SEWER USE AGREEMENT
BETWEEN
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION
AND TOWN OF RUTLAND
FOR INTERMUNICIPAL SEWER USE

THIS SEWER USE AGREEMENT ("the AGREEMENT") is entered into as of this Day of , 2015 between the Department of Conservation and Recreation and the town of Rutland ("Rutland"), referred to collectively as "the Parties".

RECITALS

I. Locations

A. Rutland transports, and desires to continue to transport, wastewater from presently sewered areas shown on Exhibit C through the R-H Interceptors and through the Worcester Interceptors to the Upper Blackstone Water Pollution Abatement District Treatment Plant ("the Treatment Plant").

II. Prior legislation and Agreements Regarding Sewer Operations

A. Previously, MDC, under the authority of St. 1926, c. 375, St. 1932, c. 262, St. 1947, c. 583, St. 1979, c. 783, constructed approximately 9.5 miles of trunk sewer from the center of Rutland to the Holden/Worcester line (referred to as the "Rutland-Holden Interceptor") and approximately 8.3 miles of relief trunk sewer paralleling the original trunk sewer (referred to as the "Relief Interceptor," and collectively as the "R-H Interceptors") to provide increased capacity to the Towns of Holden and Rutland; and the City of Worcester ("the City"), under authority of St. 1932. c. 262, constructed the Northwest, Main, and Cambridge Street Interceptors in Worcester (referred to as the "Worcester Interceptors");

B. St. 1932 c. 262, §9 authorizes the MDC to make "mutually agreed upon" payments to Worcester for Worcester's receiving and disposing of wastewater from the Rutland-Holden Interceptor;

C. Under its 1933 contract with Worcester, amended 1984, MDC paid from state and federal funds for part of the construction of the Worcester Interceptors and the Treatment Plant and secured from Worcester a capacity allocation of 2.16 million gallons per day (mgd) in such transport and treatment facilities, including expansion of the Holden Sewer system;

D. St. 1939 c. 286 (Holden) and St. 1939 c. 287 (Rutland) authorize the past construction of municipal sewer systems in the two Towns and their connection to the R-H Interceptors, and the reimbursement of the MDC for Holden's and Rutland's "proportionate share" of the cost of "receiving, caring for and disposing" of the wastewater under agreements MDC entered into with Holden and Rutland in 1938, and amended in 1945;

E. St. 1968 c. 752 authorized the establishment of the Upper Blackstone Water Pollution Abatement District ("the District") to assume responsibility for wastewater treatment and disposal from the city and further authorized the city and the towns of Auburn, Holden, Rutland, Boylston, West Boylston, Millbury, and Leicester to become members of the District;
F. The towns of Holden, Rutland and West Boylston have voted to become members of the District pursuant to the provisions of St. 1968, c. 752, as amended, and with membership costs paid by the Commonwealth pursuant to the provisions for St. 1968, c. 752 and St. 1996, c. 15, s. 2. Items 2420-7962 and 2420-7963.

III. Intent of Parties

A. DCR desires to replace its existing (1938 Contract) agreement with Rutland to reflect the expansion of reserved capacity in the R-H Interceptors as agreed to in the 2000 City of Worcester – DCR Agreement and through the city sewer system on behalf of the Town and to ensure the availability of this capacity in the city sewer system and to incorporate provision for charging a sewer use rate reflecting the Town’s proportional use of the City sewer system to be paid by the Town for use of both the DCR and City sewer systems.

B. Rutland desires to replace its existing agreement with the DCR to incorporate the provisions referenced in paragraph A.

C. The parties intend to assume the following responsibilities:

1. DCR – Own, operate and maintain the R-H Interceptors; maintain and calibrate wastewater flow meters on the R-H Interceptors; report and certify metered flow figures to the Town and Worcester; and assume all sewer connection permitting responsibilities for all direct connections to DCR-owned and MWRA-maintained trunk, spur and relief sewer lines.

2. Rutland – Own, operate and maintain the local wastewater collection and pumping system and pay to the DCR the Town’s proportionate share of the costs of O&M&R of the R-H Interceptors and the Worcester sewer system, respectively.

IV. Legislative Authority

A. The Parties are authorized pursuant to St. 1996, c. 15, §63, M.G.L. c. 40 §4, M.G.L. c. 83, §1, to enter into this Agreement.
NOW, THEREFORE, in consideration of the mutual agreements and provisions set forth herein, and the payments and obligations hereunder, and for other good and valuable consideration, the receipt and adequacy of which consideration is hereby acknowledged, the Parties hereby agree as follows:

1.0 Basic Obligations

1.1 Rutland

Rutland shall deliver its wastewater to the R-H Interceptors and shall perform necessary OM&R of its respective sewers, pumping stations, force mains and appurtenances located within its borders in accordance with all existing or future laws and regulations, permits, and orders or decrees of EPA and DEP or other government authorities having jurisdiction over the transmission of wastes via the Worcester system to the Treatment Plant and pay a proportionate share of the costs based upon flow contribution of OM&R of the portions of the DCR and Worcester systems.

