

DRAFT
CONTRACT FOR WASTEWATER COLLECTION AND
TREATMENT SERVICE
BETWEEN
THE TOWN OF MANSFIELD AND THE TOWN OF EASTON

April 2017~~March 19~~, 2015

PREAMBLE

THIS AGREEMENT entered into on _____, 2015, and executed in duplicate (each executed copy constituting an original) between the Town of Mansfield, 6 Park Row, Mansfield, Massachusetts 02048, a municipality (hereinafter "Mansfield") and the Town of Easton, 136 Elm Street, Easton, Massachusetts, 02356, a municipality(hereinafter "Easton").

WHEREAS, Mansfield operates a wastewater collection system, and participates in a treatment and disposal system which is a part of the MFN Regional Wastewater Common District System (the "District") -in which there is sufficient capacity to serve the needs of Easton; and

WHEREAS, Easton is in need of additional capacity in which to direct portions of its wastewater'; and

WHEREAS, Mansfield, in and under the terms and conditions as listed herein, desires to provide wastewater collection and treatment services to Easton; and

WHEREAS, municipalities are authorized in accordance with G.L. c. 40 §§ 4 and 4A to enter into inter-municipal agreements for the purpose of aiding the prevention or abatement of water pollution; and

WHEREAS, Easton and Mansfield have been authorized to enter into this Agreement as evidenced by the execution of this Agreement by their respective Boards of Selectmen.

NOW THEREFORE, for good and valuable consideration the sufficiency of which is hereby acknowledged and in consideration of the mutual covenants, obligations and agreements hereinafter contained, the parties agree as follows:

PART A: Standard Terms and Conditions

I. Legal

1. Term.

This Agreement shall be in force and effect for a period ending twenty-five (25) years from date hereof, unless sooner terminated as herein provided. Both Mansfield and Easton recognize that, due to the nature of the services provided, renewal of the Agreement is contemplated. It is agreed that the renewal agreement will be based upon the same principles of proportionality that are contained in this Agreement.

The parties represent and understand that time is of the essence of the performance of this Agreement. Easton and Mansfield shall work cooperatively to assure that substantial completion as set forth herein, of the infrastructure required to give effect hereto is reached no later than August 1, 2016. To that end the parties will use all best efforts to achieve this time line and substantial completion. This is to allow Easton to discharge an average day wastewater flow, not to exceed, of 55,000 gpd prior to October 1, 2019.

Comment [JS1]: W&C added August, do we want to have Mansfield commit to 6,000 gpd per month up to 30,000 gpd, starting August 2016

2. Amendments.

No officer, official or agent of Mansfield or Easton shall have or possess the power to amend, modify or alter this Agreement or waive any of its conditions or to bind the Town of Mansfield or the Town of Easton by making any promise or representation not contained herein and unless an amendment hereto, in writing, is executed by both parties; and, as to the case of the Town of Mansfield, approved by the Board of Selectmen acting as Water and Sewer Commissioners, and as to the case of the Town of Easton, approved by the Board of Selectmen acting as Water and Sewer Commissioners.

3. Assignment.

This Agreement shall not be assigned or transferred by either party.

4. Cancellation.

This Agreement will be subject to cancellation in the event a court of competent jurisdiction restricts or limits, directly or indirectly, any of Mansfield's rights to provide such service. Under such circumstances, Easton shall have the right of appeal and the opportunity to work jointly with Mansfield to implement corrective actions or remedies so as to allow service to continue. It is the intent of both parties to take all reasonable actions necessary to ensure that service will continue without interruption for the full duration of this Agreement.

5. Damages.

Mansfield will not be responsible in damages for any interruption or failure to provide such service and shall be saved and held harmless from any and all damages of any kind, nature or description, which may arise as a result of making this Agreement and furnishing such service hereunder.

Similarly, Easton will not be responsible in damages for conveyance of flow to Mansfield under the terms of this Agreement and shall be saved and held harmless from any and all damages of any kind, nature or description, which may arise as a result of making this Agreement and receiving such service hereunder.

6. Hold Harmless.

Mansfield shall not be responsible in damages for any failure, not occasioned by Mansfield's negligent actions or inactions, to provide or for interruption of such service. To this extent, Easton specifically agrees to save and hold harmless Mansfield from all damages to real and personal property occasioned or caused by making of the sewer connection herein referred to or caused by the furnishing of such service hereunder; and, shall save and keep harmless Mansfield from any and all such damages occasioned thereby, except as provided for herein.

