective.

#### ARTICLE XI. TAUNTON AND RAYNHAM APPROVALS

11.1 Before this Agreement becomes effective or binding on the parties, it must be approved by the Mayor of Taunton and ratified by a vote of the Taunton Municipal Council, and it must be approved by the Raynham Board of Selectmen with the authorization by the Town of Raynham Town Meeting.

#### ARTICLE XII. ADDITIONAL ITEMS

12.1 **INDEMNIFICATION BY RAYNHAM.** Raynham shall indemnify, defend, and hold harmless the City of Taunton, their elected officials, appointed officers, servants, employees, representatives, agents and contractors (hereinafter collectively referred to as "City Indemnatee"), from and against (and pay the full amount of) all claims, costs, losses, and damages arising out of or relating to Raynham's performance under this Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Raynham, any subcontractor, any supplier, or any of them to perform any of the work or anyone for whose negligent acts or omissions any of them may be liable. Raynham's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Raynham which is intended to respond to such events. Raynham shall not, however, be required to reimburse or indemnify any City Indemnatee for any claims, costs, losses, and damages to the extent caused by the negligence or willful act or omission of any City Indemnatee or to the extent attributable to Force Majeure. A City Indemnatee shall promptly notify Raynham of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Raynham shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the City Indemnatee only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Agreement.

12.1B **INDEMNIFICATION BY TAUNTON.** Taunton shall indemnify, defend, and hold harmless the Town of Raynham, their elected officials, appointed officers, servants, employees, representatives, agents and contractors (hereinafter collectively referred to as "Town Indemnatee"), from and against (and pay the full amount of) all claims, costs, losses, and damages arising out of or relating to Taunton's performance under this Agreement,



provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Taunton, any subcontractor, any supplier, or any of them to perform any of the work or anyone for whose negligent acts or omissions any of them may be liable. Taunton's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Taunton which is intended to respond to such events. Taunton shall not, however, be required to reimburse or indemnify any Town Indemnitee for any claims, costs, losses, and damages to the extent caused by the negligence or willful act or omission of any Town Indemnitee or to the extent attributable to Force Majeure. A Town Indemnitee shall promptly notify Taunton of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Taunton shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the Town Indemnitee only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Agreement.

**12.2 VENUE, JURISDICTION AND CHOICE OF LAW; ARBITRATION AND MEDIATION**

**12.2A VENUE, JURISDICTION AND CHOICE OF LAW:** The parties hereto agree that, with the exception of billing, invoice or pricing disputes subject to Section 12.2B herein, disputes arising under this Agreement shall be adjudicated and resolved by the filing of an action in Bristol Superior Court in Taunton, Massachusetts. The parties agree that said Bristol Superior Court has jurisdiction over such claims and that venue is proper. The parties hereto agree that disputes arising under this Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereto agree that the prevailing party in any litigation filed pursuant to this Section 12.2A shall be entitled to reimbursement of its reasonable attorney's fees and costs from the non-prevailing party in an amount not to exceed Fifty Thousand Dollars (\$50,000.00). The Bristol Superior Court shall determine which municipality is the prevailing party and the reasonableness of the attorney's fees claimed.

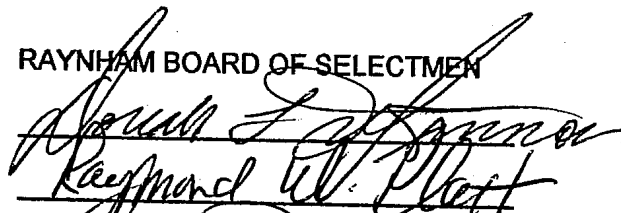
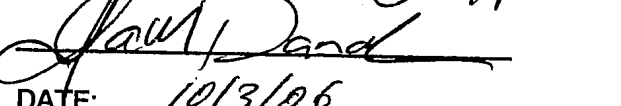
**12.2B ARBITRATION OF BILLING, INVOICING AND PRICING DISPUTES:** The parties hereto agree to binding arbitration of disputes arising under this Agreement relating to billing, invoicing and pricing. The party receiving a disputed invoice agrees to pay the undisputed portion of any invoice submitted to it within the time frame required by the relevant section of this Agreement. To the extent that a party disputes all or a part of an invoice, the parties hereto agree to submit such disputed invoice, bill or pricing to binding arbitration. The parties hereto agree to select a mutually agreeable arbitrator within thirty (30) days of notification of a billing, pricing or invoicing dispute governed by this section. In the event that the parties cannot agree on a mutually acceptable arbitrator, the parties agree to submit the billing, invoicing or pricing dispute to the American Arbitration Association ("AAA") for appointment of an arbitrator. The arbitration held pursuant to this section, whether or not before an arbitrator appointed by the AAA, shall be conducted in accordance with the Commercial Arbitration Rules of the AAA. The arbitration shall be held in a mutually convenient locale in Taunton or Raynham. The arbitrator shall have all rights and powers ordinarily accorded to arbitrators under the Commercial Arbitration Rules of the AAA, including but not limited to the right and power to hear disputes, require written submissions and testimony, enter orders allowing or denying relief, and ordering monetary damages, costs and attorney's fees, to the extent required or appropriate. If the arbitrator orders Raynham to pay all or portion of a disputed bill or invoice, the arbitrator shall order Raynham to pay interest on such invoice or portion thereof from the date it should have been paid to the date of the arbitration award issued by the arbitrator. The decision or award of the arbitrator is final and non-appeasable, except to the extent appeals are permitted pursuant to G.L. c. 258. The parties hereto agree that the non-prevailing party in any arbitration held pursuant to this Section 12.2B shall pay for the cost

of such arbitration (including arbitrator compensation and filing or administrative fees, if any), along with the reasonable attorney's fees and costs of the prevailing party, in a total amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00). The arbitrator shall determine which municipality is the prevailing party and the reasonableness of the attorney's fees claimed. The time spent for arbitration shall not be considered a continuous breach or be considered as any portion of the four months of material breach described in Sections 10.1 and 10.2 of this Agreement.


