

## TEMPORARY HAMPTON WHOLESALE, BULK SEWER AGREEMENT

This Temporary Hampton Wholesale, Bulk Sewer Agreement (the “Agreement”) is made and entered into pursuant to New Hampshire Revised Statutes Annotated Chapter 53-A:3-a, by and between the Town of Hampton, with a mailing address of 100 Winnacunnet Road, Hampton, New Hampshire (“Hampton”) and the Town of Seabrook, with a mailing address of 99 Lafayette Road, Seabrook, New Hampshire (“Seabrook”), by their respective Selectmen, who agree to the commitments, terms and conditions contained in this Agreement.

WHEREAS, Hampton collects wastewater from approximately 89 properties located in an area of Hampton known as Sun Valley and conveys this wastewater through the Sun Valley Pump Station to a force main (the “Force Main”) that crosses the bottom of the Hampton Harbor before delivering the wastewater to Hampton’s Wastewater Treatment Facility; and

WHEREAS the Force Main could be disrupted due to the ongoing investigation, design, and construction by the New Hampshire Department of Transportation (“NHDOT”) of the new proposed Seabrook Hampton Bridge; and

WHEREAS, Seabrook operates a wastewater collection system consisting of sewer lines, pump stations, force mains and other appurtenances that collect wastewater and deliver it to Seabrook’s Wastewater Treatment Facility; and

WHEREAS, part of Seabrook’s wastewater infrastructure is located in close proximity to the Hampton Sun Valley Pump Station and the Force Main; and

WHEREAS, Hampton requests a temporary interconnection of the Force Main to Seabrook’s wastewater collection system to avoid a disruption of service and other issues in the event the Force Main is damaged, fails and/or is otherwise temporarily rendered out of service during the construction of the new bridge; and

WHEREAS, Seabrook anticipates utilizing a third-party consultant to conduct a new rate study to establish new sewer rates in the near future and Seabrook and Hampton anticipate that the wholesale bulk rates charged to Hampton pursuant to this Agreement will be consistent with those anticipated changes; and

WHEREAS, Seabrook and Hampton have determined to enter into this Agreement to temporarily secure wastewater treatment services for the Sun Valley Area of Hampton to facilitate the investigation, design and construction by NHDOT of the new proposed Seabrook Hampton Bridge.

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, Hampton and Seabrook agree as follows:

1. Purpose and Intent

- a. The purpose and intent of this Agreement is to permit wastewater from the Sun Valley Area ordinarily collected and treated by Hampton, to be temporarily directed to the Seabrook sewer and treated by Seabrook, in order to:
  - i. Protect the natural resources of the Hampton Harbor and inlets in the event the Force Main is disrupted; and

- ii. Provide for the lawful disposal and treatment of wastewater to protect the environment of both communities.
- b. It is the intent of the Towns of Hampton and Seabrook that the sewer lines and appurtenant works constructed by the Town of Hampton for this temporary connection be maintained and that the wastewater collected from the system be treated in accordance with all applicable Federal and State laws.
- c. The parties to this Agreement acknowledge that Seabrook is not a public utility pursuant to RSA 362:4, III.

## 2. Consideration

- a. The consideration for this Agreement is the mutual advantage referred to in Paragraph 1 hereof, the payments to be made by Hampton to Seabrook as hereinafter provided, and the proper disposal and treatment of wastewater generated within the Sun Valley Area in Hampton.

## 3. Definitions

As used in this Agreement:

- a. "Hampton" means the Town of Hampton, New Hampshire.
- b. "Seabrook" means the Town of Seabrook New Hampshire
- c. "Wastewater" means the water-carried wastes from residences in the Sun Valley Area of Hampton as defined herein, together with incidental infiltration as may be collected and transported in said sewer lines.
- d. "Administrators" shall be the Hampton and Seabrook Town Managers or Acting Managers.
- e. "Effective Date" means the date this Agreement is approved by all parties hereto including the State of New Hampshire Department of Environmental Services and the New Hampshire Attorney General.
- f. "Sun Valley Area" refers to the residences on Thornton Street, Campton Street, Portsmouth Avenue, Woodstock Street, and Ocean Drive, in Hampton, which residences produce the wastewater which is the subject of this Agreement.
- g. "Force Majeure" means Act of God, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of either party to this Agreement, or acts or failures to act by regulatory authorities.

