

DRAFT

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**THE
NEW LONDON / WATERFORD / EAST LYME
WASTEWATER COLLECTION, CONVEYANCE AND TREATMENT AGREEMENT**

DATED: _____, 2021

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FOR THE
NEW LONDON / WATERFORD/ EAST LYME
WASTEWATER COLLECTION, CONVEYANCE AND TREATMENT AGREEMENT

An Agreement between the City of New London, the Town of East Lyme and the Town of Waterford hereinafter referenced as “Parties” regarding the collection and conveyance of wastewater from these towns and the operation of wastewater treatment facilities in the City of New London to serve the Town of Waterford and the Town of East Lyme.

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PART I – INTRODUCTION

SECTION 1 – RECITALS

WHEREAS, the City of New London and the Town of Waterford entered into an Agreement dated April 10, 1975 regarding the construction and operation of a wastewater treatment plant and related facilities located in the City of New London; and

WHEREAS, the City of New London, the Town of Waterford and the Town of East Lyme entered into a 30-year Agreement dated January 10, 1990 regarding the operation of a wastewater treatment plant and related facilities located in the City of New London; and

WHEREAS, the purpose of this Agreement is to continue the mutually beneficial collaboration between the City of New London and the Towns of Waterford and East Lyme which have developed an interconnected wastewater collection, conveyance and treatment system. The collection, conveyance and treatment facilities located in each community are owned by their respective communities. This Agreement establishes the terms, conditions and respective rights and responsibilities regarding the operation and shared use of this interconnected system.

NOW THEREFORE, the Parties agree to the following:

For the purpose of this Agreement, the following terms shall have the meaning set forth below:

SECTION 2 – DEFINITIONS

“Capital Account” means an account established separately for each of the Parties and maintained by the City which will reflect the accumulated capital payments, interest accrued and reserves created by each Party and not yet expended for Capital Improvements. The beginning balances for each Party at the time of the signing of this Agreement are attached as **Appendix A** ‘Beginning Balances of Capital Account’.

“Capital Improvements” means the acquisition, construction, reconstruction, rehabilitation, demolition or replacement of shared infrastructure under terms and conditions as detailed in Part V herein.

“Evergreen-Piacenti Force and Pressure Mains” means the dedicated force and pressure mains connecting the Evergreen Pump Station to the Piacenti Facility predominately in New London, as constructed under City of New London Contract 11 and Town of Waterford Contract 5.

“Evergreen Pump Station” means the Town of Waterford wastewater pumping facility located at 52R Miner Lane, Waterford, CT, constructed under Contract 5 & 5A.

“Municipalities” means New London, Waterford and East Lyme; “municipality” means any one or more of the municipalities, as the context may dictate.

“Parties” means the City of New London (hereinafter called “City”), represented by the New London Water and Water Pollution Control Authority, the Town of Waterford (hereinafter called “Waterford”) represented by Waterford Utility Commission, and the Town of East Lyme (hereinafter called “East Lyme”) represented by the East Lyme Water & Sewer Commission.

“Piacenti Facility”, means the City of New London's existing treatment plant, known as the “Thomas E. Piacenti Regional Water Pollution Control Facility”.

“Planned Capital Project” means a capital improvement project that the City or Waterford has planned well in advance allowing the City or Waterford ample time to notify the other Parties of the cost and timing of the project.

“Third party(ies)” means any town, city, or entity whether public, quasi-public, or private, located outside of the jurisdictional boundaries of the City of New London, Town of Waterford, and/ or the Town of East Lyme.

“Towns” means Waterford and East Lyme; “town” means either of the towns, as the context may dictate.

SECTION 3 – DESCRIPTIONS OF THE SHARED, INTEGRATED COLLECTION, CONVEYANCE AND TREATMENT SYSTEMS

A) SHARED INFRASTRUCTURE OF THE PARTIES

1. NEW LONDON’S SHARED TREATMENT SYSTEM (PIACENTI FACILITY)

The Piacenti Facility with a design capacity at the time of the signing of this Agreement of 10,000,000 gallons per day and consisting of:

- a. The primary treatment plant and related facilities which existed on April 30, 1975, January 20, 1991, and January 20, 2021, including such land which was, and continues to be, owned by the City on said dates hereof, and

Additional wastewater treatment plant and related facilities as follows; all modifications at the Piacenti Facility, including additional pretreatment and primary and secondary wastewater treatment and sludge handling facilities, the control building, flood prevention work, including the concrete seawall along the ocean side of the plant and the raising of the concrete walls of the existing primary settling tanks, the outfall sewer from said Piacenti Facility to the New London harbor channel, modifications to the so-called pumping stations Nos. 6 and 7, the reconditioning land for said Piacenti Facility, being Phase II and a portion of Phase 1 of the improvements to the City’s wastewater system set forth in the report entitled “City of New London Connecticut Report Upon Improvements to Wastewater Works”.

- b. Where the context allows, any additions, improvements or modifications to the wastewater treatment plant and related facilities made during the past Tri-Town Agreement dated 1/10/1990. Ownership and title to said Piacenti Facility shall remain with the City.