- 12.2C VOLUNTARY MEDIATION: Prior to the commencement of a court action as permitted by Section 12.2A or a binding arbitration as permitted by Section 12.2B, the parties hereto shall have the right (but not the obligation) to attempt to resolve disputes by way of non-binding, voluntary mediation. If the parties agree to proceed with voluntary mediation to attempt to resolve a dispute, then the parties agree to work in good faith to promptly designate a mutually acceptable mediator, and schedule and hold the mediation as soon as reasonably practicable. The parties hereto agree to split equally the cost of mediation and to bear their own attorney's fees incurred in preparing for and participating in such mediation. The time spent for voluntary mediation shall not be considered continuous breach or be considered as any portion of the four months of material breach described in Sections 10.1 and 10.2 of this Agreement.
- 12.3 Severability: If any term or condition of this Agreement is determined by a Court of competent jurisdiction to be unlawful, the remainder of the Agreement shall remain as a valid and enforceable obligation between the parties.

IN WITNESS WHEREOF, RAYNHAM, acting through its Board of Selectmen with authorization by the Town of Raynham Town Meeting, and TAUNTON, acting through its MAYOR AND MUNICIPAL COUNCIL has each caused this Agreement, and three other originals of like nature, to be executed, after approval by vote of the Board of Selectmen and vote of authorization by the Town of Raynham Town Meeting, and after a vote of the Taunton Municipal Council and Approval of the Mayor, and said Municipalities have caused their respective seals to be hereto fixed by their respective Raynham/Taunton Clerks, and this Agreement shall be construed as an Agreement under seal.

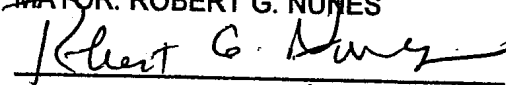
RAYNHAM BOARD OF SELECTMEN

  
  
DATE: 10/3/06

APPROVED AS TO FORM

  
MARCE. ANTINE, TOWN COUNSEL

TAUNTON, MASSACHUSETTS  
MAYOR: ROBERT G. NUNES

  
DATE: 10/3/06

APPROVED AS TO FORM

  
STEVEN A. TORRES, CITY SOLICITOR

Schedule of Payments  
Agreement for Wastewater Treatment  
Between  
City of Taunton, Massachusetts  
And Town of Raynham, Massachusetts

Schedule of Payments for Infiltration / Inflow Contribution - 20 Years

<u>Period</u>	<u>Fiscal Year</u>	<u>Principal Outstanding</u>	<u>Principal Payment</u>	<u>Interest Payment @ 2%</u>	<u>Total Annual Payment</u>	<u>Payment Dates</u>
1	2007	1,400,000.00	70,000.00	21,000.00	91,000.00	10/1/2006
2	2008	1,330,000.00	70,000.00	26,600.00	96,600.00	7/1/2007
3	2009	1,260,000.00	70,000.00	25,200.00	95,200.00	7/1/2008
4	2010	1,190,000.00	70,000.00	23,800.00	93,800.00	7/1/2009
5	2011	1,120,000.00	70,000.00	22,400.00	92,400.00	7/1/2010
6	2012	1,050,000.00	70,000.00	21,000.00	91,000.00	7/1/2011
7	2013	980,000.00	70,000.00	19,600.00	89,600.00	7/1/2012
8	2014	910,000.00	70,000.00	18,200.00	88,200.00	7/1/2013
9	2015	840,000.00	70,000.00	16,800.00	86,800.00	7/1/2014
10	2016	770,000.00	70,000.00	15,400.00	85,400.00	7/1/2015
11	2017	700,000.00	70,000.00	14,000.00	84,000.00	7/1/2016
12	2018	630,000.00	70,000.00	12,600.00	82,600.00	7/1/2017
13	2019	560,000.00	70,000.00	11,200.00	81,200.00	7/1/2018
14	2020	490,000.00	70,000.00	9,800.00	79,800.00	7/1/2019
15	2021	420,000.00	70,000.00	8,400.00	78,400.00	7/1/2020
16	2022	350,000.00	70,000.00	7,000.00	77,000.00	7/1/2021
17	2023	280,000.00	70,000.00	5,600.00	75,600.00	7/1/2022
18	2024	210,000.00	70,000.00	4,200.00	74,200.00	7/1/2023
19	2025	140,000.00	70,000.00	2,800.00	72,800.00	7/1/2024
20	2026	70,000.00	<u>70,000.00</u>	<u>1,400.00</u>	<u>71,400.00</u>	7/1/2025
			1,400,000.00	287,000.00	1,687,000.00	

**APPENDIX A**

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**TAUNTON SEWER USE ORDINANCE AND LOCAL LIMITS;  
TAUNTON APPROVED INDUSTRIAL PRETREATMENT PROGRAM**

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**APPENDIX B**

**EXAMPLE PAYMENT CALCULATIONS**

**RAYNHAM QUARTERLY AND ANNUAL PAYMENTS**

Appendix B1: Quarterly Operations and Maintenance Payment = Sum of:

1. Proportional share of Total Operation & Maintenance Cost (Total Operation & Maintenance Cost includes Administrative Fee of 5%);
2. Cost for Taunton acting as Authorized Agent for Raynham, if such services are not the responsibility of the City Operator in its contract with Taunton and additional costs are billed by the City Operator for such services;
3. Sampling and analysis costs at Raynham metering and sampling stations, if such services are not the responsibility of the City Operator in its contract with Taunton and additional costs are billed by the City Operator for such services;
4. Additional capital and operation and maintenance costs for treating Raynham Wastewater of a special character;
5. Liquidated Damages; and
6. Other costs as may be incurred and agreed to by Taunton and Raynham.