## 4. General Provisions

- a. This Agreement is limited to the wastewater generated by Hampton in the Sun Valley Area.
- b. Hampton, at its sole and own expense, and with Seabrook's approval, will construct and maintain a new sewer line to convey wastewater from the sewer valve pit located on Portsmouth Avenue in Hampton to the Seabrook termination manhole located

approximately 90 ft to the south on Portsmouth Avenue in Seabrook, near the Seabrook-Hampton Town Line. Any and all expense associated with the permitting, installation, maintenance, repair and removal of the new sewer line, and its connection to Seabrook's sewer will be the responsibility of the Town of Hampton.

- c. Upon the approval of this Agreement, Hampton shall continue to own and maintain all of its assets within Hampton as well as the sewer line and related infrastructure installed in accordance with Section 4.b of this Agreement to the Seabrook termination manhole for the discharge of wastewater to said discharge point for delivery to the Seabrook wastewater system.
- d. Hampton shall not acquire any title, property interest, or equity interest in any facilities or works in Seabrook, nor shall it have any responsibilities or authority with respect to any such facilities or works other than the right of entry for inspection and maintenance, with Seabrook's prior permission, at the point of interconnection between the systems owned by Hampton and by Seabrook. By operation of this Agreement and in accordance with its terms, Hampton shall not have any responsibility for any debts incurred solely by Seabrook except as contemplated in this Agreement.
- e. Hampton acknowledges and agrees that in order for Seabrook to meet its obligations to NHDES and EPA and the National Pollution Discharge Elimination System (NPDES) permit issued to Seabrook, Hampton will be required to adopt or adhere to portions of Seabrook's sewer regulations as it may be amended over the term of this Agreement so as to facilitate and implement programs for NPDES permit compliance that may be required of Seabrook.

## 5. Operative Provisions

- a. To the extent contemplated herein, Hampton shall have the right to discharge wastewater from the Sun Valley Area to Seabrook for the reception, treatment, and disposal. Seabrook shall be responsible for the degree and character of wastewater treatment generated from the Sun Valley Area and for disposal of all effluent to the best of Seabrook's ability and in accordance with applicable law.
- b. Hampton acknowledges and agrees that Hampton and the Sun Valley Area are prohibited from discharging septage or holding tank waste into Seabrook's sewer system.
- c. Hampton shall facilitate the entry of representatives of Seabrook for the purposes of inspecting sewers and appurtenance facilities owned by Hampton, as well as any discharges into the sewers and appurtenant facilities owned by Hampton that are part of this connection. Seabrook representatives may exercise the rights set forth herein for the purpose of ascertaining the state of compliance with Seabrook's sewer use ordinances and any discharge permits that have been issued by Hampton.
- d. The facilities identified in Sections 4.b–d of this Agreement as property and assets of Hampton, and the facilities identified as property and assets of Seabrook, are to be repaired, replaced, and maintained by each respective owner at the owner's individual expense, provided, however, that Hampton shall be solely responsible for repair, replacement, and maintenance of any property and assets of Seabrook that are in any way damaged or modified in the course of Hampton's interconnection with the Seabrook termination manhole identified in Section 4.b of the Agreement, or during the

course of maintaining, repairing or removing the new sewer line which is the subject of this Agreement.

