

Appendix B: Sample Wastewater Use Agreement

SEWER USE AGREEMENT

CITY OF _____ (A)

CITY OF _____ (B)

AGREEMENT

THIS AGREEMENT, is made and entered into by and between the CITY A, a Minnesota municipal corporation, herein called City A, and the CITY B, a Minnesota municipal corporation herein called City B. In the event City B does not enter into this Agreement with City A prior to January 1, ____ City A reserves the right to renegotiate the agreement in its entirety.

RECITALS

- A. City A owns and operates a Wastewater Treatment Plant, herein called “WWTP”, for the treatment of sanitary sewage.
- B. In compliance with a Consent Decree dated _____, between City A and the Minnesota Pollution Control Agency, City A has constructed a sanitary sewage collection and treatment facility.
- C. City A received a construction grant for its WWTP, and in compliance with the grant and the requirements of the Consent Decree has adopted a “Sewer Use Ordinance” controlling the discharge of sewage into its system; and has adopted a “Sewer Service Charge Ordinance” to assure that each recipient of the wastewater treatment services pays its proportionate share of the cost of operation, maintenance, and replacement of the waste treatment services.
- D. City B desires to discharge sewage to City A for collection and treatment and City A agrees to provide such services. In agreeing to transport its sewage to City A for treatment, City B will abandon its plans to construct their own treatment facility.

COVENANTS

NOW, THEREFORE, in consideration of the recitals and the other mutual obligations of the parties herein expressed, City A and City B do agree as follows:

1. Definitions
 - a. For the purpose of the Agreement, the words, terms and abbreviations used herein shall have the meanings, unless the context specifically indicates otherwise, as set out and defined in Section ____ of the Code of Ordinances of City A, “An Ordinance Establishing Charges for Users of the City A Wastewater Treatment Plant Facilities”, (hereinafter referred to as “Sewer Rate Ordinance”) and “An Ordinance Regulating the Use of Public Sewers for the City A”, (hereinafter referred to as “Sewer Use Ordinance) as amended from time to time.

- b. For purposes of this Agreement, the term “Interceptor System” shall mean the following parts of the WWTP:

Facility	From	To
City B Forcemain	City B	City A

2. Term and Terminations

- a. City B shall have the right for as long as the City A operates its wastewater treatment plant to use the WWTP for treatment of its sanitary sewage as long as it complies with the provisions of this Agreement or until this Agreement is terminated as otherwise provided herein.
- b. City B may terminate this Agreement at any time by twelve (12) months prior written notice. There will be no reimbursement for the up front fee should City B elect to terminate the Agreement.
- c. The parties agree that if either party believes the effect of this Agreement is inequitable or unfair to its citizens, such party may by sixty (60) days written notice, or sooner if agreed in writing by both parties, request re-negotiation of any part of this contract and the other party will in good faith, participate in such negotiations.

3. Compliance with Applicable Laws

- a. Prior to initial connection, City B shall adopt, maintain, and enforce the following in such a manner as to at all times comply with the “Consent Decree:
 - 1. A system of charges to assure that each recipient of the waste treatment services within its jurisdiction will pay its proportionate share of the costs of operation and maintenance of WWTP Sewer Rate Ordinance;
 - 2. An Ordinance providing for sewer use containing provisions similar to Section ___ of the Code of Ordinance of the City A and ensuring that new sewers and connections to the sewer system are properly designed and constructed (Sewer Use Ordinance).
- b. In the construction, maintenance, and operation of its sewer system, City B will comply with all applicable State & Federal laws.
- c. City A shall enforce its Sewer Rate and Sewer Use Ordinances at the points of discharge from City B into the City sewer system and in addition to its contract and legal remedies shall have the right to refuse to accept or treat sewage in violation of its Ordinances.
- d. City B shall not allow any use from outside its corporate limits to discharge sewage into its sewer system without the prior written approval of City A.