2. WATERFORD'S SHARED COLLECTION, CONVEYANCE, AND PUMPING SYSTEM

Waterford's existing interceptor sewers, force mains and other directly related facilities located as follows: beginning at the intersection of Gallup Lane and Rope Ferry Road, extending in a general easterly direction to and including the Evergreen Pump Station (hereinafter "Evergreen PS") near the boundary between the City and Waterford, and connected at that point with the City's wastewater system. The collection and conveyance component of this system is shared by East Lyme and Waterford. The Evergreen PS component of this system is shared by East Lyme, Waterford, and New London. Said wastewater conveyance system is more particularly described in a map or plan or report entitled "Map Showing the General Location of Selected Wastewater Conveyance Facilities in the Town of Waterford Comprised of East Lyme Sewer Main and Waterford Wastewater Conveyance System Date: August 23, 1988 Not to Scale by Consulting Environmental Engineers, Inc." See **Appendix B** 'Waterford's Shared Collection Conveyance and Pumping System'. Ownership and title to the sewers and related facilities located in Waterford is in the Town of Waterford.

3. NEW LONDON'S SHARED CONVEYANCE SYSTEM – EVERGREEN TO PIACENTI FORCE AND PRESSURE MAINS

The Evergreen to Piacenti-force and pressure mains are that piping infrastructure together with a corrosion and odor control infrastructure and other appurtenances constructed under New London Contract 11 (circa 1975), and are owned by the City of New London. The location of such infrastructure is described as follows: from outside of, and just east of the Evergreen PS, beginning at the New London/Waterford municipal boundary line, then in a southerly and easterly direction along Evergreen Avenue in New London to the intersection with Ocean Avenue in New London, then in a northerly direction along Ocean Avenue to the intersection with School Street, then in an easterly direction along School Street to the intersection with Montauk Avenue, then in a northerly direction along Montauk Avenue to the intersection with Converse Place, then in an easterly direction along Converse Place to the intersection with Pequot Avenue, then in a northerly direction along Pequot Avenue to the intersection with Trumbull Street, then in an easterly direction along Trumbull Street to about the intersection with Nameaug Street near the Piacenti Facility. See **Appendix C** 'Evergreen PS to Piacenti WWTF Sewer Pipe Location'. This system exclusively transports wastewater from the Evergreen PS in Waterford to the Piacenti Facility. According to Contract 11 plans, there are no other connections into this system along this route.

B) SHARING OF PARTIES' INFRASTRUCTURE

1. CURRENT NON-PARTY USERS OF PARTIES' INFRASTRUCTURE

Point O'Woods

2. CURRENT NON-PARTIES WITH RIGHTS TO USE PARTIES' INFRASTRUCTURE

- a. The Miami Beach Association and The Miami Beach Association Water Pollution Control Authority
- b. Old Lyme Shores Beach Association and The Old Lyme Shores Beach Association Water Pollution Control Authority
- c. The Old Colony Beach Club Association and The Old Colony Beach Club Association Water Pollution Control Authority
- d. Town of Old Lyme, a municipal corporation, and Old Lyme Water Pollution Control Authority

3. POTENTIAL FUTURE NON-PARTY USE OF PARTIES' INFRASTRUCTURE

All Parties affected by any additional expansion of the use of this interconnected wastewater infrastructure outside of the Parties' territorial limits will be advised of the terms and conditions associated with such additional sharing of a Parties' infrastructure.

Within five years of the signing of this Agreement the Parties shall commence negotiations to establish terms and conditions for the conveyance and treatment of wastewater by non-party users who currently have no rights to the parties shared infrastructure system.

PART II – METERING FLOW

SECTION 1 – MEASUREMENT OF FLOWS

East Lyme has installed and will maintain a flow measuring device at the Niantic pumping station which meets mutually acceptable specifications to measure, record and transmit the volume of wastewater flow from East Lyme to Waterford.

Likewise, Waterford has installed and will maintain flow measuring devices at the Evergreen PS which meet mutually acceptable standards at the connection between its sewer interceptor and the City's wastewater system to measure, record and transmit the combined volume of wastewater flow from East Lyme and Waterford, and certain areas of the City of New London to the Piacenti Facility.

Additionally, New London has installed and will maintain flow measuring devices which meet mutually acceptable specifications at the Piacenti Facility to measure and record the total wastewater volume.

New London recognizes that at Waterford's own cost, Waterford has installed flow meters which meet mutually acceptable standards to measure wastewater flowing from the City into the Waterford Collection system. These meters are located at (1) Boston Post Road, (2) Chester Street, (3) just east outside of the Evergreen PS (Niles Hill Interceptor meter), and (4) at the East Neck pumping station in Waterford. All of these meters will measure the flows generated by the City that discharge into the Waterford collection system, except the East Neck PS meter which will measure the flow generated in Waterford that discharges into the City system, but then returns (flows back) to the Waterford system. A map with the locations of these meters is shown in **Appendix D 'Inter-Municipal Flow Meters'**.

There may be additional meters throughout the shared conveyance system that may be deemed essential to determine flows between the Towns and the City. New London will keep a list of all the essential meters in the system that need to be tested, calibrated and certified on a yearly basis, and will be responsible for arranging for the testing, calibration and certification of such meters and will report the results of said testing to the Towns annually. The cost of testing, calibrating and certifying each meter will be charged back to each Town on the spring quarterly bill for the number of meters for which each Town is responsible. For example if East Lyme has one meter that registers its flow going to Waterford, it would be charged for the cost of testing and calibrating that meter. Waterford and New London have more meters to monitor flows going from Waterford to New London and vice-versa. The financial responsibility for any and all expenditures associated with the maintenance, testing, calibration, or replacement of the meters is as follows: the Niantic pumping station meter in East Lyme (East Lyme); the main meter at the Evergreen PS that measures the flow into the Evergreen-Piacenti Main (each party flow proportion cost sharing); the main meter that measures the total flow at the Piacenti Facility (each party flow proportion cost sharing); the Boston Post Road meter (New London); the Chester Street meter (New London); the Niles Hill Interceptor meter located just east of the Evergreen PS (Waterford/New London shared equally); and the East Neck pumping station meter (Waterford).