1.2 DCR

DCR shall receive wastewater from the Town and transport the wastewater through the R-H Interceptors (hereby defined as the trunk sewer shown on plans dated May 24, 1933 and titled “Commonwealth of Massachusetts Metropolitan District Water Supply Commission Rutland-Holden Sewer Key Map and Locality Plan”, the trunk sewer as referenced in the Agreement dated September 17, 1945 and the plans dated June 9, 1983 and titled “Commonwealth of Massachusetts Metropolitan District Commission Water Division Rutland/Holden Relief Trunk Sewer Record Plans”) to the Worcester Interceptors in accordance with all existing or future laws and regulations, permits, and orders or decrees of EPA and DEP or other government authorities having jurisdiction over the transmission of wastes and shall perform necessary OM&R of the R-H Interceptors. DCR agrees to provide to Rutland, for planning purposes, information on areas within the DCR trunk, spur and relief sewer lines where DCR has concerns regarding the introduction of additional flows from town-owned sewer lines and how they will affect downstream flow conditions that could potentially lead to surcharging in the future.

2.0 Point of Connection

2.1 Connection Points

DCR agrees to accept wastewater from the Town via the R-H Interceptors operated by the DCR to be transported through Worcester along the following route:

2.10 Rutland:

R-H Interceptor into Worcester Northwest Interceptor

3.0 Capacity Allocations

3.1 Present Trunk Sewer Capacities

DCR shall allocate flows and maintain physical capacity for those flows in the presently existing R-H Interceptors of 2.85 mgd annual average daily flow and 8.95
mgd peak flow, to be generally allocated to the Town of Rutland as set forth in Table A, and to be specifically allocated as set forth in Table B.

Table A (mgd annual average daily flow)

<table>
<thead>
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<th>Year</th>
<th>RUTLAND</th>
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<tr>
<td>Initial Flow (2005)</td>
<td>0.45</td>
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<td>Design Flow (2020)</td>
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<tr>
<td>Full Build-Out</td>
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Note: For purposes of planning, the parties estimate the projected flows beyond the term of the Agreement as indicated in full Build-Out.

Table B – incremental allocation from 2015 to 2020

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<th>Year</th>
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<tbody>
<tr>
<td>2015</td>
<td>0.517</td>
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<tr>
<td>2016</td>
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<td>2017</td>
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<td>2019</td>
<td>0.543</td>
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<tr>
<td>2020</td>
<td>0.550</td>
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3.2 Development of a program for the Town to Control I/I

DCR and the Town mutually support the development and implementation of a program to identify and remove sources of excessive infiltration and inflow (I/I) from sewers under their respective ownership and control in accordance with applicable DEP/EPA guidelines and regulations. DCR and the Town agree to provide each other with a description of their respective I/I programs, including budget, funding source(s), proposed program activities, and estimated I/I volume to be removed, within twelve (12) months of the effective date of this Agreement. DCR and the Town agree to submit to the other annually thereafter a detailed summary of the previous year’s program and the activities and accomplishments of the previous year and a description of projected activities for the following year. Any work proposed by DCR shall be submitted to the Town in sufficient time for the Town to review the proposal and comment on the proposed activities and cost prior to DCR performing any tasks. Additionally, any proposed work by either DCR or the Town is subject to the appropriation of funds; neither entity shall be obliged to perform any anticipated work should funding become unavailable.

3.3 Conditions

In the event that annual average daily flows exceed the flows projected as shown on Table B, the DCR will notify the Town. At that time, the Town will be required to submit a report to DCR detailing what measures will be undertaken to ensure that the flow returns to within the flow limitation specified in Table B within the next twelve month period.
3.4 Other Contingencies

At such time as the average daily flow from Rutland as measured at the Rutland/Holden line exceeds the Flow projected as set forth in Table B over a twelve (12) month period, or in the event sanitary system overflows occur in Rutland which are found to be caused by excess flow, the DCR may prohibit new connections or extensions by the Town within the area tributary to such problem location. Upon receiving notice of DCR prohibition, the Town shall forthwith cease making or approving such new connections or extensions except as may be approved by the Director of the DCR Division of Water Supply Protection on an emergency basis. Prior to, or concurrent with notification of the prohibition, DCR shall notify Rutland of the exact nature of the contingency that necessitated the prohibition. Upon correction of said contingency and notification thereof, DCR shall immediately notify the town that the prohibition is no longer in effect.