Appendix B2: Annual Payment: Proportional Share of Net Capital Cost

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**Appendix B-1**  
**Example Calculation of Quarterly Raynham User Charge for**  
**Operations and Maintenance**

**1.0 User Charge Calculation and Payment Generally**

**1.1 Raynham Payment Obligations Generally.** A quarterly User Charge is due to be paid by Raynham to Taunton pursuant to this Agreement.

Generally, the quarterly User Charge payment due from Raynham shall be the sum of:

1. Its proportional share of Total Operation & Maintenance Cost (Total Operation & Maintenance Cost includes Administrative Fee of 5%);
2. The cost for Taunton acting as Authorized Agent for Raynham, if such services are not the responsibility of the City Operator in its contract with Taunton and additional costs are billed by the City Operator for such services;
3. Sampling and analysis costs at Raynham metering and sampling stations, if such services are not the responsibility of the City Operator in its contract with Taunton and additional costs are billed by the City Operator for such services;
4. Additional capital and operation and maintenance costs for treating Raynham Wastewater of a special character;
5. Liquidated Damages, if any; and,
6. Other costs as may be incurred and agreed to by Taunton and Raynham.

**1.2 Billing Frequency.** Taunton shall bill Raynham quarterly for the User Charges due under this Agreement on the following dates of each year of the Term: October 15, January 15, April 15, July 15. User Charges shall be due and payable by Raynham by November 15, February 15, May 15 and August 15 of each year of the Term.

**1.3 Annual Settlement.** No later than October 1 of each year of the Term of this Agreement Taunton shall provide Raynham an Annual Settlement Statement which shall reconcile the amounts paid during the preceding fiscal year period to actual costs which should have been paid, based upon actual flows and loadings experienced and on the total actual costs that were incurred by Taunton during the same fiscal year, and which shall include any additional amounts that may be

due from Raynham, or any credit that may be due to Raynham, based upon such reconciliation. Any overpayment by Raynham shall be credited to Raynham in the November 15 payment. Any underpayment by Raynham shall be paid to Taunton no later than the scheduled November 15 payment.

**1.4 Purpose of Appendix.** This Appendix is provided solely to present illustrations of the procedures and information requirements for calculating the User Charges due and payable from Raynham. The numbers and amounts used in the example calculations are intended for illustrative purposes only, and do not denote or represent actual volumes, loadings or costs that may be experienced. All references to "Appendix" relate to this Appendix B-1.

## **2.0 Determination of Raynham Flows and Loadings for Billing Purposes**

**2.1 Proportional Share Billing Basis.** The proportional share of operating and maintenance costs included in the User Charges shall be based upon the flows and loadings contributed by Raynham, as such are determined pursuant to Section 5.8 of this Agreement based upon measurements taken at the pumping stations specified in Section 4.1 of this Agreement ("Route 44" and "South Street East").

**2.2 Flows and Loadings Determination.** Pursuant to Section 5.8 of this Agreement, the volume and pollutant strength characteristics of Raynham's wastewater will be determined based on continuous flow monitoring and monthly readings, and flow proportional 24-hour composite samples taken on at least one day in each month during each calendar quarter (or, three samples per quarter).

**2.2(A) Raynham Flow Calculation Example.** The following example illustrates the determination of flows for billing purposes, based upon continuous flow monitoring:

Example:

Period	Route 44 Measured Flow (Million Gallons)	South Street East Measured Flow (Million Gallons)	Total Measured Flow (Million Gallons)
	(a)	(b)	(a) + (b)
Month 1	15.46	2.10	17.56
Month 2	16.52	2.33	18.85
Month 3	13.90	1.68	15.58
Quarterly Total			51.99

**2.2(B) Raynham BOD Loading Calculation Example.** The following example illustrates the determination of BOD loadings for billing purposes:

Example (Route 44):

Sampling Period	Measured BOD (mg/L)	Measured Flow (Million Gallons)	mg/L to Pounds Conversion Factor	Loading in Pounds
	(a)	(b)	(c)	(a)x(b)x(c)
Month 1	234	15.46	8.34	30,171
Month 2	514	16.42	8.34	70,389
Month 3	330	13.90	8.34	38,256

Example (South Street East):

Sampling Period	Measured BOD (mg/L)	Measured Flow (Million Gallons)	mg/L to Pounds Conversion Factor	Loading in Pounds
	(a)	(b)	(c)	(a)x(b)x(c)
Month 1	234	2.10	8.34	4,098
Month 2	514	2.33	8.34	9,988
Month 3	330	1.68	8.34	4,624

Example (Combined Total BOD Loading):

Sampling Period	Route 44 (Pounds)	South Street East (Pounds)	Total Loading in Pounds
	(a)	(b)	(a) + (b)
Month 1	30,171	4,098	34,269
Month 2	70,389	9,988	80,377
Month 3	38,256	4,624	42,880
Quarterly Total			157,526

**2.2(C) TSS Loading Calculation Example.** The following example illustrates the determination of TSS loadings for billing purposes:

Example (Route 44):

Sampling Period	Measured TSS (mg/L)	Measured Flow (Million Gallons)	mg/L to Pounds Conversion Factor	Loading in Pounds
	(a)	(b)	(c)	(a)x(b)x(c)
Month 1	220	15.46	8.34	28,366
Month 2	366	16.52	8.34	50,426
Month 3	464	13.90	8.34	53,790



**Example (South Street East):**

<u>Sampling Period</u>	<u>Measured TSS (mg/L)</u>	<u>Measured Flow (Million Gallons)</u>	<u>mg/L to Pounds Conversion Factor</u>	<u>Loading in Pounds</u>
	(a)	(b)	(c)	(a)x(b)x(c)
Month 1	220	2.10	8.34	3,853
Month 2	366	2.33	8.34	7,112
Month 3	464	1.68	8.34	6,501

