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**WASTEWATER DISPOSAL CONTRACT**

**by and between**

**THE CITY OF GARDINER**

**TOWN OF RANDOLPH**

**and**

**TOWN OF FARMINGDALE**

**dated \_\_\_\_\_, 2006**

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## **WASTEWATER DISPOSAL CONTRACT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_th day of \_\_\_\_\_, 2006, by and between the **City of Gardiner** (hereinafter “Gardiner”), the **Town of Randolph** (hereinafter “Randolph”), and the **Town of Farmingdale** (hereinafter “Farmingdale”), all being municipal corporations located in Kennebec County, Maine, organized and existing under and by virtue of the laws of the State of Maine,

### **WITNESSETH:**

#### **Recitals:**

1. Gardiner is the owner and operator of a municipal wastewater secondary treatment plant / water pollution control facility and sewer system located on River Avenue in the City of Gardiner, Maine (“treatment plant”), including the Kennebec interceptor, duly licensed by the State of Maine [*license nos. ME 0101702 and W002655-5L-G-R*] to accept, treat and discharge domestic and industrial wastewater flows. Said treatment plant consists of the “Facilities for Common Service in Gardiner” as described in paragraph 4(a) of the parties’ prior agreement dated September 29, 1971, plus subsequent upgrades and additions thereto.

2. Randolph and Farmingdale currently receive service from Gardiner’s treatment plant, under a “Sewage Disposal Service Contract” negotiated between the three parties for this purpose and dated September 29, 1971, as previously amended.

3. Gardiner’s treatment plant has a maximum design capacity for wastewater treatment of 1,650,000 gallons per day (monthly average daily flow). The plant has a current licensed discharge capacity of 4,500,000 gallons per day (monthly average daily flow) for treated wastewater.

4. Gardiner has recently undertaken construction of a new primary clarifier, Kennebec relief interceptor and other treatment plant upgrades. Under the September 29,

1971 agreement, Randolph and Farmingdale have contributed and will contribute to the cost of these improvements through their payment of sewer rates to Gardiner.

5. The parties recognize and anticipate the need for future expansions and upgrades of Gardiner's treatment plant to accommodate future growth within their respective communities, to remain in compliance with existing wastewater discharge licenses, and to comply with future licensing requirements that may be based on future changes in applicable laws and regulations.

6. For the purpose of addressing future wastewater disposal needs of their respective communities and to provide for the joint exercise of enforcement powers with respect to their respective wastewater pretreatment and sewer ordinances now in force or hereafter adopted, consistent with 30-A MRSA sec. 2203, Gardiner, Randolph and Farmingdale wish to update and amend their previous agreement dated September 29, 1971 in its entirety, and have negotiated the present Agreement for this purpose.

In consideration of the foregoing recitals and of the mutual covenants and promises made herein, Gardiner, Randolph and Farmingdale hereby agree as follows:

**Agreement:**

1. Definitions.

For purposes of this Agreement, the following words and phrases shall be defined as provided below. Other words and phrases used in this Agreement shall be defined as provided in the City of Gardiner's Water and Sewer Ordinance, Title 27, Chapters 1 through 5, of the Code of the City of Gardiner, Maine ("Gardiner Code") as in force on the effective date of this Agreement, or as provided in applicable state and federal laws, regulations and licenses relating to wastewater treatment and discharge. All words and phrases not so defined shall be given their ordinary or "dictionary" definition.

Agreement: When capitalized, refers to this Wastewater Disposal contract between Gardiner, Randolph, and Farmingdale.

*Design Capacity:* The demonstrated capacity of the Gardiner treatment plant to safely treat and discharge wastewater, within all applicable license requirements and discharge parameter limitations, on a sustained (*i.e.*, 30 day) basis.

*Discharge Parameters:* Maximum volume and concentration limitations imposed on discharges from the Gardiner treatment plant under applicable state and / or federal discharge licenses. Discharge parameters include such measures as maximum levels for total suspended solids (“TSS”), biochemical oxygen demand (“BOD”), and heavy metal concentrations, among others.

*Domestic Wastewater:* Wastewater derived principally from dwellings, business buildings (*i.e.*, offices), institutions and the like. It may or may not contain ground water, surface water, or stormwater.

*gpd:* An abbreviation for “gallons per day”, used as a measure of the rate of flow or discharge of wastewater.

*Industrial Wastewater:* Wastewater in which solid, liquid or gaseous wastes from industrial manufacturing processes, laboratories, trade, or businesses predominate, as distinct from domestic wastewater. Industrial wastewater includes the wastewater generated by any “industrial user” or “significant industrial user” as defined in applicable regulations of the U.S. Environmental Protection Agency and the Maine Department of Environmental Protection, or in the City of Gardiner’s wastewater pretreatment ordinance (Title 27, Chapter 2, Gardiner Code) as currently in force or as hereafter amended.