SECTION 2 – STANDARDS OF FLOWS/PERMITS

A. The City will accept, treat and discharge the wastewater flow from the Towns in the same manner in which it accepts, treats and discharges wastewater flow from within the City and shall be responsible to such state or federal authorities as may have jurisdiction over it with respect to the manner and treatment of and the discharge of such wastewater.

B. The National Pollution Discharge Elimination System permit for the operation of the Piacenti Facility having been issued to the City, the City shall have the right to inspect, sample and test wastewater discharged by the Towns into the Piacenti Facility. Either Town also shall have the right to inspect, sample and test wastewater discharged by the Towns and the City into the Piacenti Facility. In the event that such samples or tests provide evidence of a user within the City or either

Town discharging material into the Piacenti Facility or Evergreen which causes non-compliance with the terms of said permit or any amendments or modifications to said permit, or noncompliance with any applicable federal, state or local statute, ordinance or regulation, the municipality which obtains such evidence shall immediately notify the Town or City within which the offending user is located. Upon receipt of such notice, the Town or City within which the offending user is located shall promptly require pre-treatment of the discharge of said material by the offending user. The Towns and the City shall include provisions for enforcement of the provisions of this paragraph in their respective sewer ordinances, together with provisions for the recovery from an offending user of any fines or damages which may be incurred by the City and the Towns as a result of the discharge of said material into the Piacenti Facility or the Evergreen PS. If any Party suspects a problem with the quantity, quality or flow of wastewater to the Piacenti Facility or the Evergreen PS, it may notify the generating Party or Parties of the need to inspect or test the wastewater or equipment. If the generating Party fails to make such inspection or test within two weeks, the complaining Party may do so.

C. The City and the Towns will not discharge into the City's wastewater system any wastewater which contains substances not amenable to treatment in the Piacenti Facility or which are not amenable to treatment therein to the degree required by regulatory agencies having jurisdiction over the discharge of effluent into New London harbor and under no conditions shall the City or the Towns discharge wastewater into the City's wastewater system which shall have a concentration of biochemical oxygen demand (BOD) in excess of 240 average milligrams per liter or concentration of suspended solids in excess of a concentration of 240 average milligrams per liter.

D. The Water and Water Pollution Control Authority of the City has promulgated rules and regulations consistent with state and federal statutes, regulations and guidelines with respect to the operation of the wastewater treatment plant and related facilities, which rules and regulations, as they may be amended or modified from time to time to remain consistent with and in conformance to federal and state statutes, regulations and guidelines, shall be adhered to and enforced by the Towns and the City. If the City or either Town proposes to adopt new rules and regulations which affect the Piacenti Facility and are more stringent than those required by state and federal and the City's guidelines, the respective Water Pollution Control Authorities of each Town shall agree upon the necessity and terms of such rules and regulations before they are adopted, except that the City and Towns may apply and enforce any such more stringent rules and regulations within their own boundaries before agreement by all Parties regarding the necessity and terms of such rules and regulations.

PART III – TREATMENT CHARGES

SECTION 1 – DETERMINATION OF OPERATING BUDGETS & BILLING

The City Director of Public Utilities is responsible for the development and transmittal of the annual operating and maintenance budget for the Piacenti Facility. The budget shall include the following:

- A. All City Sewer administration costs applicable to running the Piacenti Facility
- B. All the Operation and Maintenance (hereinafter “O&M”) costs of the Piacenti Facility
- C. The utility costs of the Piacenti Facility
- D. Any other costs associated with the facility including but not limited to; an annual line item specifically for “Plant Enhancements”. The intention and amount of this line item is further discussed in Part V – Section 2 of this Agreement

The following is the timeline of the annual budget:

1. If there are any “Planned Capital Projects” that exceed \$750,000, the initiating Party is to notify the other Parties no later than January 1st of the year prior to the fiscal year in which such project is proposed to commence.
2. The City Director of Public Utilities will email the Town’s designated staff representative the proposed fiscal year operating and maintenance budget by February 1st so that the Towns will have an ample opportunity to review the budget.
3. The Towns shall respond back to the City by February 15th if they have any input, discrepancies or to ask any questions as necessary.
4. By April 15th, the proposed budget will be divided by the prior year’s total Facility flows to derive an estimated cost per 1,000 gallons for the next fiscal year (see Sample Bill Calculation in **Appendix F**).
5. Each Town’s share of the costs agreed upon under Part III, Section 1 (A-D) of this Agreement for operating, repairing and maintaining the Piacenti Facility to the mutual benefit of the Parties shall be an amount which shall bear the same ratio to such costs as the actual volume of each Town’s wastewater treated in the Piacenti Facility bears to the total actual volume of wastewater treated in the Piacenti Facility.