**Example (Combined Total TSS Loading):**

<u>Sampling Period</u>	<u>Route 44 (Pounds)</u>	<u>South Street East (Pounds)</u>	<u>Total Loading in Pounds</u>
	(a)	(b)	(a) + (b)
Month 1	28,366	3,853	32,219
Month 2	50,426	7,112	57,538
Month 3	53,790	6,501	60,291
Quarterly Total			150,048

### **3.0 Determination of Total Flows and Loadings for Billing Purposes**

**3.1 Determination of Total Flows and Loadings.** Pursuant to Section 5.2 of this Agreement, the volume and pollutant strength characteristics of the influent to the Taunton WWTF shall be determined by Taunton or its Authorized Agent based on continuous flow monitoring and on the average of the pertinent analytical data required to be completed in accordance with the WWTF's NPDES Permit. As of the date of this Agreement, the NPDES Permit requires 24-hour composite sampling three days per week. Section 5.8 of this Agreement requires Taunton and Raynham to use the same analytical laboratory for wastewater characterization.

**3.2 Assumption for Example Calculation Purposes.** For the purposes of the example calculations presented in this Appendix, it is assumed that, as would be reported by Taunton under the Facilities NPDES Permit, the total flows and loadings to the WWTF for a quarterly billing period would be as follows:

Example:

<u>Period &amp; Component</u>	<u>Average Measured Amount (mg/L) (a)</u>	<u>mg/L to Pounds Conversion Factor (b)</u>	<u>Total Flow (c)</u>	<u>Totals (a)x(b)x(c)</u>
<b>Month 1</b>				
Flow	N/A	N/A	211.80 million gallons	N/A
BOD	149	8.34	211.80 million gallons	263,195 pounds
TSS	169	8.34	211.80 million gallons	298,524 pounds
<b>Month 2</b>				
Flow	N/A	N/A	253.60 million gallons	N/A
BOD	162	8.34	253.60 million gallons	342,634 pounds
TSS	179	8.34	253.60 million gallons	378,589 pounds
<b>Month 3</b>				
Flow	N/A	N/A	184.60 million gallons	N/A
BOD	141	8.34	184.60 million gallons	217,079 pounds
TSS	217	8.34	184.60 million gallons	334,085 pounds
			<b>Quarterly Totals</b>	
			Flow	650.00 million gallons
			BOD	822,908 pounds
			TSS	1,011,198 pounds

#### **4.0 Calculation of WWTF and Common Sewer Total Operation and Maintenance Costs**

##### **4.1 Calculation of Total Operation and Maintenance Costs Generally.**

Pursuant to Section 6A.7 of this Agreement, Taunton shall submit to Raynham an estimate of Raynham's proportional share of Total Operating and Maintenance Costs by March 31<sup>st</sup> of each year. As defined in this Agreement, Total Operation and Maintenance Cost means the total expense incurred in operating, supervising and maintaining the Wastewater Treatment Facility and the Common Sewer System in Taunton.

##### **4.2 Assumptions for Example Calculation Purposes.**

4.2.1. WWTF Operation and Maintenance Cost, consisting of City Operator cost and the Administrative Fee: \$1,623,051 City Operator cost + \$81,153 Administrative Fee = \$1,704,204 (\$426,051 per quarter).

4.2.2. Common Sewer System Operation and Maintenance Cost under the Existing Contract, consisting of City Operator cost (Common Sewer pumping

stations) and the Administrative Fee: \$128,546 City Operator cost + \$6,427  
Administrative Fee = \$134,973 (\$33,743.25 per quarter).

4.2.3 Common Sewer System Operation and Maintenance Costs under the Service Contract for Operation and Maintenance, City of Taunton, Massachusetts Sanitary Sewer Collection System, By and Between City of Taunton, Massachusetts and Veolia Water North American – Northeast, LLC (SSCS Contract), consisting of the Veolia operation and maintenance costs related to the Common Sewer System and the Administrative Fee: \$86,935 + \$4,346.75 = \$91,281.75 (\$22,820.44 per quarter).

## **5.0 Calculation of Quarterly Proportional Share of WWTF Operating Costs**

The following is an example of the process and data to be applied in the calculation of the quarterly proportional share of WWTF operating costs.

### **5.1 Calculation of Flow Component for WWTF.**

<u>Item</u>	<u>Example Data Source</u>	<u>Data</u>
(a) Total Quarterly Flow to WWTF	Appendix Section 3.2	650.00 million gallons
(b) Raynham Total Quarterly Flow	Appendix Section 2.2(A)	51.99 million gallons
(c) Raynham Percent of Total Flow	= (b)/(a)	7.99%
(d) Raynham Flow Cost Allocation Factor	Agreement Section 6A.4	40.00%
(e) Quarterly WWTF Operations & Maintenance Costs	Appendix Section 4.2	\$426,051
<b>Raynham Flow Cost</b>	<b>= (c) x (d) x (e)</b>	<b>\$13,616.59</b>

## 5.2 Calculation of BOD Component for WWTF.

Item	Example Data Source	Data
(a) Total Quarterly BOD Loading to WWTF	Appendix Section 3.2	822,908 pounds
(b) Raynham Quarterly BOD Loading	Appendix Section 2.2(B)	157,526 pounds
(c) Raynham Percent of Total BOD Loading	= (b)/(a)	19.14%
(d) Raynham BOD Cost Allocation Factor	Agreement Section 6A.4	27.00%
(e) Quarterly WWTF Operations & Maintenance Costs	Appendix Section 4.2	\$426,051
<b>Raynham BOD Cost</b>	<b>= (c) x (d) x (e)</b>	<b>\$22,017.46</b>