*Maximum Daily Flow:* The maximum allowable volume of discharge to the Gardiner treatment plant, in gallons of wastewater, during any 24 hour period.

*Monthly Average Daily Flow:* The maximum allowable volume of discharge to the Gardiner treatment plant in any thirty day period, expressed in average gallons per

day. A monthly average daily flow of 350,000 gallons is equal to 10,500,000 gallons of wastewater over a thirty day period (= 350,000 x 30).

Peak Hourly Flow: The maximum allowable volume of discharge to the Gardiner treatment plant in any one hour period, expressed in a daily discharge rate. A peak hourly flow of 1,000,000 gallons per day (gpd) is equal to 41,667 gallons of discharge in any one hour (= 1,000,000 divided by 24).

Superintendent: The City of Gardiner's wastewater treatment plant superintendent, as appointed from time to time by the Gardiner City Council or City Manager.

Treatment Plant: See Recitals above.

Wastewater: A combination of liquid water and carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be unintentionally present.

2. Effective Date, Term and Scope of Agreement.

(a) *Effective Date*. This Agreement shall take effect as of \_\_\_\_\_, 2006.

(b) *Term*. This Agreement shall remain in effect for an indefinite term following the effective date hereof; unless terminated for default, or by notice or mutual consent of the parties as provided in section 18 below.

(c) *Prior Agreement*. As of the effective date of this Agreement, the parties' prior "Sewage Disposal Contract" dated September 29, 1971, as previously amended, shall be deemed terminated and of no further force or effect; provided however, that Randolph and Farmingdale shall remain obligated to Gardiner for all unpaid financial

obligations incurred by them under the September 29, 1971 agreement, as previously amended, for sewer service received through the effective date of this Agreement; and further provided that the existing Advisory Board as constituted and established under section 8 of the parties' prior agreement shall remain in existence as an Advisory Board with respect to the present Agreement for the full duration hereof, including any extensions and renewals, with the duties and composition set out in section 15 of this Agreement.

(d) *Scope of Agreement.* On and after the effective date of this Agreement, Gardiner shall provide wastewater treatment and disposal services to Randolph and Farmingdale, and Randolph and Farmingdale shall utilize such services, subject to the terms, conditions, and payment of rates and other charges as further provided herein.

(e) *Prior Improvements.* Notwithstanding paragraph 2(c) above, it is further agreed that a *pro rata* portion of ongoing debt service charges incurred by Gardiner in connection with the recently-completed secondary clarifier project and other treatment plant upgrades constructed or planned for construction prior to the effective date of this Agreement (hereinafter "prior improvements") shall continue to be included in the sewer rates paid to Gardiner by Randolph and Farmingdale under this Agreement. The *pro rata* portion of such debt service charges to be paid by Randolph and Farmingdale as part of their sewer rates shall continue to be based on their respective shares of the total volume of wastewater treated and discharged by the treatment plant based on metered flows, determined and adjusted monthly. When actual metered flows are not available with sufficient regularity and accuracy, to the mutual satisfaction of Gardiner, Farmingdale and Randolph, then the proportionate distribution of annual debt service costs for such prior improvements shall be based on the average of the immediately preceding twelve months' flows.

3. Discharge Limits.

Subject to payment of rates and other charges, and compliance with other terms and conditions as provided further herein, Randolph and Farmingdale may each flow and discharge into Gardiner’s treatment plant, and Gardiner shall reserve to Randolph and Farmingdale, the following maximum amounts of wastewater originating within their respective communities (including industrial wastewater when specially licensed for that purpose as provided further below):

	<b>Randolph</b>	<b>Farmingdale</b>	<b>Gardiner</b>	<b>Total</b>
Monthly Avg. Daily Flow (Note 1)	350,000 gpd	550,000 gpd	1,600,000 gpd	2,500,000 gpd
Maximum Daily Flow (Note 2)	630,000 gpd	990,000 gpd	2,880,000 gpd	4,500,000 gpd
Peak Hourly Flow (Note 3)	1,000,000 gpd	1,570,000 gpd	6,930,000 gpd	9,500,000 gpd

Notes:

(1) Monthly Average Daily Flow limits may be adjusted upward or downward to reflect the design capacity of Gardiner’s wastewater treatment plant, as affected by seasonal weather conditions, plant expansions, plant upgrades and improvements. It is the parties’ intention that Randolph and Farmingdale shall have reserved to them and be entitled to utilize fourteen percent (14%) and twenty-two percent (22%), respectively, of the treatment plant’s current and future design capacity, measured on a monthly average daily flow basis, for treatment and discharge of wastewater originating within their respective communities.

(2) Maximum Daily Flow limits are intended to accommodate seasonal variations in rainfall levels and resulting groundwater infiltration, stormwater inflows, etc. It is not anticipated that Maximum Daily Flow limits will be reached during dry weather months (e.g., July and August).