If,

- A. $ELNET = \text{East Lyme Flow as measured at the Niantic PS minus any flow from entities covered under Part I, Section 3, B.2 – Current Non-Parties with Rights to use Parties Infrastructure that have a separate treatment agreement with the City, and}$
- B. $T = \text{Total Flow into the Piacenti Facility, and}$
- C. $NPC = \text{Piacenti Facility operating, maintenance and repair costs plus the Piacenti Facility’s share of common administrative costs,}$

(i) Then, East Lyme’s bill = $(ELNET/T) \times NPC$,

And If,

- A. EGPS is the total flow (regardless of origin) through the Evergreen PS, and
- B. BPR is the flow measured by the Boston Post Road NL/Wtfd boundary meter, which measures flow from New London only, and
- C. Chester St. is the flow measured by the Chester St. meter at the

- NL/Wtfd boundary line, which measures flow from New London only, and
- D. NHI is the flow measured by the Niles Hill Interceptor meter located to the east of the Evergreen PS that measures flows coming from New London and from Waterford via the East neck PS in Waterford, and
 - E. East Neck is the flow measured by the meter located at the East Neck PS that measures flow that generates in Waterford but discharges into New London, and
 - F. Upper Broad Street is that area in Waterford (see **Appendix E** ‘Waterford Properties Discharging into New London’) that discharges wastewater into the New London’s Collection system. Total flow calculated as per metered or estimated water consumption for those without City water, and
 - G. EL = East Lyme flow as measured at Niantic PS, and
 - H. WTFNLTP is the wastewater flow generated within the political boundaries of the Town of Waterford, then

WTFNLTP = [EGPS – (BPR + Chester St. + NHI + EL – East Neck - Upper Broad Street)]

(ii) Then, Waterford’s bill = (WTFNLTP/T) x NPC

6. New London shall provide a finalized approved budget amount by April 30.
7. The City shall bill the Towns on a quarterly basis. The bills shall be sent out within two weeks of August 15th, November 15th, February 15th and May 15th of each year. Payments for these bills shall be made no later than 45 days from the date of the invoice. For the purpose of quarterly reconciliation each invoice will be calculated by using the per 1000 gallons cost as illustrated (in the example above it would be \$1.9592 / 1000 gallons) times the trailing 3 months flow of that Town (for instance the August 15th bill would be based on the Towns flows from May, June and July and the November 15th bill would be the flow from August, September and October). It is the responsibility of the Towns to send their monthly flow data to the City Director of Public Utilities each month. If the City Director of Public Utilities would rather not use the trailing 3-month flows methodology, he/she can ask each Town by July 1st of each year what their projected flows will be for the coming year and take a quarter of that amount for each billing period.
8. At the May billing, the reconciliation from the previous fiscal year along with any septage and/or nitrogen credits would be processed with that billing cycle (i.e.: the May 2022 bill would adjust for the FY 20-21 cycle which ran from July 1, 2020 thru June 30, 2021). During the May billing, the Towns would be charged for the cost of the annual testing/calibration of the meters they are responsible for as determined in Part II, Section 1 of this Agreement.

PART IV – EMERGENCY REPAIRS

SECTION 1 – EMERGENCY REPAIRS

The City may make such emergency repairs necessitated from time to time for operational reasons. The cost of said emergency repairs shall be paid out of the capital funds accounts for each respective party at the capital projects percentages for the wastewater treatment facility. The City may make emergency repairs without a prior agreement between the City and the Towns.

Waterford may make such emergency repairs necessitated from time to time for operational reasons. The cost of said emergency repairs shall be paid out of the capital funds accounts for each respective party at the capital projects percentages for the Evergreen PS. Waterford may make emergency repairs without a prior agreement between the City and East Lyme.

PART V – SHARED RESPONSIBILITIES FOR CAPITAL AND O&M

SECTION 1 – CITY TO SERVE AS CUSTODIAN OF CAPITAL ACCOUNTS

A separate ledger for each of the Capital Accounts will be maintained by the City on behalf of each of the Parties. The funds in the Capital Accounts shall be invested by the City in the same instruments and with the same prudence as is required by State statute and regulation for the investment of municipal funds generally. All income from the investment of the Capital Accounts shall be credited to each municipality's Capital Account in the same proportion as the respective balances of the Capital Account of each municipality at the time the income was accrued. An accounting of the balances and all transactions affecting the Towns' Capital Accounts will be provided to the Towns by the City each spring as soon as the City's audit is complete. Either Town may request a balance of their Capital Account at any time during the year. The City shall provide said balance within ninety days of any such request.

SECTION 2 – PIACENTI FACILITY CAPITAL IMPROVEMENTS

Any principal and interest payments for existing bonding obligations shall be billed based on the Parties' capacity allocation (New London – 55%, Waterford – 30% and East Lyme – 15%). For example if there was \$300,000 of principal and interest in a given year from a previously bonded project, East Lyme would be charged 15% and Waterford would be charged 30% of the total charged in quarterly payments (East Lyme would owe \$45,000/ 4 for quarterly capital payments of \$11,250 while Waterford would owe \$90,000 / 4 for quarterly payments of \$22,500. If there are any other capital costs, they would be apportioned in the same manner. The Towns would have the choice of directing the City to take capital costs from their Capital Account so long as they keep the minimum balance as determined below.

