

**TOWN OF DEEP RIVER AND TOWN OF CHESTER
INTERMUNICIPAL WASTEWATER TREATMENT AGREEMENT**

This **INTERMUNICIPAL WASTEWATER TREATMENT AGREEMENT** (“Agreement”), dated as of August 19, 2005, is made and entered into by and between the Town of Deep River, Connecticut and the Water Pollution Control Authority of the Town of Deep River, Connecticut (collectively, “Deep River”) and the Town of Chester, Connecticut and the Water Pollution Control Authority of the Town of Chester, Connecticut (collectively, “Chester”).

WITNESSETH

WHEREAS, the Town of Deep River owns, and the Water Pollution Control Authority of the Town of Deep River maintains and operates, a wastewater treatment facility (“Facility”) located in the Town of Deep River; and

WHEREAS, Chester wishes to expand its sewer system and connect it with the Deep River sewer system for the purpose of utilizing the Facility for the treatment and disposal of wastewater generated within Chester; and

WHEREAS, Chester is familiar with the capacities and limitations of the Facility and will, in accordance with the terms set forth herein, undertake to ensure that only acceptable wastewater, as defined herein, flows into Deep River’s sewer system for treatment at the Facility; and

WHEREAS, Deep River, in accordance with the terms set forth herein, is willing to accept, treat and dispose of acceptable wastewater from Chester and is willing to set aside a portion of the Facility’s capacity for the benefit of Chester; and

WHEREAS, Chester acknowledges that the Facility was built and has been maintained at considerable expense to Deep River and further acknowledges that Chester will be sharing in the benefit of the Facility and will take care to safeguard Deep River’s investments; and

WHEREAS, Chester is willing to compensate Deep River at an appropriate rate for accepting wastewater and excess wastewater, if any, generated within Chester.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

Definitions:

- **Annual Discharge** – The aggregate wastewater recorded at Deep River’s Facility and recorded at the Chester flowmeter from January 1st until December 31st of the same preceding year.
- **Annual Fee** – Fee to be paid from the Town of Chester to Deep River to account for Chester’s share of the Facility operation and maintenance, as set forth in Deep

River's expense budget. This fee excludes costs and revenue related to the Facility septage receiving operation. The annual fee will be billed by Deep River to Chester on a monthly installment basis.

- **Capital expenditures** – Monies expended by the Town of Deep River to upgrade the facility. Any up grade must comply with state and local regulations.
- **Chester Flow Meter** – Flowmeter located within Chester, which monitors wastewater flowing from the Town of Chester into the Town of Deep River.
- **Connector Line** – Segment of sewer located within the Town of Deep River, which will be constructed as part of the Chester sewer extension project. Ownership of this segment shall be transferred to the Town of Deep River after the sewer construction is completed, tested and transporting wastewater.
- **Excess Flow** – The quantity of flow, which exceeds the maximum daily flow as recorded at the Chester flowmeter on a daily basis.
- **Excess Flow Fee** – A fee to be paid to Deep River by Chester at an increased rate of 50 percent of the Annual Fee per gallon for any Excess Flow recorded at the Chester flowmeter. This fee will be billed monthly, and added to the Annual Fee monthly installment.
- **Excess Flow Surcharges** – Any wastewater flow exceeding a maximum daily flow of 60,000 gallons per day.
- **Maximum Daily Flow** – For the purpose of this agreement, the maximum daily flow is 60,000 gallons per day
- **Monthly Flow Charge** – The sum of the Annual Fee monthly installment plus the Excess Flow Fee.

1. Term:

1.1 The term of this Agreement shall be for a period of TWENTY (20) years commencing on the date hereof and ending on August 19, 2025, or such shorter period as may be provided for herein. After such twenty-year period, this Agreement shall automatically renew successive five-year terms unless either party notifies the other of non-renewal at least 180 days prior to the expiration of the then current term.

1.2 This Agreement shall take effect upon its execution by the contracting municipalities and after Deep River and Chester have obtained all necessary and appropriate municipal approvals.

