

Memorandum of Understanding

Between

The Town of Londonderry, New Hampshire

And

Bodwell Waste Services Corporation

The purpose of this Memorandum of Understanding (this "MOU") is to establish an agreement by and between the Town of Londonderry, New Hampshire (the "Town of Londonderry"), as represented by its Town Manager, and Bodwell Waste Services Corporation ("Bodwell"), a New Hampshire corporation, to transfer ownership of existing private sanitary sewer facilities located in Londonderry, New Hampshire to the Town of Londonderry (the "Transfer"). This MOU outlines the principal terms and conditions regarding the Transfer, subject to the execution and closing of a definitive transfer agreement, including exhibits to the definitive agreement, (the "Transfer Agreement") by and between the Town of Londonderry and Bodwell.

A. Existing Bodwell Sewer Facilities

Bodwell is a private utility that was previously established to provide wastewater collection service for several large residential developments that were constructed in the early 1990s in the Town of Londonderry and the southeastern corner of the City of Manchester ("Manchester"), near the Londonderry town line. Bodwell currently owns, operates, and maintains the following sewer facilities:

- 1) sewer mains, manholes, and appurtenances located within several City of Manchester Rights-of-Way and existing sewer easements on private property within the Hampshire Woods Subdivision (as shown on Subdivision Plans entitled, "Hampshire Woods, Manchester, New Hampshire" prepared by CLD, dated April 1989 and recorded with the Hillsborough County Registry of Deeds as Plan No. 24393), which includes the streets Morning Glory Drive, Primrose Drive, Ashmere Drive, Meetinghouse Lane, Stonington Drive, Beech Plum Drive, Wild Indigo Lane, Rosecliff Lane, Cobblestone Lane, Megan Drive, Sugar Hill Lane, Karine Lane, and Garden Walk Drive;
- 2) sewer mains, manholes, and appurtenances located within several City of Manchester Rights-of-Way and existing sewer easements on private property within the Megan's Meadow Subdivision (as shown on Subdivision Plans entitled, "Megan's Meadow, Manchester, New Hampshire" prepared by CLD, dated April 1990 and recorded with the Hillsborough County Registry of Deeds as Plan No. 24813), which includes the streets Megan Drive, Aaron Drive, Bittersweet Drive, and Windflower Drive;

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- 3) sewer mains, manholes and appurtenances located within private roads within the Eastmeadow Condominiums, which is located on East Meadow Way;
- 4) sewer mains, manholes and appurtenances located within several Town of Londonderry Rights-of-Way and existing sewer easements on private property and homeowner association property within the Mill Pond Subdivision, which includes the streets Hunter Mill Way, Manter Mill Way, Snowberry Hollow, Grist Mill Hollow, and Bellflower Hollow.
- 5) three existing sewer pump stations and associated force mains that serve the aforementioned areas, including:
 - Rosecliff Pump Station located at 21 Stonington Drive, Manchester (Map 8878, Lot 203)
 - Aaron Drive Pump Station located on Map 887A, Lot 144 (in the general area south of 209 Aaron Drive, Manchester, Map 887A, Lot 71)
 - Eastmeadow Way Pump Station located off of East Meadow Way in the Eastmeadow Condominiums in Manchester

These sewer mains, manholes, pump stations, force mains, and appurtenances are hereinafter collectively referred to as the "Sewer Facilities".

B. Cohas Brook Sewer Project - Contract 4

The Cohas Brook Sewer Project - Contract 4 (Contract 4 Project) is the final project in a decades-long program by the Manchester Environmental Protection Division to expand Manchester's wastewater collection system to the southeastern section of the city, which are areas within the Lake Massabesic and Cohas Brook watersheds.

The Contract 4 Project will extend a new 24-inch interceptor sewer to the Londonderry town line in the vicinity of the existing Aaron Drive Pump Station, and will further extend the interceptor sewer approximately 600 linear feet into Londonderry, where the interceptor will connect to an existing 8-inch sanitary sewer that receives flow from the Mill Pond Subdivision in the Town of Londonderry. The new 24-inch interceptor sewer will connect to the existing 8-inch sanitary sewer in the vicinity of an existing drop manhole, which will allow gravity sewer service to be maintained throughout the Contract 4 Project area without the need for pumping. Contract 4 also includes extensions of approximately 182 linear feet of 8-inch sanitary sewer in the vicinity of Grist Mill Hollow that receives flow from the Mill Pond Subdivision. As a result, the Contract 4 Project will allow the existing Rosecliff Pump Station, the Aaron Drive Pump Station, and the Eastmeadow Way Pump Station to be removed from service and demolished.

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C. Proposed Franchise Dissolution of Bodwell and Transfer of Sewer Facilities to Town of Londonderry.

Bodwell has stated its intent to dissolve the franchise during the construction of the Contract 4 Project, once construction has advanced to the point that the Rosecliff Pump Station, Aaron Drive Pump Station, and the Eastmeadow Way Pump Station can be removed from service and the flows currently entering those pump stations can be redirected to the new sewers constructed as part of the Contract 4 Project.