(3) Peak Hourly Flow limits are designed to accommodate extreme wet weather events, such as a sudden intense thunderstorm. It is not anticipated that Peak Hourly Flow limits will be reached on a recurring or frequent basis.

4. Character of Wastewater Discharge.

Gardiner, Farmingdale and Randolph shall each take all necessary precautions to assure that their respective discharges to the treatment plant shall contain primarily those waste materials commonly associated with domestic wastewater / sanitary sewage. After the effective date of this Agreement, no new sewer system user whose wastewater consists of industrial wastewater as defined in section 1 above shall be permitted to connect to the wastewater disposal systems of any of the parties or to the treatment plant unless the user concerned has first obtained all required permits under Gardiner's wastewater pretreatment ordinance, Title 27, Chapter 2, Gardiner Code.

5. Rates.

(a) *Charges for Service to Randolph and Farmingdale.* For all service received under this Agreement, Randolph and Farmingdale shall pay to Gardiner a quarterly sewer charge as provided in the cost sharing schedule attached hereto as Exhibit A and made a part hereof. The charges set out in Exhibit A shall be revised annually to reflect changes in operating, maintenance or other costs of providing service, by agreement of the parties and approval of the Advisory Board under section 18 of this Agreement.

(b) *Additional Charges.* In addition to the rates provided, Gardiner may impose a surcharge or additional fee for discharge of high-strength waste, excessive loading, or upset events as provided in Gardiner's Water and Sewer Ordinance. Such additional charges may be imposed by Gardiner directly on commercial and industrial users whose discharge consists in whole or part of "industrial wastewater" as defined herein, consistent with the provisions of Gardiner's wastewater pretreatment ordinance (title 27, chapter 2, Gardiner Code). Alternatively, if the source or cause of the high-strength waste, excessive loading or upset event cannot be traced to a particular individual user, Gardiner may impose such additional charges on the municipality from which such high-strength waste, excessive loading or upset event originated, as a surcharge to the monthly sewer rates provided in Exhibit A.

(c) *Invoices.* Gardiner shall issue quarterly invoices for rates due from Randolph and Farmingdale under this Agreement for services provided hereunder, including any additional charges. Such invoices shall contain a statement of the applicable meter readings, meter constants, consumption during the billing period and other pertinent data as may be required by Randolph and Farmingdale. Meter readings and flow recordings for each of the three municipalities shall be made mutually available, concurrently with issuance of the related invoices.

(d) *Due date; Late Payments.* All invoices issued by Gardiner for services provided under this Agreement shall be due and payable within thirty (30) days after the invoice date. Invoices not paid by the due date shall bear interest on the unpaid balance at the same rate set annually by the City of Gardiner for late property tax payments by Gardiner residents.

(e) *Failure to Pay; Collection Actions.* In the event of non-payment of any amounts due hereunder by Randolph or Farmingdale, Gardiner shall be entitled to obtain judgment and execution in accordance with Maine law, notwithstanding any failure of the non-paying municipality to appropriate funds for the payment concerned. All amounts so recovered, net of collection costs, shall be credited to the City of Gardiner's sewer enterprise fund to fund treatment plant operations.

## 6. Measurement and Standard of Service.

(a) *Measurement of Service.* Randolph and Farmingdale shall be responsible for maintenance, calibration and replacement, as needed, of existing metering devices located at the delivery points specified in Exhibit B attached hereto. When requested, it shall be the obligation of Randolph and Farmingdale to read their respective meters on the final day of each billing period in the presence of a representative of Gardiner. In the event of incorrect registration of such meters or their failure to register, invoices for the billing period(s) concerned shall be based on that municipality's percentage use of the

treatment plant's total flow for the one-year period preceding the period of incorrect registration or failure to register, unless the parties shall mutually agree upon a different method of estimating flows for the billing period(s) concerned.

(b) *Meter Tests.* Randolph and Farmingdale shall periodically inspect and test their respective meters at intervals not exceeding one (1) year, at their sole expense. At the written request of Gardiner, Randolph and Farmingdale shall make additional tests of any or all such meters in the presence of Gardiner representatives. The cost of such additional tests and of any mutually requested meter repairs, maintenance, calibration and adjustments at the Treatment Plant shall be considered to be a common expense, and shall be borne proportionately by the three municipalities in accordance with their respective annual shares of total wastewater discharged to and treated by the treatment plant.

(c) *Continuity of Service.* Gardiner shall use reasonable efforts to provide regular and uninterrupted wastewater treatment service to Randolph and Farmingdale as contemplated by this Agreement. However, Gardiner shall not be liable in damages, for breach of contract or otherwise, to Randolph or Farmingdale for any failure, suspension, diminution, interruption or other variations in service occasioned by or in consequence of any cause beyond the immediate control of Gardiner, including but not limited to acts of God or the public enemy; fires, flood, earthquakes or other catastrophe; labor strikes; power outages; or breakdown of the treatment plant or wastewater transmission facilities.