1.3 In the event that Chester shall not have put into operation the expansion contemplated herein of its sewer system, and its connection with Deep River's system, within three years of the date of this Agreement, Deep River may in its sole option declare this Agreement null and void.

1.4 Compliance with the requirements of paragraph 1.3 will be achieved by Chester successfully approving and appropriating project financing for the expansion contemplated herein of its sewer system as well as the connection with Deep River's system; and by preparation and bidding of construction documents for the expansion contemplated herein of its system and connection to Deep River's system.

2. Use; Fees:

2.1 Deep River agrees to accept, treat and dispose of wastewater generated in Chester in accordance with the terms and conditions of this Agreement. Chester shall be entitled to discharge no more than 60,000 gallons of wastewater per day (12:00 A.M. to 11:59 P.M.) ("Maximum Daily Flow") into Deep River's sewer system at the metered location at the Deep River/Chester town line. Discharges in excess of the Maximum Daily Flow ("Excess Flow") shall constitute grounds for remedial action. Deep River may, in its sole discretion, accept, treat and dispose of Excess Flow from Chester. Should Deep River choose to accept, treat and dispose of Excess Flow, it may charge, in addition to the applicable user charges and fees set forth herein, an excess flow fee ("Excess Flow Fee") of 50% per gallon for the excess flow. This provision in no way obligates Chester to minimum gallons per day.

2.2 Subject to the terms and conditions of this Agreement, and in accordance with applicable state and federal laws, Deep River will provide wastewater treatment and disposal service to Chester in consideration of payment of an annual fee ("Annual Fee") calculated by multiplying the price per gallon times the number of gallons recorded at the meter on the town line. The price per gallon shall be derived by dividing the Deep River annual operation and maintenance budget (not including the costs and revenues associated with the septage disposal operation) by the total number of gallons treated at the facility during the previous year. The Annual Fee shall compensate Deep River for Chester's use of Deep River's sewer system and for Deep River's acceptance, treatment and disposal of wastewater flowing from Chester. This Annual Fee excludes any additional charges, which Deep River may reasonably apply as provided under subsections 2.1, 2.3 and 2.4.

2.3 Any capital expenditures, as defined under definitions, to either the Facility or to the Connector Line running between the Facility and the Chester connection shall be borne by Deep River and Chester in proportion to each town's annual discharge ("Annual Discharge"). For the purpose of this subsection, the Annual Discharge shall equal the total discharge for each town during the calendar year preceding the Town of Deep River's approval to undertake such capital expenditures. Chester shall, by a date no later than December 31 of each year, pay to Deep River the Annual Fee as defined in Section 2.2 and 2.3 for the following calendar year.

2.4 During the first week of each month of each year, Deep River shall submit to Chester a written invoice for the Monthly Flow Charge (which includes any Excess Flow Fee) that has been assessed in the preceding month in accordance with the terms of this Agreement. The Monthly Flow charged to Chester shall be based upon Deep River's daily meter readings as set forth in Section 4. Except as otherwise agreed by the parties, Chester shall pay all invoices within forty-five (45) days of receipt. In the event that Chester fails to pay an invoice, the invoice shall bear interest in accordance with the provisions of Section 7.2 of this Agreement.

2.5 The parties anticipate that Chester will connect Equivalent Dwelling Units to the sewer system in accordance with Chester's Wastewater Planning

Report, dated April 2004. Chester may attach additional properties to the system without Deep River's approval, provided that such additions do not cause Chester to exceed the maximum daily flow. Chester will, however, limit the properties attached to the system to those consistent in character with the users identified in subsection 9.1.

2.6 Chester has made such inquiries and investigations as necessary to ascertain the capabilities of the Facility. Chester hereby warrants that the wastewater it shall generate and deliver to Deep River is of a type, which may be treated by the Facility in the ordinary course as currently operating. Chester agrees that any breach of this warranty in the future shall be a breach within the indemnity obligation in subsection 7.6(A) below.