## 5.3 Calculation of TSS Component for WWTF.

Item	Example Data Source	Data
(a) Total Quarterly TSS Loading to WWTF	Appendix Section 3.2	1,011,198 pounds
(b) Raynham Quarterly TSS Loading	Appendix Section 2.2(C)	150,048 pounds
(c) Raynham Percent of Total TSS Loading	= (b)/(a)	14.84%
(d) Raynham TSS Cost Allocation Factor	Agreement Section 6A.4	33.00%
(e) Quarterly WWTF Operations & Maintenance Costs	Appendix Section 4.2	\$426,051
<b>Raynham TSS Cost</b>	<b>= (c) x (d) x (e)</b>	<b>\$20,864.57</b>

## 5.4 Calculation of Proportional Share of WWTF Operating Costs.

Based upon the calculations performed by applying the procedures in Sections 5.1, 5.2 and 5.3, above, the proportional share of WWTF operating costs is calculated as follows:

Proportional Share = Flow Cost + BOD Loading Cost + TSS Loading Cost

Proportional Share = 5.1 Result + 5.2 Result + 5.3 Result

Proportional Share = \$13,616.59 + \$22,017.46 + \$20,864.57

**Proportional Share of WWTF Operating Costs = \$56,498.62**

## **6.0 Calculation of Quarterly Proportional Share of Common Sewer Costs**

**6.1 Common Sewer Cost Proportional Share Generally.** Pursuant to Section 6A.3 of this Agreement, Raynham shall pay its proportionate share of the costs of operating and maintaining the Common Sewer System, based upon: its contribution of flow, BOD and TSS that enter the Common Sewer System compared to the total flow, BOD and TSS that enter the Common Sewer System for the Existing Contract; and based upon its contribution of flow only for Wastewater that enters the Common Sewer System for the Contract for Operation Sanitary Sewer Collection System.

**6.2 Calculation of Common Sewer Cost Proportional Share.** The following is an example of the process and data to be applied in the calculation of the quarterly proportional share of Common Sewer costs. For the purposes of this example, it is assumed that the annual costs for operating and maintaining the Common Sewer System as estimated by Taunton are \$134,973 or \$33,743.25 per quarter of the example year for the Existing Contract and \$91,821.75 (\$22,820.44 per quarter) under the Contract for Operation Sanitary Sewer Collection System (see Section 4.2 of this Appendix).

### **6.3 Calculation of Flow Component for Common Sewer (Existing Contract).**

<u>Item</u>	<u>Example Data Source</u>	<u>Data</u>
(a) Total Quarterly Flow into Common Sewer System	Appendix Section 3.2	650.00 million gallons
(b) Raynham Quarterly Flow into Common Sewer System	Appendix Section 2.2(A)	51.99 million gallons
(c) Raynham Flow as Percent of Total	= (b)/(a)	7.99%
(d) Raynham Flow Cost Allocation Factor	Agreement Section 6A.5	80.00%
(e) Quarterly Common Sewer Operating Cost	Appendix Section 4.2	\$33,743.25
<b>Raynham Flow Cost</b>	<b>= (c) x (d) x (e)</b>	<b>\$2,156.87</b>

#### 6.4 Calculation of BOD Component for Common Sewer (Existing Contract Costs).

Item	Example Data Source	Data
(a) Total Quarterly BOD Loading to Common Sewer	Appendix Section 3.2	822,908 pounds
(b) Raynham Quarterly BOD Loading	Appendix Section 2.2(B)	157,526 pounds
(c) Raynham Percent of Total BOD Loading	= (b)/(a)	19.14%
(d) Raynham BOD Cost Allocation Factor	Agreement Section 6A.5	7.00%
(e) Quarterly Common Sewer Operations & Maintenance Costs	Appendix Section 4.2	\$33,743.25
Raynham BOD Cost	= (c) x (d) x (e)	\$452.09

#### 6.5 Calculation of TSS Component for Common Sewer (Existing Contract).

Item	Example Data Source	Data
(a) Total Quarterly TSS Loading to Common Sewer	Appendix Section 3.2	1,011,198 pounds
(b) Raynham Quarterly TSS Loading	Appendix Section 2.2(C)	150,048 pounds
(c) Raynham Percent of Total TSS Loading	= (b)/(a)	14.84%
(d) Raynham TSS Cost Allocation Factor	Agreement Section 6A.5	13.00%
(e) Quarterly Common Sewer Operations & Maintenance Costs	Appendix Section 4.2	\$33,743.25
Raynham TSS Cost	= (c) x (d) x (e)	\$650.97

**6.6 Calculation of Flow Component for Common Sewer (Contract for Operation Sanitary Sewer Collection System).**

Item	Example Data Source	Data
(a) Total Quarterly Flow into Common Sewer System	Appendix Section 3.2	650.00 million gallons
(b) Raynham Quarterly Flow into Common Sewer System	Appendix Section 2.2(A)	51.99 gallons
(c) Raynham Flow as Percent of Total Flow	= (b)/(a)	7.99%
(d) Quarterly Common Sewer Operating Cost	Appendix Section 4.2.3	\$22,820.44
<b>Raynham Flow Cost</b>	<b>= (c) x (d)</b>	<b>\$1,823.35</b>