Pending approval of the Londonderry Town Council, the Town of Londonderry intends to assume ownership of all current Bodwell Sewer Facilities located in the Town of Londonderry, as described above in Section A.4, to facilitate franchise dissolution of Bodwell. However, provided that the Sewer Facilities that the Town of Londonderry intends to assume ownership of do not include: (1) the aforementioned pump stations and their associated force mains and appurtenances, which will be removed from service and demolished as part of the Contract 4 Project and (2) all sewer service pipes located between the sewer mains and buildings (together, the "Non-Acquired Sewer Facilities"). The Sewer Facilities located within the Town of Londonderry excluding the Non-Acquired Sewer Facilities shall be referred to herein as the "Acquired Sewer Facilities."

Such Acquired Sewer Facilities shall be considered assets being put to a public purpose. Provided however, that Bodwell assumes sole responsibility for how the Acquired Sewer Facilities or their transfer will be treated under applicable tax laws as it relates to Bodwell or any other related entities' tax obligations or burdens. For avoidance of doubt, the Town of Londonderry shall have no responsibility for or liability relating to how the Acquired Sewer Facilities or their transfer affect the tax liability or obligations of Bodwell or any other entity or person.

The Town of Londonderry will acquire the Acquired Sewer Facilities located within the Town of Londonderry without additional monetary consideration. The parties to this Memorandum of Understanding agree that the Town of Londonderry will incur no additional cost to acquire the Acquired Sewer Facilities except for the future cost of operating the Acquired Sewer Facilities. It is further agreed that the Town of Londonderry's consideration for the Acquired Sewer Facilities is its undertaking of the cost associated with operating the Acquired Sewer Facilities following the anticipated dissolution of Bodwell's franchise.

The Town of Londonderry will cooperate and sign all reasonably necessary documents, including but not limited to the Donee Acknowledgment section of the Internal Revenue Service form 8283, that acknowledge that the said Acquired Sewer Facilities are to be put to a public purpose. Such cooperation shall not be unreasonably withheld.

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D. Contents of the MOU and Its Effect

The parties agree that the Memorandum of Understanding reflects the parties' full agreement regarding the transfer of the Acquired Sewer Facilities and that neither party is relying on any external representations or promises regarding the subject matter of this Agreement except for those referenced herein.

The transfer of the Acquired Sewer Facilities contemplated by this MOU will not be complete until Bodwell signs and executes the Transfer Agreement and Sewer Facility Transfer Documents (which shall include a deed of transfer and/or any other instruments deemed necessary to transfer the Acquired Sewer Facilities) to transfer ownership of the Acquired Sewer Facilities and until the Town of Londonderry formally accepts the Acquired Sewer Facilities by either countersigning and executing the Sewer Facility Transfer Documents or executing another instrument formally accepting ownership of the Acquired Sewer Facilities.

Other Conditions

- 1) Bodwell agrees to file the necessary applications with the State of New Hampshire Public Utilities Commission (PUC) to dissolve the franchise and transfer the Acquired Sewer Facilities to the Town of Londonderry.
- 2) Londonderry will incur no cost associated with its acquisition of the Acquired Sewer Facilities, other than the future cost of operating the Acquired Sewer Facilities.
- 3) Following receipt of necessary approvals by the PUC, the Town of Londonderry and Bodwell agree to negotiate in good faith, sign, and execute a binding Transfer Agreement, which shall include and incorporate a deed, or deeds, of form and substance agreeable to the parties along with all ancillary documents deemed necessary to transfer ownership of the Acquired Sewer Facilities to the Town of Londonderry (the "Sewer Facility Transfer Documents"). The Sewer Facility Transfer Documents will include transfer to Londonderry of all existing sewer easements previously established to allow access to operate, maintain, improve, or replace the Acquired Sewer Facilities. The Sewer Facility Transfer Documents shall be signed by Bodwell and successfully filed with the Rockingham County Registry of Deeds prior to the dissolution of the Bodwell.

The Acquired Sewer Facilities transferred in the Sewer Facility Transfer Documents shall be considered assets being put to a public purpose. Provided however, that Bodwell assumes sole responsibility for how the Acquired Sewer Facilities or their transfer will be treated under applicable tax laws as it relates to Bodwell or any other related entities' tax obligations or burdens. For avoidance of doubt, the Town of Londonderry shall have no responsibility for or liability relating to how the Acquired Sewer Facilities or their transfer affect the tax liability or obligations of Bodwell or any other entity or person.