At the beginning of this Agreement, pre-determined minimum amounts have been set for each of the Parties' Capital Accounts. The purpose of this minimum is to create a reserve if a large emergency expenditure needs to be made quickly in the future. The predetermined amounts were determined based on each Parties' capacity allocation: New London (55%), Waterford (30%) and

East Lyme (15%). Based on these percentages, the minimum amounts to be kept in each capital account at all times is as follows; New London - \$1,833,333, Waterford - \$1,000,000 and East Lyme - \$500,000. The total minimum cumulative amount in all the Parties Capital Accounts at any time shall be \$3,333,333. Any of the Parties will be allowed to go below their minimum amount only with the approval of the other Parties. These minimum balances will increase each year of this Agreement by a 2% escalation factor so that these minimum balances stay relatively current with inflation throughout the length of the Agreement. If at any time either of the Towns choose to put more money into their Capital Account, it may at any time deliver to the City funds in any amount greater than \$5,000 with direction to deposit the funds into its respective Capital Account and the City shall immediately deposit the funds into that account.

In the first year of the Agreement, the minimum cost of a Capital Improvement is \$50,000, with a 2% increase annually throughout the length of the Agreement.

There will be a line item each year of this Agreement in the Piacenti Facility Operating budget for “Plant Enhancements Not Meeting the Capital Improvement Threshold”. The reason for this line item is to allow the City the ability to make repairs and small improvements to the Piacenti Facility which cost less than the minimum capital improvement threshold as identified in this Agreement. This “Plant Enhancement” line item shall be capped at a total of \$250,000 in the first year of the Agreement; and may increase 2% annually throughout the Agreement. The City will provide the Towns with a list of each of the plant enhancements and their cost at the time of the annual reconciliation.

Any capital improvements beyond the threshold as identified in this section would come out of each Parties’ Capital Account proportionally in accordance with their capacity allocation: New London (55%), Waterford (30%) and East Lyme (15%). If the City determines that a Planned Capital Project to the Piacenti Facility is necessary, and so long as the capital improvement is over \$250,000 but under \$750,000, and each municipality has enough funds in its Capital Account to cover its share of the anticipated cost, then the City is required at a minimum to notify the Towns in writing before entering into any contract for or spending any money on that Capital Improvement so that the Towns are aware of these proposed expenditures. The notice to the Towns should include at a minimum the following; a description of the capital improvement, any backup documentation including a court or regulatory order, decree, permit, legislation, regulation or other reason necessitating the capital improvement, the estimated cost, the anticipated schedule for construction and payment for the Capital Improvement. Funds will be withdrawn from each of the Capital Accounts appropriately throughout the project to pay for financial obligations to the contractor/vendor.

If a particular municipality does not have sufficient funds in its Capital Account to pay for its share of the Capital Improvement, the funds in its Capital Account shall first be expended down to its minimum amount and the remainder shall be paid into the Capital Account by that Town either in a lump sum or in installments, provided that payment into the Capital Account shall be made at least 30 days prior to the day by which the City must make a payment for the Capital Improvement. If such payments as indicated above are late, then interest shall be paid to the City at a rate equal to the rate of interest paid by the City for its most recent issue of general obligation bonds plus one

percentage point. If the City determines that any of the Town's Capital Accounts are within 10% of their minimum threshold, the City will notify the Town of its low balance.

All monies deposited into Capital Accounts as identified in this Agreement shall remain in the Capital Account until actual payment is due and owed to a contractor/vendor providing goods or services for the Capital Improvement. At that time, the City will withdraw from the Capital Accounts the amount necessary to pay the contractor/vendor in the following proportions; 55% from the New London Capital Account, 30% from the Waterford Capital Account, and 15% from the East Lyme Capital Account.

At no time in this Agreement may either of the Towns request to withdraw funds from its Capital Account unless it is approved by all Parties. The funds in all of the Capital Accounts may be used only to contribute to Capital Improvements to the facility and/or other shared sewer infrastructure.

The approach each municipality employs to generate funds for an additional capital contribution required for a Capital Improvement shall be within the sole discretion of each municipality. Nothing in this Agreement shall preclude two or more of the Parties from mutually agreeing to a joint financing mechanism or other financial cooperation so long as none of the rights and expectations the other Party to this Agreement is prejudiced or disadvantaged thereby.

Any Planned Capital Improvement that exceeds \$750,000 would be an expense that the City or the Towns may want to bond to protect their capital account balances. In this event, the City must notify the Towns in writing by January 1st of such a planned capital expense for the coming fiscal year starting July 1st.

The Towns will have until March 1st to respond back to the City if they have questions as to the need for the Capital Improvement or to better understand the costs of the project. If one or both of the Towns needs further clarification and/or understanding of the need for the Capital Improvement, representatives of each Party shall meet at the earliest convenience to discuss the project in more detail. If one of the parties determines after good faith discussions that they still disagree with the capital project moving forward, the Party which so concludes this shall send an email to the City Director of Public Utilities by April 1st. At this time, the Party in disagreement may invoke the dispute resolution mechanism identified in Part VIII, Section 2 of this Agreement by May 1st. If it does not invoke the dispute resolution mechanism by May 1st, then that Capital Improvement will proceed as planned.

SECTION 3 – SHARING COSTS FOR CAPITAL IMPROVEMENTS AND O&M FOR THE USE OF THE EVERGREEN TO PIACENTI FACILITY MAINS AND THE USE OF THE EVERGREEN PS

The cost for O&M as well as capital expenditures for the Evergreen to Piacenti Facility Force and Pressure Mains are considered separate from the Piacenti Facility. This infrastructure was constructed in 1975. Between the years of 1975 thru 1993, only wastewater generated in Waterford was conveyed through the system. Thereafter, wastewater generated in East Lyme and certain areas of New London, when New London pumping stations were eliminated and the

wastewater sent to Waterford, also began to flow through this infrastructure via pumping from the Evergreen PS.