4. Discharge Limitations

- a. The parties recognize that there is limited capacity in the WWTP and, therefore, agree that City B's right to discharge into the WWTP shall be subject to the following limitations:
 - 1. City B’s maximum flow rate to the WWTP shall not exceed 75,000 gallons per day, unless suitable arrangements have been made by City B to purchase additional capacity in these conveyance facilities from City A.
 - 2. Any new connections to the WWTP shall be prohibited unless sufficient capacity is available in all downstream conveyance and treatment facilities including, but not limited to, capacity for flow, CBOD and TSS, as determined by City A.
 - 3. Any private industrial user of the system will be covered by a separate pre-treatment industrial Agreement according to the rules and regulations approved by MPCA.
- b. In view of the discharge limitation established above, City A agrees to inform City B of any planned expansion of the conveyance or treatment facilities which serve City B, and

to offer to include additional space for City B in said facilities subject to City B's participating on a proportionate basis in the cost of the expansion.

5. Measuring Devices

- a. City B agrees to provide, install, and maintain accurate sewerage metering devices at locations designated by City A engineer and in a manner which will insure the volume of all sewage flowing from City B to the WWTP is measured at the point where its sewage leaves City B and at the point where it connects to the City A's WWTP. The measuring devices shall be equipped with an automatic flow measuring and recording device. In addition, City B shall install auto sampling devices which shall be capable of sampling according to set time intervals, time impulse, and/or proportionate to flow.
- b. The records and reports from such measuring devices will be kept by City B and made available to City A for billing and analysis procedures.
- c. In the event of failure of such measuring devices for the purpose of determining rates pursuant to this Agreement, it will be assumed that during the period of in operation of the measuring device the flow will be the average daily volume during the same time period in the preceding year.
- d. City B shall provide for at least one annual inspection and calibration of its flow measuring devices by an independent testing company satisfactory to City A. A certified copy of the inspection and test results shall be provided to the City A promptly after completion.
- e. City A may inspect such measuring devices at any reasonable time and in the event such a device fails and is not repaired within a reasonable time by City B, then City A may repair the same and City B will pay City A its reasonable costs and expenses for said repair.

6. Testing and Sampling

- a. Sampling shall be carried out by customarily accepted methods. "CBOD" and "TSS" shall be done at least monthly with 24-hour composite samples.
- b. Both parties will cooperate in performing such additional tests and sampling as may be required by the State or Federal Agency having jurisdiction in the area.
- c. Testing and sampling required by this Agreement will be performed monthly at the expense of City B at a state approved and certified laboratory.
- d. In addition, City A shall have the right at all reasonable time to inspect, examine, sample, and test all sewers and sewage of City B.

7. Operations

- a. Both parties will at all times use reasonable and diligent care to keep their sewer systems and water pollution control facilities in good operating condition.
- b. All parts of the WWTP and all records and accounts relating to the matters covered by this Agreement and the applicable sewer ordinances, shall be made available for inspection by either party at any reasonable time.
- c. Both parties will cooperate with each other in the enforcement of their sewer related ordinances.
- d. Neither party shall be liable to the other for damages in case of an operational or system failure not due to its negligence or which is caused by an event beyond its control.

8. Charges and Payments

- a. Thirty (30) days before anticipated connection, City B shall pay City A 10.56% of the amount of debt service bonds paid to date by City A. If payment by City B is made prior to January 1, _____, the amount would be \$ _____. This amount represents City B's proportionate share of the present worth of the "local" cost of the utilized portions of the WWTP.
- b. City B shall pay City A for the use of the WWTP its proportionate share of the bond payments, operation, maintenance and replacement cost of the WWTP in monthly installments based on the actual flow and loading discharge to the WWTP and the operating and debt service costs that are existing at that time. Specifically excluded are costs associated with maintaining City A's sewer distribution system.
- c. The unit cost for City B's proportionate share shall be:

FLOW FROM CITY B x 1/3 Total Operation Cost TOTAL FLOW (Q)
CBOD FROM CITY B x 1/3 Total Operation Cost TOTAL CBOD (C)
TSS FROM CITY B x 1/3 Total Operation Cost TOTAL TSS (SS)

