

THIS AGREEMENT, made this day of 1991, by and between the Town of Hebron, a municipal corporation having its territorial limits within the County of Tolland and State of Connecticut, and the Utilities Commission of the Town of Colchester, a municipal corporation having its territorial limits within the County of New London and State of Connecticut;

WHEREAS, the Chapter 103 of the Connecticut General Statutes and Section 7-257, 7-272, 7-273 and 7-259 thereof provide for the construction, maintenance, acquisition and operation of Municipal Sewerage Systems; and

WHEREAS, the Town of Hebron is desirous of connecting its sewerage system with the Town of Colchester sewerage system and further is desirous of providing for the sharing of cost of the construction, treatment, operation, maintenance and repair of the treatment plant in East Hampton, Connecticut.

ARTICLE I - GRANT OF ACCESS

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2. The Town of Hebron agrees to install an additional 50,000 gallons of equalization storage at the Prospect Hill Pump Station to be completed by July 1, 1993. It is estimated this storage will increase pump station capacity to 3.0 mgd (peak flow) or an equivalent average daily flow of approximately 1.13 mgd.
3. In accordance with an Agreement between the Borough of Colchester WPCA (as of July 1, 1990 the Colchester Utilities Commission), and the Town of Hebron dated June 5, 1990, the Town of Hebron has installed a 12-inch diameter relief sewer from manholes nos. H-2 to H-3.
4. The Town of Hebron shall install metering facilities with recorders of a type approved by the Town of Colchester Utilities Commission at the last pump station to be located in Hebron prior to the connection into the Town of Colchester sewer system for the purpose of accurately measuring the flow of sewage from the Town of Hebron into the sewer system located in the Town of Colchester. Total flows from Colchester and Hebron shall be recorded using metering facilities installed at the Prospect Hill Pump Station.
5. The Town of Hebron hereby grants to the Town of Colchester Utilities Commission the right to connect to the interceptor located within the Town of Colchester running southerly from the Town of Hebron/Colchester town line to the existing manhole #H-2. The consideration to be paid for such grants of access shall be paid as hereinafter provided in Article II.
6. If at a future date the Town of Colchester Utilities Commission shall connect to sewer lines or facilities owned by the Town of Hebron, the Town of Colchester Utilities Commission shall install metering facilities with recorders of similar type as set forth in paragraph four (4) hereof, at points of connection for the purpose of accurately measuring the flow of sewage caused by said connection. Such flow shall be considered in determining the limits set forth in Article I Paragraph 2, hereof. If such a connection is made at a future date, the Town of Colchester shall pay to the Town of Hebron a share of the capital cost of the sewer lines of the Town of Hebron used by the Town of Colchester Utilities Commission as a result of said connection, said share to be a contribution to the debt service of the Town of Hebron based upon the remaining debt term at the time of connection and the proportionate share of flows introduced into said sewer line.

The Town of Colchester Utilities Commission shall further contribute, based upon flows introduced into said line as aforesaid, to the operation, maintenance, replacement and rehabilitation costs produced by said sewer line and connections thereto.

7. If the use of the system reaches 80% of known capacity, the limitations shall be investigated by a Professional Engineer at a mutually shared expense based on the proportionate share of use at that time. Such engineering study shall determine the current flow rates of the towns, the capacity of the subject facilities and recommended modifications to operations or facilities to accommodate expected flows.
8. In the event that the discharge of sewage into the system reaches 90% of the established capacity of the system, both the Town of Hebron and the Town of Colchester Utilities Commission shall review this Agreement, and schedule a meeting within thirty (30) calendar days to discuss the future flow requirements. In such an event, the Towns of Hebron and Colchester shall not make or permit further or additional connections of properties or buildings to the system until such time as the Towns have agreed upon actions to increase the capacity of the system or appropriate portions thereof.
9. The Towns of Hebron, through its Water Pollution Control Authority (WPCA), and the Town of Colchester through, its Utilities Commission, agree to adopt and enforce regulations controlling the use of its sewerage systems and agree that the system shall not be used for the discharge of waste not in conformance with their sewer regulations or for any subsurface, surface, or other clean water discharge.
10. All measuring devices, recorders and records of flow measurements shall be open to and available for inspection by either of the parties to this Agreement at all times and the records thereof shall be preserved by both parties for at least a period of twenty (20) years from the recording dates thereof. All measuring devices and recorders shall be continually maintained and inspected during the term hereof or any extension thereof. Metering devices shall be calibrated twice per year.