Under the previous 1991 Tri-Town Agreement, the O&M cost-sharing distribution for the Piacenti Facility as well as for the conveyance system infrastructure was based on the total annual flows from each community into the Facility. Capital expenditures cost-sharing for both the treatment facility and the conveyance system was based on the treatment allocation for each community at the plant; New London (55%), Waterford (30%), East Lyme (15%). However, under this 2021 Agreement, the conveyance system is exclusively for flow from the Evergreen PS to the Piacenti Facility and the proportional responsibility for such O&M and capital expenditures shall be based on the actual flow from each of the communities.

For the Evergreen to Piacenti Facility Mains

O&M Expenditures – The following constitutes the expenditures for the force/pressure main to the Piacenti Facility expenditures to be attributed to O&M: field labor, parts, materials, and equipment associated with single expenditures less than \$25,000 including but not limited too; annual inspections, cleaning of the pipes, closed-circuit television (CCTV) activities, clearing stoppages, minor repairs, maintenance, equipment, and chemicals associated with odors and corrosion control, and other activities associated with O&M of collection systems. The O&M expenditures incurred during the fiscal year, together with the flow percentages, will be used to calculate each Party's cost for that year and will be billed on the May bill.

Capital Improvements - means the acquisition, construction, reconstruction, rehabilitation, demolition or replacement of the Evergreen PS to Piacenti Facility Conveyance System, or major components thereof. Capital Improvements include repairs which cost, exclusive of the labor cost of City or Town employees, more than \$25,000. This figure will increase 2% each year of the Agreement. Other than the percentage of cost sharing, capital expenditures threshold, and notifications associated, such expenditures with this conveyance system will be handled in the same manner as capital expenditures associated with the Piacenti Facility as described above. The Capital Improvements incurred during the fiscal year together with the flow percentages will be used to calculate the Parties' cost sharing, to be billed in the same manner as capital expenditures at the Piacenti Facility. Each of the parties may use the balance in its Capital Account to pay their share so long as the Account stays above its minimum balance.

Cost Sharing Distribution – For a given fiscal year, the percentage of cost sharing for O&M as well as capital expenditures shall be prorated based on the flow from each community through the Evergreen PS on the previous fiscal year as follows:

New London percentage – Annual flow metered at: the Chester Street meter, plus the Boston Post Road meter, plus the Evergreen east meter (from the Niles Hill interceptor), minus the East Neck meter, then divided by the annual total flow through Evergreen PS. During fiscal year 2019-2020, this percentage was 17%.

East Lyme percentage – Annual flow metered at the Niantic River PS in Niantic, then divided by the annual total flow through the Evergreen PS. During fiscal year 2019-2020, this percentage was 27%.

Waterford percentage – the annual total flow through Evergreen PS minus East Lyme flow, minus New London flow, then divided by the annual total flow through the Evergreen PS. During fiscal year 2019-2020, this percentage was 56%.

For the Evergreen PS

O&M and capital expenditures will be cost-shared and billed in the same manner as expenditures associated with the Evergreen PS/ Piacenti Facility main. The threshold for the Evergreen PS capital expenditures will be a minimum of \$10,000, with annual increases of 2%. At its discretion, and for capital expenditures only, each Town may use its Capital Account as long as its minimum balance is maintained. The municipality intending to use such Capital Account will inform Waterford of such intention.

SECTION 4 – COORDINATION WITH EAST LYME/WATERFORD AGREEMENT

Waterford and East Lyme (but not the City) agree that the provisions of this Agreement are to be read and understood in conjunction with any current agreement regarding the use of the Waterford wastewater conveyance system between East Lyme and Waterford and as between this Agreement and the said East Lyme/Waterford Agreement, neither is intended to abrogate the rights and responsibilities stated in the other. To the extent possible, said agreements shall be construed so as to be harmonious and the separate provisions of each agreement should be construed so that each would be operative. The City is not a party to the Waterford/East Lyme Agreement and is not bound by it.

PART VI – TERM, REOPENING AND TERMINATION OF AGREEMENT

SECTION 1 – TERM OF AGREEMENT

This Agreement shall be in effect for a period of twenty (20) years. The Parties shall have the option of extending the Agreement for another ten (10) years if all Parties agree to such an extension no less than five (5) years from the end of the original term. At any time before the final five years of the initial twenty (20) year term, any of the Parties may, by giving written notice to the other parties, propose to extend the term of this Agreement for an additional ten (10) years. In such event, each of the Parties receiving said notice shall respond to said notice within sixty (60) days after receipt of same. If either of the responding parties refuses to extend the Agreement, it shall provide reasonable and rational reasons for said refusal. If either of the responding Parties proposes an extension upon certain conditions or modifications, it shall give reasonable and rationale reasons for such conditions or modifications. Upon receipt of the answers from the responding Parties, the Party proposing to extend the term of this Agreement shall either begin negotiations with the other Parties or withdraw its proposal, in its discretion.

SECTION 2 – REOPENING CONTRACT TO ADDRESS TREATMENT CAPACITY OF EACH MUNICIPALITY

At any time after five (5) years, any Party to this Agreement may request the Agreement be reopened in order to negotiate modifications to the allocation of the Piacenti Facility capacity among the parties. Such request should be in writing and be delivered in accordance with the provisions of Section 11 of this Agreement. The other parties shall not unnecessarily withhold their participation in such negotiations.