Similarly, Easton shall not be responsible in damages for conveyance of flow to Mansfield under the terms of this Agreement. To this extent, Mansfield specifically agrees to save and hold harmless Easton from all damages to real and personal property occasioned or caused by making of the sewer connection herein referred to or caused by receiving such service hereunder; and, shall save and keep harmless Easton from any and all such damages occasioned thereby, except as provided for herein.

II. Regulations and Related Agreements

Wastewater flow conveyed to Mansfield under this Agreement shall be subsequently conveyed to "Common District System" facilities owned and operated by the MFN Regional Wastewater District (hereinafter "District") for treatment and disposal. The terms and conditions for treatment and disposal of this wastewater are provided under separate Agreement between Mansfield and the District, a copy of which is included as Attachment A to this Agreement. The terms and conditions contained in the District Agreement, as appropriate, shall apply to this Agreement.

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Under the terms of the separate Agreement between Mansfield and the District, the rules, regulations and requirements of the District prescribing and limiting the content of wastewater discharged into the sewers tributary to the District treatment works shall apply within Easton, and Easton shall adopt and enforce such local laws and sewer use regulations as may be necessary to assure proper observance of the aforementioned rules, regulations and requirements with respect to wastewaters originating in Easton and delivered to the District for treatment and disposal. Similarly, Easton shall adopt such local laws or revise its sewer use regulations as may be necessary to assure proper compliance with the Mansfield sewer use regulations. Mansfield's sewer use regulations are attached as [Attachment Exhibit B](#). As a minimum, Easton shall adopt the more restrictive of the District or Mansfield Sewer Use Regulations. Any costs incurred by Mansfield as a result of Easton failing to appropriately adopt and enforce these regulations shall be the sole expense of Easton.

Easton may not permit any further extension of the sewer service area beyond the service area described in Part B of this Agreement without prior approval of the Mansfield Board of Selectmen acting as Water and Sewer Commissioners. Additionally, approval for further extension of the service area would be required by the MFN Regional Wastewater District Commission.

1. Decisions.

The Board of Selectmen of Mansfield appoint its Town Manager to manage and direct Mansfield's compliance with this Agreement.

The Board of Selectmen of Easton appoint its Town Administrator to manage and direct Easton's compliance with this Agreement.

III. Rights

1. Inspections.

Mansfield reserves the right to, with proper notice, inspect and test sewer lines and Easton owned appurtenant features within the sewer service area located in the Town of Mansfield described in Part B of this Agreement and make reasonable recommendations to Easton, in light of the age of said system ~~and the financial ability of Easton to repair or replace same~~, for repair or replacement of these sewer lines and appurtenances if required to meet the terms and conditions of this Agreement. Such replacements or repairs, and the costs thereof, shall be assumed and paid by Easton.

2. Performance / Dispute Resolution.

Any disputes arising out of this Agreement shall be submitted to non-binding mediation performed by an independent mediator. The cost of such mediation, except for the cost of each Party's direct representation, shall be shared equally between the Parties. In the

event the parties are unable to resolve their dispute they may proceed as noted below.

Mansfield reserves the right, either in law or equity, by suit, a complaint in the nature of mandamus, or other proceeding, to enforce or compel performance of any or all covenants herein contained.

Similarly, Easton reserves the right, either in law or equity, by suit, a complaint in the nature of mandamus, or other proceeding, to enforce or compel performance of any or all covenants herein contained.

3. Termination.

This Agreement may be terminated earlier than its expiration date by mutual action of Mansfield and Easton. For the purposes of this paragraph, such action shall be, in the case of Mansfield, by the Town Manager with Board of Sewer Commissioner approval and, in the case of Easton, by its Town Administrator with Board of Sewer Commissioner approval.

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Mansfield and Easton reserve the right to terminate this agreement after giving the other party five (5) years notice, in writing, of its intent to do so for refusal to fulfill any obligation or condition shown herein. Before taking such action, Mansfield and Easton will have provided the other party with reasonable opportunity to implement corrective actions as necessary to maintain compliance with the obligations and conditions of the Agreement. The discontinuance of service, for such cause, shall not release Mansfield and Easton from its obligation to pay all bills due in accordance with this Agreement. ~~Mansfield shall pay to Easton the remaining value of the capital improvements installed in Mansfield, including but not limited to the value of the sewer lines, the Mill Street pump ing station modifications and the value of Easton's contribution to upgrade and expand the District wastewater treatment plant. All pipelines, manholes and related equipment shall be depreciated over 20 years and all other items including equipment etc. shall be depreciated over 10 years from date of acceptance.~~

Comment [JS2]: It was agreed at the meeting that the termination was to be mutual; and Easton owned the capacity once it was paid for.