- e. Within ninety (90) days after the termination of this Agreement, as contemplated in Section 6.d or Section 12, or within ninety (90) days after the Term identified in Section 12 expires, whichever shall occur first, Hampton shall remove or cause to be removed the sewer line identified in Section 4.b, above, and shall restore the Seabrook termination manhole identified in Section 4.b, and all other real and personal property owned by Seabrook and disturbed by Hampton's installation, maintenance or repair of the new sewer line, to the condition such termination manhole, real and personal property were in at the commencement of the Term, and all at Hampton's sole expense.
- f. Inspection of any tie-ins shall be the responsibility of Hampton who will notify and be required to have Seabrook inspect all tie-ins with Hampton.
- g. No commercial or industrial use shall be allowed to connect to said Hampton and Seabrook approved sewer system except for those that are already connected at the time of this Agreement.
- h. Seabrook shall not be liable for any damages, direct, indirect or consequential, resulting from its inability or failure to provide sewage treatment services for the Sun Valley Area of Hampton on a temporary or emergency basis due to a Force Majeure event. Seabrook will use its best efforts to provide the treatment capacity required hereunder. If restrictions are imposed by governmental regulatory authorities, Seabrook reserves the right to temporarily reduce the capacity treated pursuant to this Agreement, but only for such time as the capacity cannot be accommodated as the result of the imposed governmental restrictions.

#### 6. Bulk Sewer Treatment Service

- a. Hampton may collect and transmit sewage from the Sun Valley Area to through the connection point and Seabrook agrees to accept and treat the sewage from the Sun Valley Area in Hampton at rates of flow not to exceed the following:
  - i. Average Day Flow Rate: [INSERT]
  - ii. Maximum Day Flow Rate: [INSERT]
  - iii. Peak Hourly Flow Rate: [INSERT]
- b. Hampton shall pay to Seabrook for the services provided in this Agreement. Payment is based on the following:

TO BE DETERMINED

The total cost paid to Seabrook by Hampton shall be calculated by:

TO BE DETERMINED

- c. Hampton shall provide to the Seabrook Water & Sewer Superintendent the total flow from the Sun Valley Pump Station for each ninety-day period. Seabrook will then prepare an invoice, using the rates identified in Section 6.a, above, or such rates as may be modified consistent with Section 6.d, below, and shall send such invoice to Hampton's Finance Department. Seabrook will invoice Hampton for services not later 30

days after the end of each ninety-day period, and Hampton will pay Seabrook for invoiced services not more than 30 days after the billing date.

- d. Hampton shall be responsible for reviewing and paying all invoices tendered by the Town of Seabrook in accordance with Section 6.b, above. In the event Hampton disputes any amount invoiced by Seabrook in accordance with Section 6.b, Hampton shall nevertheless pay Seabrook the full amount invoiced, including all disputed amounts, in accordance with Section 6.b. Promptly upon paying any disputed amount, however, Hampton shall notify Seabrook of such dispute and the grounds therefor, and shall also provide Seabrook copies of any and all documentation evidencing the existence of a genuine dispute. Thereafter, Seabrook shall promptly investigate the dispute, the grounds therefor, and the documentation provided by Hampton to determine whether the original invoice was correct or was in error. In the event Seabrook determines the invoiced amount was in error, Seabrook shall issue Hampton a corrective invoice together with a refund of any overpayment, if any. If Seabrook determines the original invoice was correct, then Seabrook shall notify Hampton in writing that the original invoice was correct.
- e. Should circumstances require a change in the rates or fees in this Agreement, Seabrook shall notify Hampton of the circumstances and the proposed changes. Hampton shall have the opportunity to review, comment, and accept or reject the change prior to the rate or fee changes being invoiced. In the event an agreement cannot be reached then this agreement shall be terminated and said connection between the Hampton and Seabrook sewer systems shall be removed consistent with Section 5.e of this Agreement.

#### 7. Applicable Ordinances, Rules, Regulations and Permits

- a. The laws, ordinances, rules, and regulations of the Towns of Seabrook and Hampton, the State of New Hampshire and the United States Government as they now exist or may be changed from time to time shall apply to activities under this Agreement. In cases where the Laws, Ordinances, Rules and Regulations differ, the more stringent shall govern.
- b. The rules, regulations, and requirements of Seabrook prescribing and limiting the content of wastewater discharge, placed or otherwise permitted to flow into the sewers tributary to the treatment facilities of Seabrook shall apply within the Sun Valley Area of Hampton under this Agreement. Hampton has adopted such local laws and shall make such contractual arrangements as may be necessary to assure proper observance of the aforementioned rules, regulations, and requirements with respect to wastewaters originating within Hampton and delivered to Seabrook for treatment and disposal. Hampton shall diligently enforce the aforementioned rules, regulations and requirements of Seabrook within the Sun Valley Area of Hampton.
- c. Hampton's and Seabrook's rules and regulations and requirements relating to the content of wastewater discharge, placed or otherwise permitted to flow into their sewers shall be nondiscriminatory and shall be applied and administered equally.
- d. Permits for discharges into the sewers of Hampton as applicable to the contributing properties under this Agreement in the Sun Valley Area shall be issued and administered by Hampton in accordance with applicable laws and subject to the provisions of this Agreement, and where applicable, Seabrook's regulations as paragraph 7.b, above. Prior