**6.7 Calculation of Proportional Share of Common Sewer Operating Costs.**  
The Raynham proportional share of Common Sewer costs for the example quarter is calculated as follows:

$$\text{Proportional Share} = \text{Flow Cost} + \text{BOD Loading Cost} + \text{TSS Loading Cost}$$

$$\text{Proportional Share} = 6.3 \text{ Result} + 6.4 \text{ Result} + 6.5 \text{ Result} + 6.6 \text{ Result}$$

$$\text{Proportional Share} = \$2,156.87 + \$452.09 + \$650.97 + \$1,823.35$$

$$\text{Proportional Share of Common Sewer Operating Costs} = \$5,083.28$$

**7.0 Calculation of Total Quarterly Proportional Share of Operation and Maintenance Costs**

The total quarterly proportional share of costs due and payable by Raynham relative to WWTF and Common Sewer System operation and maintenance costs is as follows:

$$\text{Proportional Share} = 5.4 \text{ Result} + 6.7 \text{ Result}$$

$$\text{Proportional Share} = \$56,498.62 + \$5,083.28$$

$$\text{Proportional Share} = \$61,581.90$$

## **8.0 Calculation of Other WWTF/Common Sewer System User Costs**

**8.1 Other User Costs.** Pursuant to Article VI of this Agreement, Raynham is obligated to compensate Taunton in full for other user costs, in addition to Raynham's proportional costs, that are incurred and documented by Taunton relative to the operation, maintenance, management and administration of the WWTF and the Common Sewer System, as such costs are provided for in Section 6A.1 of this Agreement and further enumerated in Section 1.1 of this Appendix. Pursuant to Section 6A.7 of this Agreement, estimates of such costs are to be provided by Taunton to Raynham by March 31 of each year of the Term of this Agreement.

For purposes of this Appendix, the following costs are assumed:

1. Additional annual cost for Taunton acting as Raynham's Authorized Agent: \$00.00 (\$00.00 per quarter);
2. Quarterly cost (as documented by Taunton) for additional sampling and analysis at Raynham metering and sampling stations: \$00.00;
3. Additional capital and operating and maintenance costs (as documented by Taunton) for treating Wastewater of a special character: \$00.00;
4. Liquidated damages levied on Raynham: \$000.00;
5. Other costs agreed to by Taunton and Raynham: \$00.00.

## **8.2 Calculation of other WWTF/Common Sewer System User Costs.**

Other quarterly user costs are calculated as follows:

$$\text{Other Quarterly User Costs} = 1 + 2 + 3 + 4 + 5$$

$$\text{Other Quarterly User Costs} = \$00.00 + \$00.00 + \$00.00 + \$00.00 + \$00.00$$

$$\text{Other Quarterly User Costs} = \$00.00$$

## **9.0 Calculation of Total Quarterly User Charge**

The total quarterly User Charge due to be paid by Raynham is the sum of the charges calculated under Sections 7.0 and 8.2 of this Appendix, as follows:

$$\text{Total Quarterly User Charge} = 7.0 \text{ Result} + 8.2 \text{ Result}$$

$$\text{Total Quarterly User Charge} = \$61,581.90 + \$00.00$$

$$\text{Total Quarterly User Charge} = \$61,581.90$$



**Appendix B-2**  
**Example Calculation of Raynham Annual Payment of**  
**Proportional Share of Net Capital Cost**  
**Using Facility Design Flow, BOD Design Capacity and TSS Design Capacity**

**1.0 Proportional Share of Net Capital Cost Calculation and Payment Generally**

**1.1 Raynham Payment Obligations Generally.** The proportional share of Net Capital Cost due to be paid by Raynham under Article VIIA of this Agreement shall be based on its proportional share of the actual debt service payments or other payment obligations incurred by Taunton as specified in any of the indentures, trust agreements, contracts, leases or similar documents related to: (a) the financing of Initial Capital Improvements made to the WWTF and Common Sewer System by the City Operator as a part of its Existing Contract with Taunton; (b) the financing of capital improvements made by Taunton to the Common Sewer System after the execution of the Existing Contract with the City Operator and prior to execution of this Agreement; and (c) the financing of Future Capital Improvements, additions or expansions of the WWTF and Common Sewer System.

**1.2 Billing Frequency.** Raynham's payment for its proportional share of Net Capital Cost is due on October 15<sup>th</sup> of each year, based upon an invoice presented by Taunton by September 15<sup>th</sup> of the same year.

**1.3 Proportional Share of Net Capital Cost.** The allocation of Net Capital Cost relative to the WWTF shall be apportioned among flow, BOD and TSS at 24.00%, 57.00% and 19.00% respectively. The Net Capital Cost relative to the Common Sewer System shall be based on flow. For Raynham's proportional share of Net Capital Cost for the WWTF and Common Sewer System, calculations for Raynham's wastewater flow and loadings shall be based on a Raynham Average Daily Flow of 1.3 million GPD.

**1.4 Allocation of Taunton Capital-Related Payment Obligations.** The allocation of the payment obligations of Taunton related to the financing of capital improvements made to the WWTF and Common Sewer System as described in (a) of Section 1.1, above, is 85% for the WWTF and 11% for the Common Sewer. As an example of the application of this allocation, if Taunton's total payment obligation for one year is \$504,680, then \$428,978 is allocable to the WWTF (85% of \$504,680) and \$55,515 is allocable to the Common Sewer (11% of \$504,680). Pursuant to Section 7A.1 of this Agreement, Taunton shall also recover administrative costs, defined as 5% of the debt service. For the purposes of this Appendix, the amounts recoverable as administrative costs are \$21,449 relative to the WWTF (based on debt service of \$428,978) and \$2,776

relative to the Common Sewer System (based on debt service of \$55,515).

Adding these administrative costs to allocable debt service costs results in: \$450,427 as the total cost allocable to the WWTF and \$58,291 of the total cost allocable to the Common Sewer System. For costs associated with (b) of Section 1.1, above, the payment obligations of Taunton related to the financing of certain capital improvements to the Common Sewer System are 100% allocable to the Common Sewer System. As an example, if Taunton's payment obligation for one year regarding such cost is \$42,125, then \$42,125 would be allocated to the Common Sewer System cost. As with other capital-related payment obligations, Taunton shall also recover administrative costs, defined as 5% of the debt service, or \$2,106 in this example, resulting in a total of \$44,231.