4. Capacity Buy-Back

Should Mansfield request to buy-back unused capacity by Easton and Easton agrees to sell such capacity to Mansfield, then the cost to buy-back the flow shall be the same as defined herein: Mansfield shall pay to Easton ~~the proportionate share of~~ the remaining value of the capital improvements installed in Mansfield, including but not limited to the value of the sewer lines, the Mill Street pumping station modifications and the value of Easton's contribution to upgrade and expand the District wastewater treatment plant. All pipelines, manholes and related equipment shall be depreciated over 20 years and all other items including equipment etc. shall be depreciated over 10 years from date of acceptance.

Comment [JS3]: Will need to be reviewed by Bond Council

IV. Responsibilities

1. Ownership.

Mansfield shall not acquire any title, property interest or equity in any facilities or works within Easton, nor shall it have any responsibility or authority with respect to any such facilities or works other than the right of entry and inspection provided pursuant to Paragraph 12 under Section III of this Agreement.

By operation of this Agreement and in accordance with its terms, Easton shall have the right to convey its wastewater to Mansfield, but Easton shall not acquire any title, property interest or equity in the facilities and works of Mansfield beyond the pressure flow to gravity flow transition manhole or other Mansfield assets, other than temporary ownership during the project construction and warranty period of facilities constructed in Mansfield under this Agreement; further description of the transfer of the ownership of these assets from Easton to Mansfield is provided under part B of the Agreement.

Upon transfer of ownership from Easton to Mansfield of facilities constructed in Mansfield under this Agreement, which shall occur in accordance with Part B, Section III 1 A herein, Easton shall not have any responsibility or authority with respect to such facilities or works other than the right of entry and inspection provided pursuant to Paragraph 12 under Section III of this Agreement. Additionally, Easton shall not have responsibility for any debts of Mansfield, except in accordance with its obligation to make proper and timely payments for services and to perform in good faith pursuant to this Agreement.

2. Points of Responsibility.

Mansfield bears no degree of responsibility for the service at any point beyond the town line of Mansfield. Easton shall bear responsibility for maintaining the system at any point inside the town line of Easton and to the transition manhole in Mansfield where pressure flow from Easton switches to gravity flow in Mansfield. Easton shall be responsible for the transition manhole.

Similarly, Easton bears no degree of responsibility for the service at any point beyond the transition manhole in Mansfield following the transfer of ownership from Easton to Mansfield of facilities constructed in Mansfield under this Agreement; following the transfer of ownership, Mansfield shall bear responsibility for maintaining the gravity system at any point inside the town line of Mansfield.

During the construction and warranty period, Easton and Mansfield will jointly administer and oversee construction contracts for facilities constructed in Mansfield as described in Part B of this Agreement, with Easton using its position as the funding and contracting entity for this construction to ensure that the terms and conditions of the construction agreements are properly enforced.

Mansfield shall grant to Easton a temporary utility easement or grant of location over Mansfield's public ways for the purpose of designing, constructing and installing the sewer lines.

Comment [JS4]: Mansfield Counsel believes that temp easements require ATM approval. Easton counsel to discuss this with Mansfield as Town Manager would rather not go to ATM for easements/

3. Operator.

Each party shall keep the other party informed of the official to contact regarding this service for Easton.

All notices regarding service hereunder shall be given to the Department of Public Works Director. If to Easton:

Easton MA

Phone
Email

If to Mansfield:

Mansfield, MA

Phone:
Email:

4. Emergencies.

Easton shall immediately notify Mansfield's Department of Public Works Director of any emergency or condition, which may affect the service supplied to Easton by Mansfield. Similarly, Mansfield shall immediately notify Easton's Department of Public Works of any emergency or condition, which may affect the service supplied to Easton by Mansfield.