ARTICLE II - ANNUAL PAYMENTS/SHARING OF CAPITAL COSTS

1. The Town of Hebron agrees to pay to the Town of Colchester Utilities Commission, each year a percentage of the amounts under items a, b, and c below, with that percentage being based on Hebron's average daily flow relative to the total average daily flow for the system for the previous year, said payment to be in exchange for allowing the Town of Hebron to discharge sewage into facilities constructed and maintained by the Town of Colchester Utilities Commission. This amount specifically includes the following capital costs and excludes state and federal grants and depreciation (based on straight line depreciation over 50 year life for sewers, 28 years for the Prospect Hill Pump Station and 20 years for the East Hampton Facilities). The annual amounts under a, b, and c (total \$79,038 times the applicable percentage) shall begin in January of 1993 and shall be based on the relative flows for the previous calendar year. The first payment (January 1993) shall reflect the relative flows from Hebron's "first flush" through December 31, 1992.
 - a. Gravity Sewers: The applicable percentage (Hebron Flow : Total Flow) of the annual amount of \$14,349 for 11 years, which represents the capital costs of only those sewers which carry Hebron's sewage, after grants and depreciation.
 - b. Prospect Hill Pump Station and Force Main: The applicable percentage of the annual amounts of \$26,656 for 11 years.
 - c. East Hampton Facilities: The applicable percentage of the annual amount of \$38,033 for 11 years.
2. The Town of Colchester Utilities Commission agrees to pay the Town of Hebron its prorata share of the cost of increasing the capacity of the Prospect Hill Pump Station, as described in I.2 above. Colchester's share shall be an annual amount equal to the capital cost less grants divided by (20) years times a percentage representing Colchester's Flow : Total Flow.
3. The Town of Hebron has paid for the entire cost of the 12 inch relief sewer between manhole nos. H-2 and H-3 (\$50,600).

4. The Towns of Hebron and Colchester each agree to pay for one-half the cost of the Colchester Sewerage Study conducted by Lenard Engineering, Inc. as defined in Amendment No. 2 to the Engineering Agreement between the Town of Hebron and Fuss & O'Neill, Inc. dated December 14, 1989.
5. Should modifications to that portion of the Colchester sewerage system which carries Hebron's sewage be required in the future, the cost for said improvements shall be split between the two towns on the basis of the projected average daily sewage flows from the respective towns.
 - a. Should repairs be required to sewerage facilities which convey both Hebron's and Colchester's sewage, the cost for said repairs shall be split between the two towns on the basis of their respective then current average daily sewage flows over the previous 12 months.
 - b. Should the capacity of any of the sewerage facilities be required to be increased, the cost of bonding for such construction shall be split amongst the towns on the basis of the proportion of the incremental increase in capacity that each town is expected to use.

ARTICLE III - PAYMENT AND SHARING OF OPERATION AND MAINTENANCE COSTS

1. The Town of Hebron shall pay monthly in advance to the Town of Colchester Utilities Commission a percentage of the annual cost of the operation, maintenance, rehabilitation, replacement and repair (including maintenance-related construction activities) of the facilities used by the Town of Hebron for conveyance of sewage through the Town of Colchester to the sewage treatment plant in East Hampton and for treatment of sewage at the East Hampton treatment facilities. The Town of Hebron WPCA shall provide in its sewer Operating and Maintenance budget an amount necessary to make such payments for each fiscal year.

For the purposes of this Section, "cost of operation, maintenance, rehabilitation, replacement and repair (including maintenance-related construction activities)" shall mean the total cash expenditures anticipated by the annual operating and maintenance budget of the Town of Colchester Utilities Commission used by the Town of Hebron for the conveyance and treatment of sewerage which may include, but not be limited to:

- (a) Replacement of tools and equipment.
- (b) Alteration of equipment or facilities to improve the efficiency of plant operation or to upgrade quality of the effluent without enlarging or expanding the plant or interceptor sewers.
- (c) Purchases of a minor capital nature not involving expansion of plant, pumping station, or interceptor sewers.
- (d) Cost of chemicals for treatment.
- (e) Power costs (electric and gas).
- (f) Plant/system operations personnel - salaries.
- (g) Solids disposal.
- (h) Operation costs at disposal site.

but shall not include expenditures made for improvements, maintenance or repair outside of the facilities used by the Town of Hebron for the conveyance and treatment of sewerage.

- 2. Payment under this Article III shall be made by the Town of Hebron making monthly payments in advance to the Town of Colchester Utilities Commission each year. The amount of each monthly payment shall be based upon the annual Town of Colchester Utilities Commission budget to be prepared as hereinafter provided. The amount paid by the Town of Hebron shall be based upon that percentage of the total costs which the sewage flow attributable to each of the parties bears to the total sewage flow received by the Prospect Hill Pump Station for the period ending July 1st of any given year. The first years shall be from the first day of the month following the date of activation of the Town of Hebron to July 1, 1992.
- 3. On or before July 1st of each year, the Town of Colchester Utilities Commission shall prepare an Operation and Maintenance Budget covering the anticipated cost of operation, maintenance and repair (including maintenance-related construction activities) for the shared facilities for those purposes outlined in paragraph 1 of this Article, from July 1st of said year to June 30th of the following year. This budget shall include Colchester's and Hebron's share of the costs of operation, maintenance and repair of the sewage treatment facilities in East Hampton.