Pursuant to Article VIIA of this Agreement, and subsection 1.1(c) of this Appendix, Raynham shall also be responsible for its proportional share of the financing of Future Capital Improvements, additions or expansion of the WWTF and Common Sewer System. For the purposes of these example calculations, improvements to the Common Sewer System are assumed. It is assumed that such costs total \$75,000.00 plus 5% administrative fee, to equal \$78,750.00, and that Raynham's proportional share is based on flow only.

Based upon the calculations performed in this Section 1.4, the capital-related costs allocated to the WWTF and the Common Sewer System are as follows:

WWTF: \$450,427.00

Common Sewer System: \$58,291.00 + \$44,231.00 = \$102,522.00

Future Capital Improvements to Common Sewer System = \$78,750.00.

**1.5 Purpose of Appendix.** This Appendix is provided solely to present illustrations of the procedures and information requirements for calculating the proportional share of Net Capital Cost due and payable from Raynham. The numbers and amounts used in the example calculations are intended for illustrative purposes only, and do not denote or represent actual volumes, loadings or costs that may be experienced. All references to "Appendix" relate to this Appendix B-2.

## **2.0 Example Calculation of Proportional Share of Net Capital Cost** **/WWTF**

### **2.1 Basis of Calculation of Proportional Share of Net Capital Cost/WWTF.**

The following is an example of the process and data to be applied in the calculation of the annual proportional share of Net Capital Cost/WWTF Portion due and payable by Raynham. The calculations are based upon the permitted design capacity for flow, and upon the BOD design capacity and TSS design capacity of the Taunton WWTF at that flow.

## Taunton WWTF Flow & Loadings Design Capacities

Component	Unit	Daily Value	Annual Value
Facility Permitted Design Capacity Flow	Million gallons	8.4	3,066
BOD Design Capacity	Pounds	11,060	4,036,900
TSS Design Capacity	Pounds	13,772	5,026,780

**2.1(A) Calculation of Raynham Flow.** The Raynham flow for the year, is 474.50 million gallons (i.e., 1.3 MGD times 365 days). This specified annual flow shall be applied in all cases performed under this Agreement to compute Raynham's flow and Wastewater loadings.

**2.1(B) Calculation of Raynham Loadings.** The example below illustrates the calculation of the total BOD and TSS loadings from Raynham for the subject year. The loadings values included in the calculation are the total of quarterly values for the prior fiscal year resulting from a quarterly flow (based on 1.3 million GPD) and BOD and TSS concentrations resulting from the sampling conducted pursuant to Section 5.8 of this Agreement.

Example:

Period	BOD (Pounds)	TSS (Pounds)
Quarter 1	358,740	347,876
Quarter 2	281,491	252,944
Quarter 3	298,795	235,608
Quarter 4	300,670	222,022
Annual Total	1,239,696	1,058,450

**2.1(C) Debt Service Assumption.** For the purposes of the example calculation presented in this Appendix, it is assumed that the annual allocable debt service that is allocable to the WWTF for the subject year is \$450,427 (see Section 1.4 of this Appendix).

**2.2 Calculation of Proportional Share of Net Capital Cost/WWTF.** The following is an example of the calculation of the Net Capital Cost Share/WWTF, applying the data developed under Section 2.1 of this Appendix.

**2.2(A) Calculation of Flow Component.** The following is an example of the calculation of the flow component of the proportional share of Net Capital Cost/WWTF.

<u>Item</u>	<u>Example Data Source</u>	<u>Data</u>
(a) WWTF Permitted Design Flow	Appendix Section 2.1	3,066 million gallons
(b) Raynham Flow	Appendix Section 2.1(A)	474.50 million gallons
(c) Raynham Percent of Permitted Design Flow	= (b)/(a)	15.48%
(d) Raynham Flow Cost Allocation Factor	Agreement Section 7A.4	24.00%
(e) Annual Debt Service	Appendix Section 2.1(C)	\$450,427
<b>Raynham Flow Cost</b>	<b>= (c) x (d) x (e)</b>	<b>\$16,734.26</b>

**2.2(B) Calculation of BOD Loading Component.** The following is an example of the calculation of the BOD loading component of the proportional share of Net Capital Cost/WWTF.

<u>Item</u>	<u>Example Data Source</u>	<u>Data</u>
(a) WWTF BOD Design Capacity	Appendix Section 2.1	4,036,900 pounds
(b) Raynham BOD Loading	Appendix Section 2.1(B)	1,239,696 pounds
(c) Raynham Percent of BOD Design Capacity	= (b)/(a)	30.71%
(d) Raynham BOD Loading Cost Allocation Factor	Agreement Section 7A.4	57.00%
(e) Annual Debt Service	Appendix Section 2.1(C)	\$450,427
<b>Raynham BOD Cost</b>	<b>= (c) x (d) x (e)</b>	<b>\$78,845.90</b>

**2.2(C) Calculation of TSS Loading Component.** The following is an example of the calculation of the TSS loading component of the proportional share of Net Capital Cost /WWTF.