5. Emergency Repairs.

Should emergency repairs of pumping stations, pipelines (after the transition manhole), or other infrastructure assets that jointly convey Mansfield and Easton flow be required, the cost of such repairs as necessary to maintain or restore system operation for the benefit of both Mansfield and Easton shall be split flow proportionately between the two communities.

Following completion of the emergency repairs, the community that completed the necessary repairs will prepare a summary of the net costs incurred and propose a cost split based on the percentage of average day flow capacity from each community, ~~determined by metering~~, conveyed by the subject infrastructure. Net costs shared by the two communities will be net of any insurance payments, or other third-party reimbursement received in support of the emergency repairs.

In the event there is an emergency repair to the Easton force main located in Mansfield up to and including the transition manhole, then Easton shall undertake the necessary repairs and pay for all costs associated therewith.

V. Equipment and Operation

1. Service Mains and Manholes.

Within the Easton town limits, Easton shall provide and maintain all service mains and manholes and bear the costs for connecting said mains to and severing them from Mansfield's system. Within the Mansfield town limits, Easton will provide service mains and manholes for connecting to the existing Mansfield system and transfer the ownership of these service mains and manholes after the transition manhole to Mansfield as provided for and further described under Part B of this Agreement.

2. Metering Devices.

Flow conveyed from Easton to Mansfield shall be metered in one location at or near the border of Easton and Mansfield or at the main pumping station conveying all Easton flow to Mansfield so that the meter will record only flows pumped from Easton. Easton shall be responsible for maintenance of the meter and related structures, and for the eventual replacement of the meter when the meter reaches the end of its useful life. Easton shall be responsible for periodic calibration, maintenance and repair of the meter and associated telemetry of the flow to the District plant and to Mansfield as part of this Agreement. Mansfield shall reserve the right to perform separate meter calibration testing at its own cost.

Mansfield agrees that it will provide to Easton, on a quarterly basis, the District flow calculations used in determining Mansfield's flow into the District plant.

3. Incorrect Meter Reading.

When it is determined that the Easton meter registered incorrectly, an estimate of the amount of flow furnished through the faulty meter shall be prepared by the Director of Public Works of Mansfield for the purposes of

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Comment [JS5]: W&C removed reference to meters, as Mansfield's flow is determined by subtracting the metered flow from the Foxboro & Norton.

billing Easton. The estimate shall be based upon the average of two (2) comparable preceding readings of the meter for a similar timeframe, exclusive of incorrect readings. When less than two (2) correct comparable readings are available, fewer readings, including some obtained after the period of incorrect registration, may be used.

Easton reserves the right to pay for calibration of the meter and for billing results to be adjusted to reflect the results of the calibration.

PART B: Specific Terms and Conditions

I. Service to be Furnished

1. Use Restriction.

All wastewater flow conveyed by Easton to Mansfield under this Agreement shall originate from the "service area" within Easton, as shown in Figure 1 (Easton 5-11). Easton shall not re-assign treatment capacity provided under this Agreement to another community, or convey flow from parts of Easton outside of the designated service area without formal amendment to this Agreement.

Upon the coming into operation of the works necessary for the delivery and reception of Easton wastewater, and thereafter during the continuance of this Agreement, Easton shall be entitled to deliver and Mansfield shall receive a total flow not to exceed 0.165 million gallons daily (mgd) as an arithmetic average daily flow. The average shall be calculated on a calendar year basis. The allowable peak hourly flow shall not exceed a rate of 0.86 mgd and the maximum daily flow shall not exceed 0.46 mgd (~~confirm peaking factors~~).

Upon reaching 80 percent of their flow capacity, Easton shall develop a flow management plan and present it to Mansfield for acceptance as to how the remaining 20 percent flow will be managed to prevent any future flow exceedances. Any flow penalties incurred by Mansfield in the District Agreement as the direct result of Easton flows shall be the sole responsibility of Easton. Similar flow penalties for exceeding flow capacity as outlined in the District Agreement shall also apply between Easton and Mansfield.

Given the importance of Mansfield and Easton coordination in planning and executing future infrastructure upgrades, the two parties commit to meeting on at least an annual basis to (1) review updated flow projections for both the Easton and Mansfield portions of the subject service area and (2) based on updated flow projections, review the need for possible upgrade to Mansfield infrastructure within the foreseeable future and, if required, begin planning for such upgrades.

II. Funding and Appropriations

Easton agrees to appropriate annually sufficient money as may be necessary to provide sufficient funds for the payment of the service furnished by Mansfield hereunder.