4. An additional payment shall be made by the Town of Hebron in the event that monthly payments made during the fiscal year were insufficient to meet the full amount of Hebron's share. In the event said monthly payments exceed the annual costs due from the Town of Hebron, any excess shall be credited towards subsequent payments in the order such payments become due.
5. The Town of Hebron agrees to adopt a user charge system in accordance with the regulations of the United States Environmental Protection Agency and to review the same annually.
6. The Town of Hebron shall be responsible for all costs of maintenance and repairs of the sewer lines and facilities constructed to collect and convey sewage up to the point of entry into the facilities of the Town of Colchester Utilities Commission as described in Article I, paragraph 1.
7. It is the specific intent and purpose of this Article that all costs of maintenance and repair of those portions of the sewerage system used jointly be shared in an equitable manner.
8. Abnormal Maintenance and Repairs

In the event it becomes necessary during the term of this Agreement, or any extension thereof, to make abnormal repairs or replacements over and above those considered to be normal maintenance and repairs, because of the discharge into the system covered by this Agreement of waste not in conformance with each municipality's respective sewer regulations, the cost of making said abnormal repairs or replacements shall be borne entirely by the offending party.

9. Books and Records

As to the shared facilities, each of the parties to this Agreement shall maintain a complete accounting of any and all expenditures and receipts (including receivables and payables) incidental to the construction, operation, maintenance and repair of its sewerage facilities, and shall have the books and records so maintained and reviewed annually by an independent accountant, and such books and records as so reviewed shall be available for inspection by either party to this Agreement.

10. Inspection

The Town of Hebron WPCA shall, at all reasonable times, have the right by their agents or employees to:

- a. Inspect the sewer facilities of the Town of Colchester Utilities Commission covered by this Agreement to assure themselves that operation and maintenance of such facilities are being carried out in a satisfactory manner.
- b. Inspect the books and records of the Town of Colchester Utilities Commission relating to the facilities covered by this Agreement including, but not limited to, metered flow records for the purpose of auditing the same and verifying any charges that may be payable to the Town of Colchester Utilities Commission by virtue of the terms of this Agreement.
- c. The Town of Colchester Utilities Commission shall have the right to inspect any portions of the Town of Hebron WPCA's sewer system concerning the effects the Hebron sewer system may have on the maintenance and operation of the Colchester sewer system.

ARTICLE IV - MISCELLANEOUS

1. Any controversy or claim arising out of or relating to this Agreement or any breach thereof shall, if not settled by the parties hereto, be settled in accordance with the rules of the American Arbitration Association by a board of three arbitrators, one arbitrator to be selected by each party hereto and a third to be selected by those two arbitrators. The decision of any two of this board shall be final and binding on the parties hereto and judgment upon the award may be entered in any Court having jurisdiction thereof.
2. No matter shall be submitted to arbitration unless written demand for arbitration is made within 15 days of the receipt of notice by the Town of Hebron WPCA of the decision of the Town of Colchester Utilities Commission. Notice of demand for arbitration shall be given by a sheriff or indifferent person serving a copy of such demand on the Chairman or the Public Utilities Manager of the Town of Colchester Utilities Commission within said fifteen day period. Notice of a decision of the Town of Colchester Utilities Commission made pursuant to the provisions of this paragraph shall be made by a sheriff or indifferent person serving a copy of such notice on the Chairman of the Town of Hebron WPCA within 15 days of such a decision.

If any matter is submitted to arbitration hereunder, such arbitration shall be completed within 65 days of the demand for arbitration hereunder.

ARTICLE V - TERM OF AGREEMENT

The initial term of this Agreement shall be ninety (90) years from the date hereof and the Agreement shall continue from year to year thereafter until renegotiated by the consent and agreement of both parties hereto.

ARTICLE VI - EFFECTIVE DATE

This Agreement shall become effective on the date of execution hereof.

ARTICLE VII - FORCE MAJEUR

Performance hereunder shall be subject to delays occasioned by acts of God, unusual adverse weather conditions, material shortages, strikes, or other delays not caused by either party's fault or neglect.

If any provision of this Agreement or application thereof to any party, person, or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons, parties, or circumstances other than those to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enjoined to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties hereto have hereunto set their hand and seals on the date first above written.

Signed, Sealed and Delivered
in the Presence of:

Harvey Wall
Witness
Patricia A. LaPage
Notary Public 3-31-92

Town of Colchester

By: Theresa Congdon
Theresa Congdon, Chairman
Utilities Commission
hereunto duly authorized

F. Duncan Green
Witness 3-31-92
Patricia A. LaPage
Notary Public

By: F. Duncan Green
F. Duncan Green,
First Selectman
hereunto duly authorized

Town of Hebron

Goldie Liverant
Witness
Patricia A. LaPage
Notary Public 3-31-92

By: Wallace C. Clebowicz
Wallace Clebowicz
Chairman, Water
Pollution Control Authority
hereunto duly authorized

Witness

Notary Public

By: _____
Harry K. Megson, First
Selectman,
hereunto duly authorized