

INTERMUNICIPAL AGREEMENT
BETWEEN THE CITY OF PORTSMOUTH, NEW HAMPSHIRE AND
THE TOWN OF RYE, NEW HAMPSHIRE
FOR SEWER LINE EXTENSION

This agreement made this 29th day of August, 2012 between the City of Portsmouth, New Hampshire, a duly organized municipality of the State of New Hampshire, having a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter "Portsmouth") and the Town of Rye acting through the Rye Sewer Commission (hereinafter "Rye" or "Rye Sewer Commission"), a duly organized municipality of the State of New Hampshire having a principal place of business at 10 Central Road, Rye, NH 03870, for the extension of Portsmouth's municipal sewer system as provided for under RSA 53-A:3 et seq.

WHEREAS, Portsmouth currently provides sewer services to approximately 6,200 customers by way of approximately 100 miles of sewer mains and 20 pumping stations;

WHEREAS, Portsmouth operates two wastewater treatment plants; a 1.2 mgd secondary plant at the Pease International Tradeport and a 4.8 mgd advanced primary plant at Peirce Island, which is presently scheduled to be upgraded to provide secondary treatment;

WHEREAS, Portsmouth's wastewater system users are regulated by local ordinance; rates and fees being set during the annual budget process consistent with a Final Report for Water and Sewer Rate Study dated September 2006 prepared by Weston & Sampson and Woodcock & Associates;

WHEREAS, In addition to serving Portsmouth residents, Portsmouth receives bulk wastewater generated from the Adams Point Mobile Home Park located in Rye, pursuant to a 1997 agreement with the Town of Rye and such agreement is presently being renegotiated;

WHEREAS, Portsmouth also accepts wastewater from the Town of New Castle pursuant to a bulk wholesale agreement, which agreement is also being renegotiated;

WHEREAS, Portsmouth presently services 108 Ocean Road and 1450 Greenland Road, Greenland, NH pursuant to a Public Utility Commission Order Nisi dated June 20, 2008 and further anticipates accepting wastewater from the Town of Greenland pursuant to a 2011 intermunicipal agreement with the Town of Greenland;

WHEREAS, Rye wishes to extend sewer services to portions of Rye as conditions permit;

WHEREAS, Such extension will help ensure that sewage from residential and commercial properties is disposed of in an environmentally responsible manner and that public health is maintained; and

WHEREAS, Portsmouth is not a "public utility" pursuant to RSA 362:4, III (a) as it serves customers outside its municipal boundaries using the same rates as those charged to

customers within its boundaries.

Accordingly, in consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

1. **Purpose:** Portsmouth and Rye hereby enter into this Agreement to extend, as conditions set forth herein are met, Portsmouth's sewer system to certain portions of Rye that are presently served by Portsmouth's municipal water system. The portions of Rye to which the Portsmouth system may be extended during the term of this Agreement are shown on the attached map identified as Exhibit A and are described as follows:
2. **Conditions for Extension:** Portsmouth shall accept an extension of its sewer system as users in Rye make funds available for such extensions. Portsmouth shall have no obligation to extend into any area described in Paragraph 1 unless extension costs are born by the new users in Rye. Neither Rye nor Portsmouth have any obligation whatsoever to make funds available for such extensions.

This Agreement allows a third party (or parties) to extend the sewer line under such terms and conditions that are consistent with this Agreement and negotiated with Portsmouth and Rye. Such party will either design and construct a sewer line extension at its cost to Portsmouth's specifications or reach an agreement with the City of Portsmouth relative to Portsmouth undertaking such construction itself. In no case shall the City be required to bond or otherwise advance or loan funds for an extension.

Before beginning construction, the plans and specifications shall be approved by the City and by the Rye Sewer Commission (for that part of the sewer extension located in Rye) and New Hampshire Department of Environmental Service. All costs of design, engineering, permitting, rights-of-way acquisitions, construction, insurance costs and testing related to the sewer extension line shall be borne solely by the third party and the costs shall be agreed upon by Portsmouth, Rye Sewer Commission and such third party. Additionally, filing fees necessary for PUC review and approval shall be paid for by such third party.

Within thirty (30) days of substantial completion of the construction of the sewer line extension as determined by the City of Portsmouth, ownership of the sewer line shall be transferred to the City of Portsmouth by the third party. Also transferred shall be any and all necessary easements and other property rights to enter property to allow the City of Portsmouth to operate and maintain such sewer line extension. Portsmouth shall have no obligation to accept sewage from the sewer line extension until such time as the line is transferred to the City. Thereafter, Portsmouth will own the sewer line extension, and the responsibilities for and cost of operation, maintenance and repair and replacement shall remain with Portsmouth pursuant to Portsmouth sewer

regulations and the franchise approval by the New Hampshire Public Utilities Commission. Portsmouth's ownership in any infrastructure and any easement and other property rights acquired by any accepted sewer line extension shall survive the termination of this Agreement.

Rye shall not bear any responsibility and shall not bear any costs for construction, maintenance and repair or replacement of the sewer extension line.