III. Costs

1. Capital Costs.

In recognition of equities in Mansfield's wastewater conveyance system previously contributed by Mansfield, Easton will make the following payments and/or transfer of capital assets to Mansfield which will insure to the benefit of Easton that Easton will be enabled to utilize a wastewater conveyance system already in operation:

A. Infrastructure Design, Construction and Financing for Mansfield Ownership

Easton will pay for all design and construction phase engineering, construction, and start-up costs associated with the infrastructure described as follows and as shown on Figure 2 (Easton Fig 5-9) of the Agreement:

- Gravity sewers and related facilities within the Five Corners area of Easton;
- A main wastewater pumping station located in Easton that will have sufficient capacity to pump flows from this service area in Easton to the Mansfield sewer system; ~~and~~
- A force main to convey the wastewater flows from the main pumping station to a transition manhole followed by gravity sewers in Mansfield to connect to the existing Mansfield sewer system; ~~and-~~
- ~~_____ related costs for review of the Easton design documents.~~
- ~~_____ Easton shall pay for any of Mansfield's engineering review of the Easton's pumping station discharge rate calculations.~~

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Alternatives to this general layout (~~to allow for early connections~~) may be allowed but only with the approval of Mansfield so that flow metering, SCADA signals, odor control, and other related operational issues are appropriately addressed.

Any sewer system constructed in Mansfield, that will become the property of Mansfield, must meet their design standards and shall

include a minimum 2-inch pavement overlay of any street where gravity pipes are constructed. Final acceptance of construction shall include a video of the inside of each pipe and must be turned over to Mansfield in an approved format.

Easton will provide to the Mansfield DPW Director the design plans prior to bidding for his review and approval which shall not be unreasonably withheld. The Mansfield DPW Director shall respond within 30 days of receipt of design package. Response will either be an approval to proceed or comments which would need a re-submittal and start another 30-day review period.

Easton's payment for this infrastructure will include all project capital and financing costs, with project bonding undertaken by Easton. Following completion of construction, acceptance testing and surface restoration to the satisfaction of both Easton and Mansfield, the ownership of the infrastructure located within Mansfield - including the gravity sewers after the transition manhole described previously - will be conveyed from Easton to Mansfield as described below for the use and benefit of Mansfield, with the provision that Easton be allowed the right of flow conveyance through this infrastructure as described within this Agreement.

The infrastructure within Mansfield may be constructed under a single construction contract. Easton will execute necessary agreements for the design, construction and construction oversight of this infrastructure, with responsibilities for administration of these agreements and the construction activities by Easton. Easton will provide reasonable notice to Mansfield personnel to enable them to attend and participate in any design, permitting, pre-construction and construction meetings. Easton will comply with all required rules and regulations in Mansfield related to the design and permitting activities including but not limited to field survey, borings, or other field activities:

- To facilitate project design and construction, Mansfield will determine if formal easements, utility easements, or grant of locations are required for construction within property owned in Mansfield and if any of these are required, make necessary arrangements for legal rights to be held in the name of Mansfield. Any costs associated with procuring or maintaining these easements will be paid by Easton.
- Mansfield and Easton shall hold periodic design meetings, initiated by Easton, leading up to the submission of the complete bid package. Mansfield will use their in-house engineering department to review the design documents and to attend the meetings. Aside from Mansfield's engineering review of the

Easton's pumping station discharge rate calculations, these periodic meetings and design reviews shall be at no cost to Easton.

- Upon reaching project completion of the conveyance project, Easton will transfer to Mansfield ownership of the gravity pipeline portions of the project, subject to warranty provisions of the construction contract. Easton will maintain ownership of the force main to the transition manhole to be located in a utility easement granted by Mansfield. The transition manhole will be owned by Easton. At this time, both Easton and Mansfield can begin use of the pipeline portions of the project and Mansfield will assume operation and maintenance responsibilities associated with the new pipeline, subject to the provisions of this Agreement.

Easton and Mansfield shall -work jointly and cooperatively to develop and implement this infrastructure project to the benefit of both communities and to minimize construction impacts to the residents of both communities. Should a problem arise during project design or construction that designated representatives of Easton and Mansfield cannot resolve ~~initially~~, the parties agree to employ the mediation provision as set forth in this Agreement.