In the event that an issue arises downstream of Rutland in the DCR’s trunk or relief sewers that poses a threat to the water supply and public health, the DCR acknowledges that it will work toward a resolution of the issue in an appropriate and expeditious manner.

4.0 Financial Terms

4.1 Annual Sewer Use Charges (Transport Rate) Paid by Towns

Worcester shall compute annually and submit to the DCR on or before April 1 of each year, a transport rate in accordance with the computation method incorporated herein as Exhibit D, including all essential supporting financial, budget and flow information and computations. Worcester shall use this rate to establish the Annual Sewer Use charge to be billed to DCR by the City for transport of sewage from the DCR points of connection through the City to the Treatment Plant. DCR shall provide the Town with copies of all documents received from the City under this Section 4.1 within thirty (30) days of receipt.

In the event that Worcester is required to revise their transport rate and the calculated rate is no longer as determined as illustrated in Exhibit D, the DCR shall notify affected parties and shall commence using the new rate to calculate the annual sewer use charge for transport of sewage through the City to the Treatment Plant.

4.2 Operations and Maintenance Charges Paid by Towns

DCR charges the Towns for all Operations, Maintenance and Repairs (OM&R) for the trunk and relief lines. The OM&R charges are determined by flow contributed from each Town/entity to the trunk and relief sewer lines. DCR and/or its contractor, MWRA, issue OM&R bills on a quarterly basis. The bills include copies of all work orders generated for the quarterly OM&R activities.
5.0 Flow Measurement

5.1 DCR's Responsibilities

DCR shall operate and maintain the existing flow measuring devices from Rutland to the R-H Interceptors and the flow into Worcester from the R-H Interceptors.

DCR shall measure annual wastewater flows as follows: For Rutland, DCR shall make a direct reading at Station D, located at the Rutland-Holden line. This station records all wastewater flow from the town of Rutland.

DCR shall ensure that flow metering devices on the R-H Interceptor and each other point of connection are properly installed and periodically calibrated (annually, at a minimum) in conformance with accepted wastewater standards to ensure accuracy.

DCR shall report all flows from all connections on behalf of the towns to the City on a quarterly basis.

5.2 Rutland's Responsibilities

Upon request, Rutland shall provide the DCR with water meter readings for the time period specified for all sources of wastewater contributed to the sewer system within the town. Additionally, the Town of Rutland shall notify the DCR of all new connections and requests for connections to the sewer system by April 30, July 31, October 31, and January 31, of each year.

6.0 Billings and Payments

6.1 Billing

Worcester shall provide the DCR with quarterly invoices reflecting the Transport Charge calculated for the amount of DCR wastewater flows covering the applicable billing period in accordance with section 4.1. Such invoices shall be sent to the Director of the DCR Division of Water Supply Protection. The DCR shall calculate the town's proportionate share of the costs of OM&R for the R-H Interceptors. The DCR shall then prepare and forward invoices to each town within ten business days of receipt of each invoice from the City stating the amounts owed Worcester and DCR, respectively.

6.2 Payments

Within thirty (30) days of receipt of each quarterly invoice from the DCR, the Town shall remit full payment to the DCR. Upon receipt of payments from the towns, the DCR shall promptly remit payment to the City. The DCR shall notify each town of their obligation to remit payment within 30 days of the receipt of the DCR's invoice. Should the town fail to remit such payment within 30 days, the DCR shall initiate the Cherry Street Intercept process against the town and request a legislative appropriation and authorization to pay Worcester.

6.3 Financial Statements

Worcester shall provide DCR with annual financial statements summarizing such costs and revenue received from sewer services provided as set forth in Exhibit E.
DCR shall provide the Town with copies of all documents received from the City under this Section 6.3 within Thirty (30) days of receipt.

7.0 Sewer Use Regulations

7.1 Sewer Use Regulations
Rutland has adopted Sewer Use Regulations. At a minimum, the regulations or by-law must comply with the regulations that are in effect for the Treatment Plant and the City’s systems. If changes are made to the Treatment Plant or the City’s regulations, the DCR will notify the Town in writing of the changes. The Town must revise their regulations to comply with any and all revisions that are made by the Treatment Plant or the City. The Town’s revised regulations are to be completed within the timeframe specified by the Treatment Plant or the City. In the event that no timeframe is specified, the changes must be made within one year from the date of notification.