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- 4) The Transfer Agreement shall establish an appropriate schedule for transferring the ownership of the Acquired Sewer Facilities from Bodwell to the Town of Londonderry in a manner that corresponds to the planned construction sequence for the City of Manchester's Contract 4 Project. The formal transfer of ownership of the Acquired Sewer Facilities shall coincide with, but shall not be before, the substantial completion of construction of the City of Manchester's Bid Alternate Nos. 1, 2 and 3, to the reasonable satisfaction of the parties, as well as the other terms and conditions herein and in the Transfer Agreement and shall occur prior to the franchise dissolution of Bodwell.
- 5) The Town of Londonderry shall have no obligation to acquire the Acquired Sewer Facilities unless the City of Manchester achieves substantial completion of the portions of the Contract 4 Project affecting the Acquired Sewer Facilities, to the reasonable satisfaction of the parties, which, at a minimum, shall result in an operational system in which (1) the Acquired Sewer Facilities flow via gravity to the new interceptor sewer and (2) the interceptor sewer is functional and able to move waste to the City for treatment.
- 6) At the time of Londonderry's acquisition of the Acquired Sewer Facilities, Bodwell will cease providing sewer service in Londonderry and Bodwell will only bill customers located in Londonderry for sewer service provided up to the date of cessation of service.
- 7) Upon recording of the Sewer Facility Transfer Documents which are recordable, substantial completion of construction of Bid Alternate Nos. 1, 2 and 3, to the reasonable satisfaction of the parties, and the formal transfer of Acquired Sewer Facilities to the Town of Londonderry, Bodwell shall no longer have any obligation with respect to the care, operation, maintenance, and repair of the Acquired Sewer Facilities lying within the Town of Londonderry.
- 8) In connection with obtaining the necessary easements in Londonderry to complete the construction of Bid Alternative 3, easements which shall be granted to the Town of Londonderry, the City of Manchester has or will incur certain surveying costs (the "Easement Surveying Costs"). The Town of Londonderry will not be responsible for the payment of those costs.
- 9) As a condition to accepting the Acquired Sewer Facilities, the Town of Londonderry will receive title and ownership of (1) all other sewer facilities (sewer mains, manholes and appurtenances) required to operate the Acquired Sewer Facilities, including the interceptor sewer, all of which must conform to Londonderry's ordinary specifications for similar facilities, and (2) any easements or property rights needed to allow access to operate, maintain, improve, or replace the Acquired Sewer Facilities.
- 10) Prior to the execution of the Transfer Agreement Bodwell shall provide the Town of Londonderry with documented confirmation based on surveyed current conditions that all of the Acquired Sewer Facilities are legally located within Town of Londonderry Rights-of-Way or the existing sewer easements on private property and homeowner association property that will be transferred to Londonderry through the Sewer Facility Transfer Documents.
- 11) The Town of Londonderry's acceptance of the Acquired Sewer Facilities is conditioned on the Town of Londonderry's Council's approval of this transaction.

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12) Prior to accepting the Acquired Sewer Facilities, Bodwell will complete an accurate inspection of all Acquired Sewer Facilities, as set forth in the Sewer System Inspection Procedure Guidelines that the Town of Londonderry previously provided to Bodwell on June 2, 2021 and as set forth in any communications between the parties. Additionally, Bodwell will complete all repairs required by the Town of Londonderry that arise from the above-mentioned inspections to the Town of Londonderry's satisfaction.

13) Bodwell shall provide a schematic map of the Acquired Sewer Facilities, which shows the area of the Acquired Sewer Facilities, including the Mill Pond Subdivision, along with any roads, sewer manholes, and sewer lines.

14) As a condition to accepting the Acquired Sewer Facilities, the Town of Londonderry must be satisfied that Bodwell is the owner of the Acquired Sewer Facilities and that Bodwell's ownership of same is satisfactory of record and free and clear of encumbrances deemed objectionable to the Town of Londonderry.

15) The signatories hereby establish this mutual understanding in good faith, as outlined above, and agree to the terms and conditions of this MOU. If any of the conditions set forth in this MOU are not satisfied, the Town of Londonderry reserves the right to refuse ownership of the Acquired Sewer Facilities by not signing the Sewer Facility Transfer Documents or otherwise refusing to formally accept the Acquired Sewer Facilities or by postponing signing of the Sewer Facility Transfer Documents or formal acceptance until such time that the conditions are satisfactorily met in the opinion of the Town of Londonderry. It is acknowledged that delays with respect to Bodwell obtaining the necessary approvals from the PUC could lead to related delays with the City of Manchester authorizing construction of Bid Alternate Nos. 1, 2 and 3, which in turn could lead to claims for extra work by the City of Manchester's selected general contractor for the Contract 4 Project (e.g. remobilization costs due to construction sequencing/scheduling interruptions, etc.). If such delays or claims for extra work arise, the Town of Londonderry is aware that the City of Manchester reserves the right to refuse ownership of the Sewer Facilities located in Manchester by not signing the Sewer Facility Transfer Documents or by postponing executing the Sewer Facility Transfer Documents. In such case, the Town of Londonderry will not claim costs from Bodwell on account of these delays.

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AUTHORIZED SIGNATURES

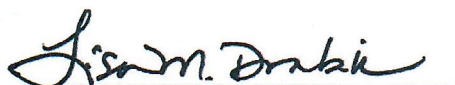
Town of Londonderry



Michael Malaguti
Town Manager, Londonderry

8/18/2022

Date



Witness

Bodwell Waste Services Corporation



Robert S. LaMontagne

8/18/22

Date



Witness