B. Mansfield Sewer System Modifications

The hydraulic capacity of the existing sewers in Mansfield from the transition manhole to 18-inch diameter sewer in Mill Street need to be verified and upgrades made where required. Initial review of these pipe capacities based on the peak hour and maximum day flow rates noted in Part B I.1 indicates that existing pipes need to be increased in size to adequately carry the proposed flow rates. It appears it may be best for Easton to connect to the Mansfield sewer in East Street at Route 106. This shall be verified during final design. Easton will be responsible for all of these costs to design and construct those sewers.

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B.C. Cost Sharing of Existing Mill Street Pumping Station Upgrade/Refurbishment

This pumping station is currently in need of some upgrade work and preliminary engineering for final design of those improvements is underway. At a minimum it is anticipated that new flow metering, SCADA upgrade, concrete repair, site improvements, valve replacements and replacement of ~~one of the~~ two pumps will be required. Easton will pay/reimburse Mansfield \$165,000 towards ~~for~~ the construction cost of this work as its connection fee to the existing sewer system in Mansfield. ~~The net reimbursed cost will not exceed \$165,000.~~

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It is recognized and understood by both parties that, during the life of this agreement, much of the equipment, structure and appurtenances associated with both the Mill Street pumping station and Mansfield sewer that convey flows from both communities lead to the MFN Regional Wastewater Common District System will reach the end of their useful life and require replacement or refurbishment. When repair, refurbishment or upgrade unforeseen in Mansfield's operating budget of this station or collection sewer system is required, Easton and Mansfield will share the cost, with Easton's contribution to the total project cost in proportion to the ratio of Easton's proposed contributory flow capacity to total station or pipeline design capacity at the time of the project.

Comment [JS6]: W&C added

Comment [JS7]: Easton does not want to be charged twice for O&M.as this should be included in their operating budget below.

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6.D. MFN Regional Wastewater District WPCF Upgrade and Expansion Cost

The MFN Regional Wastewater District (District) came into existence was formed in July, 2014 and consists of the communities of Mansfield, Foxborough and Norton. Each community owns a specific capacity in the Water Pollution Control Facility (WPCF) which is located in the Town of Norton. The District is in the process of expanding the WPCF from an average day flow of 3.14 mgd to 4.14 mgd. Of that 1.0 mgd expansion, Mansfield's share of the capacity increase is 0.665 mgd with the intent to allot 0.165 mgd of that capacity to Easton per this Agreement. This is known as the "Expansion" portion of the District project.

The District WPCF was built in 1985 and underwent some equipment upgrades in 2010 (Phase 1). However, additional equipment and facility upgrades are still required and a new NPDES discharge permit (No. MA 0101702) was recently received that requires a treatment upgrade (Phase 2) for nutrient removal. This is known as the "Upgrade" portion of the District project.

The design of the Upgrade and Expansion Project began in September 2014 and per the new NPDES permit the project must be constructed and operational in the fall of 2019. Easton will be a customer of Mansfield and thus pay a proportionate share of Mansfield costs related to the Upgrade and Expansion Project.

1. Upgrade - As a customer to Mansfield, Easton at 165,000 gpd would essentially utilize own 4.0% of the District WPCF treatment and disposal capacity once the Upgrade and Expansion Project is completed. This percentage is calculated as $0.165\text{mgd}/4.14\text{mgd} = 0.04$. However as a customer to Mansfield, Easton will own 6.24% of Mansfield capacity. This percentage is calculated as $0.165\text{mgd}/2.645\text{mgd} = 0.0624$. Thus, Easton would pay for all engineering, construction and other related project (including financing) costs associated

with upgrading equipment and facilities and for increasing the treatment level per the NPDES permit at a rate of 6.24% of Mansfield's costs for these items.

During the term of this Agreement it can be anticipated that additional equipment and facility upgrades will be required and Easton would pay a similar proportionate share or 6.24% if no flow capacity changes occur, of the Mansfield costs for those items. This is similar to the Phase 1 Upgrade done in 2010 for which Easton will pay 6.24% of the remaining debt for that project as it included work necessary to keep the existing plant in operation.

2. Expansion - As a customer to Mansfield, Easton at 165,000 gpd would essentially be purchasing 16.5% of the 1.0 mgd expansion or 25% of the Mansfield expansion capacity calculated as $0.165\text{mgd} / 0.665\text{mgd} = 0.25$. Thus, Easton would pay for all engineering, construction and other related project (including financing) costs associated with this expansion project at a rate of 25% of Mansfield's costs for this project.