3. Construction:

3.1 Chester shall design and construct a sewer line ("Connector Line") within the Town of Deep River from the Main Street sewer line (in the vicinity of Winter Avenue) to the Deep River/Chester town line in order to connect the Chester sewer system with the Deep River sewer system. Chester shall pay all costs associated with the design and construction of the Connector Line including but not limited to material, labor and any necessary appurtenances, and shall restore all structures and road surfaces disturbed during the construction of the Connector Line. Chester shall obtain at its expense the necessary permits, environmental or otherwise, required for the design and construction of the Connector Line. These construction and design documents, including the plans and specifications, shall be submitted to Deep River and the Connecticut Department of Environmental Protection (CTDEP) for review prior to bidding. The design shall be approved by Deep River prior to bidding the Connector Line project; such approval shall not be unreasonably withheld.

3.2 Deep River reserves the right to inspect at will the Connector Line both during and after construction.

3.3 Deep River and Chester agree that upon completion of the Connector Line, title to said Connector Line shall be granted to Deep River.

3.4 To the extent provided by law, and in accordance with the indemnification provisions contained in Section 7.6 of this Agreement, Chester agrees to indemnify and hold harmless Deep River from any and all actions for damages arising out of the installation and construction of the Connector Line within the Town of Deep River including any actions brought by designers, engineers, contractors or subcontractors.

4. Equipment; Meter Readings:

4.1 Deep River has an existing Bristol Babcock SCADA system. Any equipment Chester installs to monitor its sewer system, including, but not limited to,

pump station controls and flow meters, shall be compatible with Deep River's system. Chester shall install at Chester's expense a radio telemetry system that will transmit monitoring information to the Facility. All equipment shall be approved by Deep River prior to bidding; such approval shall not be unreasonably withheld.

4.2 Chester shall install a tamper-proof flow meter at the Deep River/Chester town line to measure wastewater flow ("the Chester Flow Meter"). The Chester Flow Meter shall be compatible with the metering system already employed by Deep River and shall be approved by Deep River prior to bidding. Such approval shall not be unreasonably withheld. The Chester Flow and Deep River Flow Meters shall be calibrated annually by a third party certified in the calibration of such meters at owner's expense.

4.3 Chester shall construct a manhole to provide physical access to the Chester Flow Meter. This manhole shall be located in the Town of Chester. Deep River and Chester shall have the right to access the Chester Flow Meter via the manhole without approval of the other party.

4.4 Deep River shall read the Chester Flow Meter on a daily basis via a telemetry system at the Deep River Facility. At the end of each month, Deep River shall mail the daily readings to the Chester Water Pollution Control Authority. Chester may also, at its discretion, read the Chester Flow Meter on a scheduled basis. This schedule shall be determined by the Chester Water Pollution Control Authority and may be adjusted accordingly.

5. Maintenance; Inspections:

5.1 Deep River and Chester shall ensure that all sewer lines and equipment located in their respective towns are maintained in good operating order and shall further ensure that said lines and equipment are not negatively impacting, or otherwise impeding, the operation of the sewer system and Deep River Facility in accordance with DEP Guidelines.

5.2 Deep River also has the right to inspect and test all sewer lines and equipment located in the Town of Chester which may affect the sewer system and Facility, including such inspections and tests as may be necessary to verify the number and types of properties connected to the system in Chester. Chester also has the right to inspect and test all sewer lines and equipment located in the Town of Deep River that may affect Chester's sewer system. If upon inspection either town discovers conditions or equipment that are negatively impacting, or otherwise impeding, their operation of their sewer system and Facility, they may demand, in writing, that the other town satisfactorily rectify such conditions or equipment. If either town fails to replace or repair such equipment within the reasonable time prescribed in the written notice, the requesting town may do so and bill the offending town for the cost thereof.

5.3 Both towns shall be liable for any damage caused to sewer system and Facility by sewer lines or equipment located in their respective towns that are not performing or inadequately performing, and they shall also be liable for all costs incurred due to such damage.