7.2 Building Connection to the Public System
The Town shall adopt and enforce a local by-law or regulation to require all owners of properties located in the areas served by the public system, as shown on Exhibit C, with on-site sewage disposal systems which have been deemed to have failed by the Board of Health, to connect to the public sewer system within ninety (90) days from (a) the date that an operating public sewer is available in the street abutting the property into which the property owner may connect or (b) the date the on-site system fails, whichever date is later. As an alternative, should the property owner elect not to connect to the sewer, they shall be permitted to install a DEP-approved septic treatment system. Plans for the replacement system must be submitted to the Town Board of Health for review and approval.

8.0 Dispute Resolution

It is contemplated that from time-to-time that the Parties may desire to settle disputes arising from alleged breaches of the terms of the Agreement through non-binding mediation.

In each of such instances, the party desiring to settle any dispute arising from an alleged breach of the terms of the Agreement shall notify in writing the other Party of the dispute which such Party is seeking to settle, and the Parties for such matter shall (a) meet within thirty (30) days of such request to commence negotiations in response to the request, (b) exchange within twenty (20) days of such initial meeting all necessary information and documents, and (c) make all reasonable efforts to reach agreement. The Parties in such negotiations shall at all times act in good faith and shall adhere to the applicable governmental laws and regulations and the general framework and principles set forth in the Agreement.

If a matter cannot be resolved through non-binding mediation within sixty (60) days of the date of the written request (unless extended by agreement of the Parties in dispute), the Parties shall, within thirty (30) days of the end of such period as the same may be extended, hire a mediator or mediators who will serve to facilitate settlement of the dispute. The Parties shall meet with the mediator(s) and the other Party as appropriate to endeavor in good faith to resolve the matter in dispute. The mediator(s) and other costs of the mediation will be divided equally between the Parties.
If the matter still has not been resolved through negotiation within sixty (60) days after the appointment of the mediator(s), or if the Parties fail to hire a mediator within the required period, the exclusive remedy of the Party seeking resolution of the dispute shall be to submit the matter to the Superior Court of the Commonwealth or other court of competent jurisdiction under Massachusetts law.

9.0 Term and Renewal of Agreement

9.1 Term


9.2 Renewal

Commencing on or before two (2) years from the end of the term of the Agreement, the parties shall meet to negotiate a renewal of the Agreement. The parties shall continue negotiations in good faith with the objective of reaching agreement and entering into an amendment to the agreement or a new agreement. If the parties do not accomplish the foregoing within Six (6) months, the parties agree to follow the procedure in Section 8.0 beginning with hiring a mediator under paragraph 3 of said Section.

9.3 Continuation Pending Renewal

Should the Parties not reach agreement on renewal, the provisions of this Agreement shall continue in effect until such time a new agreement is reached, or until final judgment of a court of competent jurisdiction.

10.0 Effect of Agreement on Prior Agreements

10.1 Termination of Prior Agreements

During the Term of the Agreement, the provisions of this Agreement replace and terminate the provisions of all prior agreements relating to sewer allotment, connections and costs thereof.

11.0 General Provisions

11.1 Successors Bound

The Agreement shall insure to the benefit of and shall be binding upon the parties and their successors and assigns.

11.2 Force Majeure

In the event of floods that cause wastewater flows in the system to exceed capacity limits set forth in this Agreement, and/or that result in an unsafe condition, and/or that cause, or threaten to cause, harm to the public health, the time periods for holding meetings and making decisions under the Agreement shall no longer apply and the Parties shall cooperate fully in all reasonable ways to resolve such capacity, safety, and public health concerns in accordance with the broad objectives of the Agreement and applicable laws and regulations.
11.3 **Covenant of Good Faith and Fair Dealing**

Each Party shall use reasonable efforts and take and employ all necessary actions to ensure the rights secured by the other Party, through this Agreement, can be enjoyed and neither Party shall take any action that will deprive the other Party of the enjoyment of the rights secured through this Agreement.

11.4 **Attorney's Fees**

In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

11.5 **Governed by Massachusetts Law**

The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

11.6 **No Reliance by Third Parties**

Nothing contained in the Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either of the Parties.

11.7 **Entire Agreement**

The Agreement and the exhibits hereto represent the entire agreement among the Parties pertaining to the subjects covered therein and expressly supersede all prior negotiations, representations and formal or informal agreements leading up to the final approval and execution of this agreement.

11.8 **Amendments in Writing**

The Agreement may be amended only by written instrument signed by all the Parties or determination has been made by a court of competent jurisdiction.

11.9 **Effect of Invalidity of One Part of the Agreement**

The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections herein contained shall not affect the validity or enforceability of the remaining portions of the Agreement.