In accordance herewith, Easton shall pay Mansfield ~~\$165,000~~ ~~Million~~ on ~~July 1, 2015~~ ~~201X~~ as its share of the Mill Street pumping station modifications project; and on January 1, 2016 \$0.565 Million as its share of the design cost for the Upgrade and Expansion Project. Easton shall then pay annual payments \$YY Million (quarterly billings; adjusted to reflect actual final costs) as its share of the on July 1, 2019 or 30 days after substantial engineering and construction of completion of the Upgrade and Expansion Project whichever is later as its share of that project costs.

Mansfield recognizes that Easton is a wholesale customer and is paying for its own capital costs up front as part of this agreement. Therefore, Easton's share of the operating costs noted above shall not include any debt service of the Town of Mansfield related to the Upgrade and Expansion Project at the District treatment plant.

The above Items 1A to 1D shall constitute the total connection fee to be paid by Easton to Mansfield for the right to convey 165,000 gpd of wastewater flow from Easton to Mansfield as described under this Agreement; no further or separate payment shall be required from Easton to Mansfield for these purposes.

The percentages calculated in Items 1A to 1D above are based on flows stated herein. Should those flows be revised over the course of this Agreement, then appropriate percentage calculations using the same methodology described above would be calculated and utilized accordingly.

Comment [YDF8]: Easton at last meeting requested to revise to annual payments yet they have revised this wording. Need to decide.

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Comment [YDF9]: Belongs below in O&M Item B where Easton deleted??

2. Annual Operating Costs.

A. Mansfield Sewer System Operating Costs

Mansfield maintains a separate sewer system budget account for all fixed and variable costs associated with operating and maintaining its local wastewater collection system that conveys flow to the Common District System. This is the system that Easton will connect to per this Agreement. ~~The Town of Foxborough also utilizes a portion of the Mansfield sewer system. Their capacity contribution is 830,000 gpd. The Mansfield sewer system has the capacity to convey up to 2,645,474.72-645 mgd of wastewater of which Easton will utilize 0.165 mgd and Foxborough will utilize 0.830 mgd or 6.244.75 % and 23.9 % respectively of the Mansfield sewer capacity or 6.2%. Thus Easton will pay Mansfield annually 6.244.756.2% of their sewer system operating budget. Credits for any costs incurred per Part A. 4.5 - Emergency Repairs as stated above would be applied to this annual payment.~~

~~The percentages calculated in Item 2A above are based on flows stated herein. Should those flows be revised over the course of this Agreement, then appropriate percentage calculations using the same methodology described above would be calculated and utilized accordingly.~~

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B. Mansfield District WPCF Operating Costs

Once the Upgrade and Expansion Project is completed at the District WPCF, Mansfield will own 2.645 mgd of that capacity or 63.89% of the WPCF. Per the "Agreement Establishing the MFN Regional Wastewater District" dated June 26, 2014, the annual operating costs are divided into semi-fixed, flow variable and an Annual Payment to Norton (APN). The annual operating costs also include debt service payments for the Phase 1 Upgrade at the WPCF completed in 2010 and running through fiscal year 2028. As a 165,000 gpd customer to Mansfield, Easton will pay 6.24% of the Mansfield net annual operating cost.

~~Mansfield recognizes that Easton is a wholesale customer and is paying for its own capital costs up front as part of this agreement. Therefore, Easton's share of the operating costs noted above shall not include any debt service of the Town of Mansfield related to the Upgrade and Expansion Project at the District treatment plant.~~

C. Annual Operating Costs Schedule

Easton shall make annual operating costs payments for the sewer system and treatment plant to Mansfield upon reaching substantial completion of the Easton connection to the Mansfield sewer system. A prorated payment shall be made the first year to reflect the timing of the substantial completion milestone within a given year.

The percentages calculated in Item 2A above are based on flows stated herein. Should those flows be revised over the course of this Agreement, then appropriate percentage calculations using the same methodology described above would be calculated and utilized accordingly.

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3. Billing.

Mansfield shall bill Easton at no less than quarterly intervals for annual operating costs for the service furnished to Easton under this agreement and Easton shall pay such bill within thirty (30) days of the receipt of the same.