to the issuance of any permit, Hampton shall provide a draft thereof to Seabrook and shall have the appropriate consultation with Seabrook to assure that the permit and any other arrangements in connection therewith are consistent with the sewer ordinances of Seabrook and its rules and regulations. Seabrook shall have the right to disallow the permit. It shall be the further responsibility of Hampton to obtain such reviews and approvals and to furnish such information with respect to its permits as may be required by law.

8. Access to Books and Records

- a. The duly designated representatives of Hampton shall have access to all books and records of Seabrook, which relate to sewerage systems, used by Hampton at all reasonable times and shall be entitled to receive or make copies of any information contained therein.
- b. The duly designated representatives of Seabrook shall have access to all books and records of Hampton, which relate to sewerage systems, discharged by Hampton to Seabrook at all reasonable times and shall be entitled to receive and make copies of any information contained therein.

9. Insurance

- a. Hampton will secure and maintain the appropriate insurance to cover its liability under this Agreement.
- b. Seabrook will secure and maintain the appropriate insurance to cover its liability under this Agreement.

10. Indemnification

- a. Consistent with RSA 53-A:3-a, IV, Hampton hereby agrees to indemnify Seabrook, its officers, employees, and agents, against any liability arising out of the negligent or otherwise wrongful conduct of Hampton, its officers, employees, and agents, including, without limitation, all judgments, costs, expenses, and reasonable attorneys' fees. Hampton further agrees to indemnify, defend, and hold Seabrook harmless against any and all liabilities, including, without limitation, all judgments, costs, expenses, and reasonable attorneys' fees, for anything done or omitted by Seabrook, its officers, employees, and agents, in carrying out Seabrook's obligations under the terms of this Agreement, except as to such actions or omissions as constitute gross negligence or willful misconduct by Seabrook, its officers, employees, or agents.

11. Dispute Resolution

- a. If for any reason the parties hereto are in dispute over any part of this Agreement for more than thirty (30) days, Hampton and Seabrook agree to engage in non-binding mediation with an independent mediator acceptable to both Hampton and Seabrook, failing which, the dispute(s) shall be submitted to a third party arbitrator acceptable to both Hampton and Seabrook for the purpose of resolving the dispute(s), which may be appealed to the Superior Court pursuant to the applicable provisions of N.H. RSA Ch. 542.

12. Administration

- a. This Agreement shall be administered by the Boards of Selectmen of the Towns of Seabrook and Hampton in accordance with the above terms.

13. Term, Continuation, and Revocation of Agreement

- a. This Agreement shall begin at the execution of this document following approval by the New Hampshire Attorney General's Office pursuant to RSA 53-A: 3, V, and shall remain in effect as needed and shall continue until the New Hampshire Department of Transportation's completion of the new Seabrook-Hampton Bridge, estimated to be December 31, 2027 ("the Term"). This Agreement is intended to be temporary in nature. Either Seabrook or Hampton may revoke this Agreement by action of its Board of Selectmen without cause. If this Agreement is revoked by Seabrook, advance written notice thereof must be given to Hampton providing a reasonable time in which to make other arrangements for the proper disposal of sanitary sewage from the structures serviced by this Agreement; provided, that one hundred eighty (180) days' advance written notice shall be deemed reasonable in all cases, but shall not be mandatory. Termination of this Agreement shall be subject to review and approval of the New Hampshire Department of Environmental Services or its successor agency as to the other requirements for the proper disposal of the sanitary sewage collected and treated hereunder.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals by the respective Selectmen of the Towns of Seabrook and Hampton.

Need all the signatory lines.