Item	Example Data Source	Data
(a) WWTF TSS Design Capacity	Appendix Section 2.1	5,026,780 pounds
(b) Raynham TSS Loading	Appendix Section 2.1(B)	1,058,450 pounds
(c) Raynham Percent of TSS Design Capacity	= (b)/(a)	21.06%
(d) Raynham TSS Loading Cost Allocation Factor	Agreement Section 7A.4	19.00%
(e) Annual Debt Service	Appendix Section 2.1(C)	\$450,427
Raynham TSS Cost	= (c) x (d) x (e)	\$18,023.39

**2.2(D) Calculation of Proportional Share of Net Capital Cost/WWTF.** Based upon the calculations performed by applying the procedures in Sections 2.2(A), 2.2(B) and 2.2(C), above, the proportional share of Net Capital Cost is calculated as follows:

Proportional Share of Net Capital Cost = Flow Cost + BOD Cost + TSS Cost

Proportional Share of Net Capital Cost = 2.2(A) Result + 2.2(B) Result + 2.2(C) Result

Proportional Share of Net Capital Cost = \$16,734.26+ \$78,845.90 + \$18,023.39

**Proportional Share of Net Capital Cost/WWTF = \$113,603.55**

### **3.0 Calculation of Net Capital Cost Share/Common Sewer System**

**3.1 Proportional Share of Net Capital Cost Generally.** Pursuant to Article VIIA of this Agreement, Raynham shall pay Taunton its proportional share of the Net Capital Cost of the Common Sewer System. Pursuant to this Agreement, Sections 7A.5 (Allocation of Net Capital Cost for Common Sewer System for Initial Capital Improvements resulting from the Existing Contract with the City Operator.), 7A.7 (Allocation of Net Capital Cost for Common Sewer System for improvements made by the City after execution of the Existing Contract with the City Operator and prior to execution of this Agreement.), and 7A.8 (a proportional share of Net Capital Costs for Future Capital Improvements) that share shall be the ratio of Raynham's flow based on 1,300,000 GPD compared to the Common Sewer System Flow Capacity (8.4 MGD) times the actual debt service payment(s) made by Taunton during the same fiscal year.

**3.2 Debt Service Assumption (Existing Contract Costs and Costs after Execution of Existing Contract – Agreement Sections 7A.5 and 7A.7).** For the purposes of the example calculation presented in this Appendix, it is assumed that the annual allocable debt service associated with the Common Sewer System for these costs for the subject year is \$102,522 (see Section 1.4 of this Appendix).

**3.3 Calculation of Flow Component (Existing Contract Costs and Costs after Execution of Existing Contract – Agreement Sections 7A.5 and 7A.7).** The following is an example of the calculation of the flow component of the proportional share of Net Capital Cost for these costs.

Item	Example Data Source	Data
(a) Common Sewer System Flow Capacity	By definition, 8.4 MGD	3,066 million gallons (per year)
(b) Raynham Flow	Appendix B-2, Section 2.1(A)	474.50 million gallons (per year)
(c) Raynham Percent of Permitted Design Flow	= (b)/(a)	15.48%
(d) Annual Debt Service	Appendix B-2, Section 3.2	\$102,522
Raynham Flow Cost	= (c) x (d)	\$15,870.41

**3.4 Calculation of Flow Component (Future Capital Improvements – 7A.8).** The following is an example of the calculation of the flow component of the proportional share of Net Capital Costs for Future Capital Improvements to the Common Sewer System, with a financing cost of \$78,750.00

Item	Example Data Source	Data
(a) Common Sewer System Flow Capacity	By definition, 8.4 MGD	3,066 million gallons (per year)
(b) Raynham Flow	Appendix B-2, Section 2.1(A)	474.50 million gallons (per year)
(c) Raynham Percent of Design Flow	= (b)/(a)	15.48%
(d) Annual Debt Service	Appendix B-2, Section 1.4	\$78,750.00
Raynham Flow Cost	= (c) x (d)	\$12,190.50

**3.5 Calculation of Proportional Share of Net Capital Cost/Common Sewer System.**

Based upon the calculations performed by applying the procedures in Section 3.3 above, the proportional share of Net Capital Cost is calculated as follows:

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Proportional Share of Net Capital Cost = Flow Cost

Proportional Share of Net Capital Cost = 3.3 Result and 3.4 Result

Proportional Share of Net Capital Cost = \$15,870.41 + \$12,190.50

**Proportional Share of Net Capital Cost/Common Sewer System =  
\$28,060.91**

#### **4.0 Calculation of Proportional Share of Total Net Capital Cost**

Based upon the calculations performed under 2.2(D) and 3.5, above, the total proportional share of Net Capital Cost due to be paid by Raynham is as follows:

Total Proportional Share of Net Capital Cost = 2.2(D) Result + 3.5 Result

Total Proportional Share of Net Capital Cost = \$113,603.55 + **\$28,060.91**

**Proportional Share of Net Capital Cost Share = \$141,664.46**

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**APPENDIX C**

**LIQUIDATED DAMAGES  
FOR  
NONPERFORMANCE**

1. Exceedance by Raynham of flow allocation \$500/day or  
\$1/1,000 gallons,  
whichever is greater
2. Failure by Raynham to adopt sewer use ordinance/local limits and approved industrial pretreatment program as stringent as that in Taunton within 180 days of notice by Taunton \$500/day
3. Failure by Raynham to provide safe and ready access to any of its flow metering and temperature controlled sampling stations through which its Wastewater enters the Common Sewer System within 365 days of execution of this Agreement, and thereafter within five (5) business days of notice by Taunton or the City Operator, unless in this latter instance, an extension is required due to extenuating circumstances beyond Raynham's reasonable control \$500/day
4. Failure by Raynham to repair inoperable equipment at any of its flow metering and sampling stations through which its Wastewater enters the Common Sewer System within 96 hours of notice by Taunton or the City Operator, unless an extension is required due to extenuating circumstances beyond Raynham's reasonable control \$500/day
5. A. Delay by Raynham in providing evidence of annual calibration of flow metering equipment at any of its flow metering and sampling stations through which its Wastewater enters the Common Sewer System within 60 days of annual calibration \$500/day



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5. B. Delay by Taunton in providing evidence of annual calibration of flow metering equipment at the station at the Wastewater Treatment Facility headworks area within 60 days of annual calibration \$500/day
6. Failure by Taunton to provide Raynham available monitoring data and supporting documentation to quarterly or annual billings within 60 days of such request by Raynham \$100/day

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**APPENDIX D**

**MAP OF EXISTING COMMON SEWER SYSTEM AS OF DATE OF EXECUTION OF THIS  
AGREEMENT**