Any bill remaining unpaid after the thirtieth day of the date on which the bill is due shall bear interest at the interest rate of ~~fourteen (14) prime plus 3 percent~~ prime plus 3 percent per annum, computed from the due date on such bill. In the event of non-payment of the bill presented to Easton and remaining unpaid for sixty (60) days, Mansfield reserves the right to require Easton to deposit, in advance, a sum equal to the average estimated costs for a period of 180 days at the prevailing metered rate; said sum to be deposited in an interest-bearing account and the interest credited to Easton.

4. Audit.

Mansfield's financial records relative to the sewer services, operations and capital expenditures shall be included in their annual municipal audit and a copy of the audit provided to Easton upon their request. ~~shall be included in their annual municipal audit. A copy of such audit can be made available to Easton at their request.~~

PART C: Further Contract Terms

I. Force Majeure

1. Neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to,

strikes, riots, war, fire, or acts of God, herein referred to as "*Events of Force Majeure*." The financial inability to perform of a party is not an Event of Force Majeure.

2. In any case, by reason of force majeure, Mansfield is rendered unable, wholly or in part, to carry out the obligations under this contract, notice and full particulars of such force majeure shall be given by Mansfield to Easton, in writing, within a reasonable period of time.
3. The obligations of Mansfield, upon giving of such notice to Easton, so far as is affected by force majeure, shall be suspended during the continuance of the inability claimed.
4. Under such circumstances, Easton shall have the opportunity to work jointly with Mansfield to implement corrective actions or remedies so as to allow service to continue. It is the intent of both parties to take all reasonable actions necessary to ensure that service will continue without interruption for the full duration of this Agreement.

II. Service of Notice

All notices or communications provided for herein shall be in writing and shall:

As to the Town of Mansfield, be delivered to the Town Manager's Office, Town Hall, 6 Park Row, Mansfield, Massachusetts 02048, with a copy to the Department of Public Works Director of the Town of Mansfield at the foregoing address.

As to the Town of Easton, and its sewer users, be delivered to the Town Administrator's Office, Town Hall, 136 Elm Street North, Easton, Massachusetts 02356 with a copy to the Department of Public Works Director of the Town of Easton at 130 Center Street North, Easton, MA 02356.

III. Interpretation of Law

This agreement and all acts performed or required to be performed hereunder shall be interpreted under the laws of the Commonwealth of Massachusetts and jurisdiction shall vest in said Massachusetts' courts.

IV. Regulatory Authority

Any and all conditions, rules, regulations, orders or other requirements heretofore or hereafter placed upon the Town of Mansfield by the District and/or the Department of Environmental Protection, Commonwealth of Massachusetts and by any court of competent jurisdiction and by any other applicable Federal, State or County agency that impact the ability of Mansfield to carry out obligations under this contract, shall be construed to become a part of this contract. Further, any additional costs placed upon the Town of Mansfield as a result of any orders of the above referenced court or agencies, not the result of any negligence or

violation of any law solely within the control of Mansfield, in connection with the supplying of the service to the Town of Easton by the Town of Mansfield shall be borne proportionally by said Town of Easton as reasonable.

Should the Town of Mansfield become aware of any of the foregoing they shall promptly notify Easton of same including but not limited to providing Easton with any written order, regulation, change of law, notice or condition.

V. Captions.

The captions appearing in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit construe or describe the scope or intent of any provisions of this Agreement nor in any way affect this Agreement.

VI. Severability.

If any term of this Agreement is held to be invalid in any judicial action, it shall be severed from this Agreement and the remaining terms will be unaffected.

VII. Third Parties.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against any or all of the Parties except as noted in this Agreement or documents referenced in this Agreement.

VIII. Binding Effect.

The terms, covenants, and conditions contained in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns and any person or persons, natural or corporate, claiming through or under them, or any of them.

IX. No Assignment.

No assignment of this Agreement or any Party's rights, interests or obligations hereunder may be made without the other Party's consent, which shall not be unreasonably denied, withheld, delayed or conditioned.

IN WITNESS WHEREOF, of the date first mentioned, the officials of the Town of Mansfield and of the Town of Easton hereto execute this agreement, in duplicate copies. Said agreement, when so executed, to be recorded in the office of the Town Clerk of the respective municipalities.

Mansfield Board of Selectmen and
Water and Sewer Commissioners

(Seal of the Town of Mansfield)

Easton Board of Selectmen and Water
and Sewer Commissioners

(Seal of the Town of Easton)