The areas of Rye to which the sewer line may be extended as described under paragraph 1 are presently served by Portsmouth's municipal water system. The City generally bills sewer usage based on metered municipal water usage and remedies for non-payment are exercised through the termination of water services. Should any sewer line extension include a property not connected and served by municipal water, such property owner must reach an agreement with the City of Portsmouth as to metering, collection and termination of services.

3. **Meetings and Administration of Agreement:** No separate legal or administrative entity is created to administer this Agreement. Once Portsmouth acquires ownership of any sewer line, pump station or other infrastructure constructed as part of this Agreement, Portsmouth shall be solely responsible to operate and maintain the sewer line, pump station(s) or other infrastructure and to finance these operations. Portsmouth shall own any and all real and personal property necessary to implement this Agreement to the extent not inconsistent with the terms of this Agreement, Rye customers shall have the same rights and responsibilities as Portsmouth customers; this includes, for example, Portsmouth's right to require pre-treatment of wastewater through the issuance of an Industrial Discharge Permit.

Portsmouth and Rye, through their representatives, the City Manager and the Rye Sewer Commission respectively, shall serve as administrators of this Agreement and may meet at such times and places as are mutually convenient to discuss issues of mutual concern including but not limited to connections along the sewer extension line and any possible further expansion of the sewer line into other areas. Once a sewer line extension has been accepted by Portsmouth, Portsmouth shall serve as an administrator for purposes of RSA 53-A subject to its obligations described in this Agreement, any order of the Public Utilities Commission, and such applicable federal, State and local ordinances that govern the provision of sewer service.

4. **Cost:** The cost of construction of any sewer line extension will be as agreed upon by the parties. Any property owner (other than the property owner(s) who construct(s) the line) within Rye who wishes to connect to the public sewer line will pay a connection fee and such other charges and fees to Portsmouth as may be required by the Portsmouth Sewer and Water Ordinances along with any applicable Capacity Use Surcharge. Billing shall be in the same manner as

applied to Portsmouth residents; such billing is presently monthly based on water use as metered by Portsmouth Water Division.

5. **Sewer Connections:** Rye shall retain authority within Rye to grant waivers for Rye properties connections otherwise required pursuant to RSA 147:8 and to order private property owners to connect to any municipally owned sewer line as may be lawful and appropriate.
6. **Future Expansions of the Franchise:** Portsmouth and Rye retain the authority to negotiate future expansions of the sewer extension lines. Any future expansion in Rye beyond service to properties beyond the area depicted on Exhibit A shall require approval of the Rye Sewer Commission; a favorable vote of the Rye Town Meeting; and amendment of this agreement.
7. **Term:** Any third party seeking to extend the Portsmouth sewer system to areas described herein must complete construction and transfer ownership to Portsmouth within five (5) years from the date of this Agreement. All rights, powers and obligations to provide and regulate public sewer service shall continue to exist after expiration of the five (5) year time period for construction and transfer. Each jurisdiction shall also retain authority over waivers and connections to the sewer extension line beyond the five year window for construction and transfer described herein.
8. **Amendment:** This Agreement may be amended only by written Agreement signed by both parties.
9. **Public Utility Commission Approval:** The parties understand that any extension of Portsmouth's system within Rye is conditioned upon the New Hampshire Public Utilities Commission having granted a final, non-appealable order so authorizing such franchise extension, such order to be on terms acceptable to Rye and to Portsmouth.
10. **Notices:**

For Town of Rye

Rye Sewer Commission
10 Central Road
Rye, NH 03840

With a copy to:

Michael Donovan, Esq.
PO Box 2169
Concord, NH 03302-2169

For the City of Portsmouth

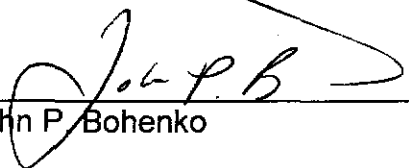
John P. Bohenko, City Manager
1 Junkins Avenue
Portsmouth, NH 03801

With a copy to:
Robert Sullivan, City Attorney
1 Junkins Avenue
Portsmouth, NH 03801

11. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the provisions of the laws of the State of New Hampshire.
12. **Authorization:** This Agreement is authorized by the City of Portsmouth, pursuant to a City Council vote of December 9, 2011, pursuant to a vote taken on Article 13 at the March 9, 2010 Town Meeting; and pursuant to a vote of the Rye Sewer Commission at its August 29th, 2012 meeting.

CITY OF PORTSMOUTH

By its City Manager

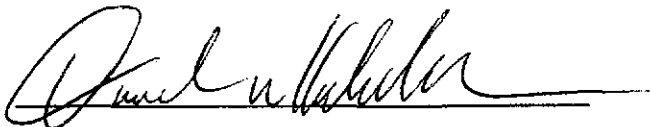


John P. Bohenko

Dated: 7-9-12

TOWN OF RYE

By its Sewer Commission



Chairman Sewer Commission

Dated: 8-29-12