Terms used in the above unit cost formulas are defined as follows:

- Q = Total annual flow, in 1,000 gallon units measured at the City A WWTP during the preceding year.
- C = Total annual pounds of CBOD, in 100 pound units, measured at the City A WWTP during the preceding year.
- SS = Total annual pounds of TSS, in 100 pound units measured at the City A WWTP during the preceding year.
- d. In addition to the above charges, City B agrees to pay in twelve (12) monthly payments a General Fund Administration charge of four percent (4%) of all charges annually levied to the utility for General Fund Administration costs.
 - e. The cost for preparation of this contract such as: engineering fees to evaluate the WWTP to upgrade the effluent limitations, accountant, and attorney fees shall be assessed to City B in (20) twenty equal installments with the total not to exceed \$ _____.
 - f. The charges so computed shall be billed to City B following the last day of each month and shall be payable within thirty (30) days.
 - g. Effective date for rate adjustments under the terms of this Contract shall become effective on January 1 of the following year.

9. Annual review of Unit Costs

An annual review shall assemble, tabulate, and distribute data in accordance with the following steps:

Step 1: City A will tabulate the projected annual review requirements in the table format that clearly demonstrates which budget amounts are to be shared in proportion to flow and load by WWTP users, and which amounts is the sole responsibility of a particular contract.

Step 2: City A will tabulate annual wastewater flow and load data for the WWTP, for the immediately preceding 12 month period. The data shall contain the following information:

Total Flow: In units of million gallons per year.

Average Daily Flow: In MGD, CBOD, and TSS in units of mg/l.

Total CBOD: In units of mg/l and lb/year.

Total Suspended Solids: In units of mg/l and lb/year.

Flow from each contract customer: In units of million gallons/year.

CBOD from each contract customer: In units of mg/l and lb/year.

Total Suspended Solids from each contract customer: In units of mg/l and lb/year.

Step 3: Annual budget costs shall be distributed to three cost causative elements, in accordance with the following criteria:

Category	Flow	CBOD	TSS
E	33—1/3%	33—1/3%	33—1/3%

Step 4. Unit costs shall be computed by applying the data assembled in Steps 1 through 3, of the formulas presented above to paragraph “8d” herein.

Step 5. City A will share copies of the above data with City B by October 1 of each year and actual budgets or audits when requested by City B.

Step 6. With respect to City B, City A will use the rates derived by the preceding steps or as adjusted using the previous three (3) months information.

10. Future Construction

City B shall be responsible for its proportionate share of those future capital expenditures attributable to upgrading the existing WWTP. City B shall not share in capital costs associated with expanding the capacity of the WWTP unless City B has made prior arrangements with City A to purchase additional capacity in the WWTP except that in any case City B shall pay all the costs associated with bringing the pumping capacity of the City B force main up to the design level.

11. Remedies

- a. In addition to the remedies provided in this Agreement and those normal remedies provided by law for breach of contract, the parties specifically agree that this Agreement may be enforced in a Court of competent jurisdiction by an action to require specific performance.
- b. At any time City B defaults in making payments due at a specific time, an interest rate (in accordance with current ordinance) shall be added to the payments.

12. Infiltration and Inflow

Parties will continue to cooperate with all applicable agencies and in good faith attempt to eliminate infiltration and inflow presently existing in their respective systems.

IN WITNESS WHEREOF, the Council of City A, by appropriate resolution duly adopted, has caused this Agreement to be executed in its corporate name by its Mayor and City Clerk/ Treasurer and its corporate seal to be affixed hereto; and the Council of City B by appropriate resolution duly adopted has caused this Agreement to be executed in its corporate name by its Mayor and City Clerk and its corporate seal to be affixed hereto, the date and year first above written.

THE CITY OF CITY A

THE CITY OF CITY B

BY: _____
MAYOR

BY: _____
MAYOR

BY: _____
CITY CLERK

BY: _____
CITY CLERK