6. Exchange of Information; Reports; Audit Rights:

6.1 Deep River and Chester shall exchange records pertinent to the operation and maintenance of the sewer system and Facility as necessary or by request, but at least annually. Such records shall include, but shall not be limited to: (1) the average daily flow (in gallons) carried by the sewer lines for each town for the past year; and (2) the average daily amount (in gallons) treated at the Facility for the past year.

6.2 Chester shall issue a report to Deep River setting forth the Equivalent Dwelling Units generating wastewater to be accepted, treated and disposed of by Deep River for the upcoming year. This report shall also include an estimate of the daily amount of wastewater (in gallons) to be generated by such Equivalent Dwelling Units for the upcoming year. In accordance with Section 2.3, Chester shall submit this report with the Annual Fee for the upcoming year.

6.3 During the first week of January of each year, Deep River shall issue a report to Chester providing (1) an estimate of the daily amount of wastewater (in gallons) to be generated by the Town of Deep River for the upcoming year; (2) an estimate of the daily amount of wastewater (in gallons) to be treated at the Facility for the upcoming year; and (3) the Annual Fee for the upcoming year.

6.4 Deep River and Chester agree to keep and maintain adequate records relative to the sewer system of each town. Deep River shall also keep and maintain adequate records regarding the treatment, transport and disposal of all wastewater treated at the Facility. Chester shall, within fifteen business days after written notice to Deep River, have the right to inspect all records of Deep River relating to the construction, expansion, operation and maintenance of Deep River's sewer system and Facility. Deep River shall, within fifteen business days after written notice to Chester, have the right to inspect all records of Chester relating to the construction, expansion, operation and maintenance of Chester's sewer system.

6.5 Deep River agrees to make available all records and documents necessary such that Chester may accurately verify user fees. In the event of any overcharge by Deep River for services provided under this Agreement, Deep River shall promptly make full payment to Chester including interest at the rate provided in subsection 7.2.

7. Remedies; Arbitration; Indemnification:

7.1 If either party fails to fulfill any material obligation or condition of this Agreement, the other party has the right to terminate this Agreement in accordance with DEP guidelines by giving sixty days written notice of its intent to do so. Upon receipt of such notice, the party shall have the right to prevent termination by curing the default within thirty days. Termination shall not release Chester from its obligation to pay all invoices or sums owed for services previously rendered in accordance with the terms of this Agreement.

7.2 Any invoice remaining unpaid after the thirtieth day from the date of billing or the due dates as specified in this Agreement, whichever is later, shall bear interest at the rate of 12% annually computed from the end of the governing period.

7.3 If an administrative agency, board, commission or division of the state or Federal government or any court materially impairs, alters, restricts or limits, directly or indirectly, Deep River's right or authority to maintain, sell, contract for, or permit wastewater disposal as set forth in this Agreement, Deep River, in its sole discretion reasonably exercised, may terminate and void this Agreement by written notice to Chester. Termination under this provision shall not release Chester from its obligation to pay all invoices or sums owed for services previously rendered unless to do so would be in violation of a final administrative or judicial decree, order or ruling. Deep River will notify Chester of any formal proceedings or order so that Chester may participate in such proceedings if it so chooses.

7.4 If either party fails to perform any obligation under this Agreement, the other party may perform on behalf of the defaulting party and charge the reasonable costs thereof, including administrative time, to the defaulting party as a sum due under the Agreement provided written notice is given to the defaulting party allowing it a reasonable time to cure the default.

7.5 Deep River and Chester agree that all disputes arising out of, or relating to, this Agreement, or breach thereof, excluding those claims, disputes or other matters in question arising out of this Agreement, shall be submitted to arbitration with the American Arbitration Association. Matters arising under Section 3 shall be submitted in accordance with the Construction Industry Dispute Resolution Procedures, while those arising under other Sections or under a mixture of Section 3 and other Sections of this Agreement shall be submitted in accordance with the Commercial Dispute Resolution Procedures. In any arbitration the AAA shall endeavor to appoint a tribunal of one or more arbitrators who are present or former municipal officials. The award rendered by the tribunal in any arbitration proceeding shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The tribunal shall award attorneys fees to the prevailing party.