11.10 **Exhibits**

All exhibits listed attached hereto are incorporated by reference into the Agreement.

11.11 **Effective Date**

The effective date of the Agreement shall be upon execution of all parties.

11.12 **Original Agreements**

This Agreement may be executed in any number of counterpart copies, all of which constitute one and the same agreement and each shall constitute an original.
IN WITNESS WHEREOF, each party has executed the Agreement as an instrument under seal as of the date first written above.

Authorized by Vote of Board of Selectmen,

________________________________________, 2015

By:
Chairman, Board of Selectmen

Selectmen

Selectmen

Selectmen

Selectmen

Department of Conservation and Recreation:
Commissioner

Deputy Commissioner of Operations

Director, Division of Water Supply Protection
LIST OF EXHIBITS

A. Glossary
B. Definitions
C. Map of Sewered Areas in Town of Rutland
D. Transport Rate Computation Method and Example Computation
E. Worcester's cost accounting records and annual financial statement
EXHIBIT A

GLOSSARY

1. I/I - Infiltration & Inflow
2. SSS - Separate sanitary system
3. SS0 - Sanitary system overflow
4. CSS - Combined sewer system
5. CSO - Combined Sewer Overflow
6. EPA - U.S. Environmental Protection Agency
7. DEP - Massachusetts Department of Environmental Protection
8. OM&R - Operation, Maintenance, and Repair
9. MGD - Million Gallons Per Day
10. CCF - One Hundred Cubic Feet
11. CCFD - One Hundred Cubic Feet Per Day
EXHIBIT B

DEFINITIONS

1. Department of Conservation and Recreation ("DCR")
   State Agency established in 2003, whose Division of Water Supply Protection is responsible for the operation, maintenance and preservation of water quality in the watershed system that supplies water to the Greater Boston area. Watershed system includes the Quabbin, Ware, Wachusett and Sudbury Watersheds and associated reservoirs, dams and other structures.

2. Metropolitan District Commission ("MDC")
   Predecessor Agency to DCR established in 1919.

3. Northwest and Main Interceptors
   Connection line in Worcester which conveys wastewater from the Rutland-Holden Interceptor to the Upper Blackstone Treatment Plant.

4. Rutland-Holden Interceptors
   Built by MDWSC with authorization from St. 1932, c. 262. Conveys wastewater from sewer lines in Rutland and Holden to sewer lines in Worcester.

5. Rutland-Holden Relief Interceptor
   Built in the late 1970s to early 1980s, runs parallel to and at multiple points connects to the original Interceptor to handle increased flow from the towns. Authorized by St. 1979, c. 798.

6. Upper Blackstone Water Pollution Abatement District ("UBWPAD" or "Upper Blackstone" or the "District")
   Authorized by St. 1968, c. 752. Current members include Worcester, Auburn, Holden, Rutland, West Boylston and Millbury. Treats sewage at the former Worcester treatment plant which has since been upgraded and is partially located in Millbury.

7. User Charges
   "User Charges" shall mean charges levied in proportion to the use of sewage works. As required by Section 204 (b)(1)(A) of Public Law 95-217, as amended, and by regulations promulgated by the U.S. Environmental Protection Agency, such charges must, to the extent possible, distribute operation and maintenance (including replacement) cost to each user in proportion to the user's contribution to the total loading of the sewage works, where construction of such works has been financed in part by federal grant.

8. Infiltration
   Water, other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
EXHIBIT D

Rate Structure

1. (Total Worcester DPW sewer division budget - UBWPAD sewage treatment charges)/(Worcester non-MDC sales (ccf) + MDC sales (ccf) - Charge per CCF ($/ccf))

2. Charge per ccf from step 1 x MDC sales (ccf) = Gross MDC charge

3. (Worcester debt service/total Worcester DPW sewer division budget) x Gross MDC charge + (Worcester direct expenses/total Worcester DPW sewer division budget) x Gross MDC charge x .70 = MDC Credit

4. Gross MDC Charge - MDC Credit = MDC Billed Charge

- Direct expenses = all non-pension, non-debt service, non-transfer-of-service, non-fringe benefits, non-sewer treatment expenses included in total Worcester DPW sewer division budget.

- Debt service = redemption of bonds + interest on bonds (or other repayment of long-term loan).

Revised Proposal

Existing Rate Structure except credit is now:

- .7x(debt service/gross; budget + maintenance budget + gross budget) x MDC charge
- (Maintenance budget = Worcester's non-pension direct expenses - treatment costs)
- (Maintenance Budget = $4,283,460 - $3,388,772)

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