SECTION 3 – PROCEDURE FOR TERMINATION OF THE AGREEMENT

Not less than the final five years prior to the initial or extended term, either or both the Towns may, by giving written notice to the other Parties, elect to terminate its use of the Piacenti Facility at the end of this Agreement. In such event, the wastewater system of the Town or Towns electing to terminate shall be physically separated from the City's facilities or the other Town's facilities at the end of the term of this Agreement. In the event that Waterford elects to terminate its use of the Piacenti Facility pursuant to the terms of this paragraph, East Lyme agrees to use due diligence in obtaining all necessary state and/or federal regulatory approvals to use alternative treatment facilities, and after having obtained such approvals, to pursue the construction and/or connection to such alternative treatment facilities with due diligence. Physical separation of East Lyme's facilities from Waterford's facilities shall not occur until such alternative treatment facilities are available to East Lyme.

Not less than the final five years prior to the initial or extended term the City may, by giving written notice to the Towns, elect to terminate the Towns' use of the Piacenti Facility at the end of this Agreement. In such event, the Towns agree to use due diligence in obtaining all necessary state and/or federal regulatory approvals to use alternative treatment facilities, and after having obtained such approvals, to pursue the construction and/or connection to such alternative treatment facilities with due diligence. Physical separation of the City's facilities from the Towns' facilities shall not occur until such alternative treatment facilities are available to the Towns.

If the Towns or City fail to terminate this Agreement in the manner as identified above, then the joint use of the Piacenti Facility and shared infrastructure as defined herein shall continue in effect for another 10 year term after the last day of this Agreement under the same terms as this Agreement.

It is recognized that if an eventual separation should occur, either or both of the Towns may be entitled to reimbursement for any portion of the City's or the other Town's wastewater facilities for which either or both of the Towns have paid a proportionate share which may be of further usefulness to the City or to the other Town. Reimbursement with regard to a Town's wastewater facilities will be considered only if East Lyme becomes separate from Waterford. If the Parties are unable to agree on the amount of such reimbursement, the question of further usefulness of any portion of the City's or other Town's wastewater facilities and the value thereof shall be determined in accordance with the provisions of Part VIII, Section 2 of this Agreement. In determining further usefulness and value the municipalities and any decision makers invoked pursuant to Part VIII, Section 2 of this Agreement shall consider the remaining useful life of the Piacenti Facility and Waterford's wastewater conveyance system and any improvements and additions thereto as of the date of separation, the value to the municipality which retains the use of the facility or system, and the proportion of Capital Improvements paid by each municipality throughout the life of the facility or system, provided that no reimbursement shall be payable to a municipality which affirmatively acts to require a separation. The percentage of such value for which either or both of the Towns shall be reimbursed will be in the same proportion as each Town's share of the original cost of the Piacenti Facility as determined under a prior agreement between the City and Waterford dated April 30, 1975, as amended, by Paragraph 15 of the 1990 Agreement. In the event that East Lyme becomes separated from Waterford's wastewater conveyance system, the

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percentage of such value for which East Lyme shall be reimbursed will be in the same proportion as East Lyme's share of the original cost of Waterford's wastewater conveyance systems as determined under an agreement between East Lyme and Waterford dated August 24, 1988. If the computation should result in a negative value to any municipality and a positive value to any other municipality, then the municipality or municipalities with a negative balance shall be obligated to pay their respective deficiencies to the municipality or municipalities with a positive balance, except that if East Lyme separates but Waterford and the City remain connected, no such payment will be required from Waterford at the time of East Lyme's separation. Any municipality which has not elected to terminate shall be entitled to reimbursement of all costs associated with the separation and with the removal or destruction of any excess facilities. Such costs will be paid by the municipality or municipalities which have elected to terminate this Agreement.

In the event of separation, each municipality shall receive the balance, including accrued interest, of its Capital Account.

PART VII – SEPTIC TANK PUMPING AND NITROGEN CREDITS

SECTION 1 — SEPTIC TANK PUMPING

Septic tank pumping originating from septic tanks located in either Town or in the City may be deposited at the Piacenti Facility, subject to rules and regulations promulgated by the City with respect to such deposits, which rules and regulations shall be the same for residents of the Towns as are established for residents of the City. The rate for such septage deposits shall be determined by the City. Both revenues and expenses from septic tank pumping will be allocated to each of the Towns in proportion to their actual flow as calculated in the Spring reconciliation which is detailed in Part III Section 1 of this Agreement. The credit would be titled "Septage" on the New London bill.

SECTION 2 – NITROGEN CREDITS

Nitrogen Exchange Program - The Nitrogen exchange program is administered through the State of CT DEEP. The program provides a credit to facilities that exceed the nitrogen removal goals set forth by the DEEP. There is also a penalty for underperformance in nitrogen removal. The credit or penalty depends on the performance of the facility in any given year. Each community shares in this program based on flow for the program year. Either a credit or penalty will be added to the annual adjusted bill.

Both revenues and expenses from Nitrogen Credits will be allocated to each of the Towns in proportion to their actual flow as calculated in the Spring review.