7.6 Indemnification:

(A) To the fullest extent permitted by law, Chester agrees to indemnify and hold harmless Deep River or its agents or employees against any and all liability or claims arising from the negligent or willful acts or omissions of Chester or its agents or employees relating to Chester's performance under this Agreement, including but not limited to liability derived from state and federal environmental administrative findings or orders or actions or claims for damages on account of injury to person, or property or the environment caused by any act or omission of Chester, its agents or employees or any fine, penalties or monetary awards which arise out of Chester's acts or omissions under the terms of this Agreement.

(B) To the fullest extent permitted by law, Deep River agrees to indemnify and hold harmless Chester or its agents or employees against any and all liability or claims arising from the negligent or willful acts or omissions of Deep River or its agents or employees relating to Deep River's performance under this Agreement, including but not limited to liability derived from state and federal environmental administrative findings or orders or actions or claims for damages on account of injury to person, or property or the environment caused by any act or omission of Deep River, its agents or employees or any fine, penalties or monetary awards which arise out of Deep River's acts or omissions under the terms of this Agreement.

8. Termination:

8.1 In the event that Deep River terminates this Agreement for any reason permitted herein and with DEP regulations, other than a threat of imminent harm to the Deep River sewer system or Facility, Deep River shall be obligated to continue to accept and treat wastewater from Chester until such time as Chester is able to implement an alternative wastewater treatment disposal plan. Chester shall use its best efforts to adopt such an alternative plan as soon as practicably possible. The failure of Chester to fund or pursue such an alternative plan shall constitute a separate ground for default and shall not be grounds for reliance on the protections of this paragraph 8.

9. Miscellaneous:

9.1 Restrictions: Chester agrees to use the wastewater capacity provided under this Agreement, and by applicable state and federal law, solely for its municipal wastewater and for wastewater generated by residential properties, commercial properties, industrial users, or municipal uses within Chester's town limits.

9.2 Restaurants: Chester shall require any restaurant located in the Town of Chester that will use its sewer system to obtain a general permit for the discharge of fats, oils and greases. Chester shall also require any such restaurant to install grease traps or other equipment to prevent such substances from causing harm to Deep River's sewer system and the Facility.

9.3 Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut except for those requirements, terms, duties and conditions regulated by federal law.

9.4 Notices: All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile transmission, electronic mail followed by a hard copy, mailed (first class postage prepaid) or delivered by a recognized overnight courier service to the following addresses or facsimile numbers:

If to the Town of Deep River, to:

Deep River Water Pollution Control Authority	and	First
Selectman		
C/o Chairman		Town of Deep River
99 Winter Avenue		174 Main Street
Deep River CT 06417		Deep River CT 06417

If to the Town of Chester, to:

Chester Water Pollution Control Authority	and	First Selectman
C/o Chairman		Town of Chester
203 Middlesex Avenue		203 Middlesex
Avenue		
P.O. Box 218		P.O. Box 218
Chester CT 06412		Chester, CT 06412

9.5 Entire Agreement: This Agreement supercedes all prior discussions and agreements between the parties with respect to the subject matter hereof and thereof, and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof and thereof.

9.6 No Assignment; Binding Effect: Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party hereto without the prior written consent of the other party hereto and any attempt to do so will be void, except for assignments and transfers by operation of law. Subject to the preceding sentence, this Agreement is binding upon, insures to the benefit of and is enforceable by the party's hereto and there respective successors and assignees.

9.7 Headings: The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

9.8 Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument. Facsimile copies hereof and facsimile signatures hereon shall have the force and effect of originals.

10. Signatures:

WATER POLLUTION CONTROL AUTHORITY OF THE TOWN OF CHESTER

By _____
WPCA Chair

Date: August 19, 2005

TOWN OF CHESTER

By _____
First Selectman

Date: August 19, 2005

WATER POLLUTION CONTROL AUTHORITY OF THE TOWN OF DEEP RIVER

By _____
WPCA Chair

Date: _____

TOWN OF DEEP RIVER

By _____
First Selectman

Date: _____