PART VIII – OTHER PROVISIONS

SECTION 1 – FIRST YEAR OF THE AGREEMENT

There are numerous provisions in this Agreement that identify specific ways to handle Treatment charges and Capital Expenditures among other things. Many of these provisions have specific timelines and procedures that need to be followed throughout the fiscal year and some of them are different than how those procedures were followed in the past agreement. In light of this and the timing of the signing of the new agreement, the Parties agree that in the first year of this Agreement, the Parties will abide by the intent of this new Agreement while transitioning from the old Agreement to the new one. Nonetheless, starting in January before the first full fiscal year of this Agreement, all of the timelines, notifications and other provisions of the new Agreement will be followed.

SECTION 2 – DISPUTE RESOLUTION

It is the express intention of the parties that all legal proceedings related to this Agreement or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the Superior Court for the Judicial District for New London at New London, Connecticut. The parties each irrevocably consents to the jurisdiction of such court in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding. It shall be a condition precedent to initiating an action in the Superior Court that the parties have engaged in non-binding mediation.

THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND THE PARTIES HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE PARTIES' CONSENT TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY

SECTION 3 – RIGHT TO ACCESS RECORDS

On reasonable notice and at reasonable times and intervals, all records of the City pertaining to the Piacenti Facility shall be available for inspection and review by authorized representatives of either Town and by an independent certified public accountant retained and paid by either Town for such purposes.

SECTION 4 – RESERVATION OF RIGHTS

The Parties each reserve the right to assign their respective rights and obligations under this Agreement and any related agreements to an entity or system providing for regional water and/or sewer service.

SECTION 5 – SUPERSEDES JANUARY 10, 1990 AGREEMENT AND ANY AMENDMENT THERETO

New London, East Lyme, and Waterford agree that this Agreement is intended to supersede and replace their agreement dated January 10, 1990, as amended, and that agreement is hereby declared null and void.

SECTION 6 – AMENDMENTS AND MODIFICATIONS ONLY IN WRITING

The provisions of this Agreement shall be amended or modified only by written agreement duly executed by the duly authorized representatives of the Parties.

SECTION 7 – CHOICE OF CONNECTICUT LAW

This Agreement and any questions concerning its validity or construction shall be governed by the laws of the State of Connecticut.

SECTION 8 – SEVERABILITY CLAUSE

In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal or unenforceable in any respect, the other provisions shall remain in force and effect, except that if any portions of this Agreement are determined to be invalid, illegal or unenforceable, the Towns and the City will negotiate in good faith to reestablish the Sections that are determined to be invalid, illegal or unenforceable. If after six months of negotiations, mutual agreement is not reached, any Party may, but is not obligated to, terminate this Agreement in same manner and subject to the same terms as provided in Part VI Section 3 of this Agreement as if the end of the term were two years from the date of notice of termination.

SECTION 9 – NO THIRD-PARTY RIGHTS

Except as may be expressly provided herein, nothing in this Agreement is intended to confer on any person other than the City of New London and Towns of Waterford and East Lyme any rights or remedies under or by reason of this Agreement.

SECTION 10 – SINGULAR/PLURAL USAGE

In this Agreement, the use of the singular shall encompass the plural, and vice versa, where appropriate in the context.

SECTION 11 – LISTING OF NAMES AND ADDRESSES FOR NOTICES

Except as otherwise provided in this Agreement, all notices and communications required or permitted hereunder shall be in writing and sufficiently given if delivered in person, sent by certified or registered mail, or by email as follows:

If to the City:

Chairman
New London Water and Water Pollution Control Authority
13 Masonic Street
New London, Connecticut 06320

Plus, a copy to:
Director
New London Public Utilities
13 Masonic Street
New London, Connecticut 06320

If to Waterford:

Chairman
Waterford Utility Commission
1000 Hartford Road
Waterford, Connecticut 06385

Plus, a copy to:
First Selectman
Waterford Town Hall
15 Rope Ferry Road
Waterford, Connecticut 06385

Plus, a copy to:
Director
Waterford Utility Commission
1000 Hartford Road
Waterford, Connecticut 06385

If to East Lyme:

Chairman
East Lyme Water and Sewer Commission
PO Box 519
Niantic, Connecticut 06357

Plus, a copy to:
East Lyme Public Works Director
PO Box 519

Niantic, Connecticut 06357

The respective addresses to which such notices are given may be changed from time to time by written notice from the Addressee. Additionally, email addresses provided to each Party may be used as proper notification.

IN WITNESS WHEREOF, the Parties of this Agreement and this instrument to be signed in triplicate by their duly authorized officers and their respective seals to be affixed hereto, all as of this ____ day of _____, 2021.

Signed, Sealed and Delivered in the presence of:

**CITY OF NEW LONDON
WATER AND WATER POLLUTION CONTROL AUTHORITY**

By its Chairman,
Barry J. Weiner

Witnesses

TOWN OF WATERFORD

By Robert Brule, First Selectman
As authorized by Board of Selectman and
Representative Town Meeting

Witnesses

**TOWN OF WATERFORD
UTILITY COMMISSION**

By its Chairman,
Kenneth Kirkman

Witnesses

**TOWN OF EAST LYME
WATER & SEWER COMMISSION**

By its Chairman,
Mark Nickerson

Witnesses

APPROVED AS TO FORM:

Brian Estep - Attorney – City of New London

APPROVED AS TO FORM:

Nick Kepple – Town Attorney – Town of Waterford

APPROVED AS TO FORM:

Edward O’Connell - Town Attorney – Town of East Lyme