(d) *Emergencies.* Gardiner shall at all times retain the right to temporarily limit or interrupt service under this Agreement to Randolph and Farmingdale or either of them, whenever necessitated by upset events; extreme weather conditions; wastewater discharges in excess of municipal discharge limits set out in section 3 above; wastewater discharges in excess of treatment plant permit limits; or any of the causes set out in section 6(c) above. Gardiner's treatment plant superintendent shall be responsible for issuing all orders and other necessary actions for this purpose.

## 7. Service Area.

Except as expressly provided below, wastewater treatment services provided under this Agreement shall be limited to properties located within the municipal boundaries of Randolph, Farmingdale and Gardiner. Randolph and Farmingdale shall not extend or allow connection to their respective sewage collection systems so as to serve properties located beyond their respective municipal boundaries, except as follows:

(a) *Pittston Elementary School.* Subject to the provisions of section 8 below relating to sewer connections, Randolph may allow the Pittston Elementary School (Maine School Administrative District No. 11) located in Pittston, Maine and residential and commercial properties located in the immediate area of said school to connect or maintain existing connections to the Randolph sewage collection system, provided that the wastewater discharge from the school and said properties shall not cause Randolph to exceed its wastewater discharge limitations as set out in section 3, above. Randolph, at its own option and discretion, may negotiate an agreement or agreements for this purpose, provided that any such agreements shall not conflict with the provisions of this Agreement.

(b) *West Gardiner.* Gardiner, at its own option and discretion, may negotiate an agreement or agreements and extend its municipal sewage collection system to serve new industrial, commercial and residential development in West Gardiner, provided that the wastewater discharge from areas to be served in West Gardiner shall not cause Gardiner to exceed its wastewater discharge limitations as set out in section 3, above. Any agreements negotiated by Gardiner for this purpose shall not conflict with the provisions of this Agreement, and shall not grant the town of West Gardiner or properties served therein preferential treatment with respect to rates charged for wastewater disposal services over rates charged to Randolph and Farmingdale.

(c) *Northern Avenue.* Owners of properties situated on the southerly side of Northern Avenue in the City of Gardiner who currently receive sewer service from the

Town of Farmingdale shall be permitted to maintain their existing sewer connections and to continue receiving sewer service as customers of the Town of Farmingdale.

(d) *Other Areas.* Subject to the mutual consent of all three parties to this Agreement and certification by the Superintendent that adequate unused treatment capacity exists, Gardiner, Randolph or Farmingdale may provide sewer service to other properties located outside of their respective municipal boundaries, upon such terms and conditions as may be approved by the parties to this Agreement. This paragraph shall not be deemed to imply a right to locate, construct or extend public or private sewer lines or provide sewer service within other municipalities that are not parties to this Agreement, except with the prior approval of the municipality concerned.

#### 8. Sewer Connections.

(a) *Existing Connections.* All properties connected to the sewage collection systems in Randolph and Farmingdale as of the effective date of this Agreement shall be permitted to maintain and replace such existing connections for the duration of this Agreement, subject to payment of individual sewer user fees as may be imposed by Randolph and Farmingdale and subject compliance with all applicable ordinances and local sewer connection requirements.

(b) *Future Connections.* During the term of this Agreement, Randolph and Farmingdale may allow new connections to their respective sewage collection systems, including future extensions thereof, subject to the following provisions:

i. Prior to connecting to the Randolph or Farmingdale sewage collections system, all new users whose discharge consists in whole or part of “industrial wastewater” as defined in section 1 of this Agreement shall obtain such additional licenses or permits as may be required by Gardiner under Gardiner’s industrial wastewater pretreatment ordinance, Title 27, Chapter 2, Gardiner Code (Exhibit C attached) or required under equivalent local industrial pretreatment ordinances adopted by Randolph and Farmingdale for this purpose.

Gardiner, through its Superintendent, shall have concurrent authority (but not the obligation) with Randolph and Farmingdale to enforce all provisions of Gardiner's wastewater pretreatment ordinance or equivalent local industrial pretreatment ordinances that may be adopted by Randolph and Farmingdale within the municipal limits of those municipalities, including the authority to order disconnection of any commercial or industrial property that is discharging to the Randolph or Farmingdale sewage collection systems without a required wastewater industrial pretreatment permit, or in violation of any such permit previously issued. For this purpose, until such time as Randolph and Farmingdale shall have adopted equivalent local industrial pretreatment ordinances, all commercial and industrial properties connecting or maintaining existing connections to the public sewage collection systems of Randolph and Farmingdale whose discharge consists in whole or part of "industrial wastewater" as defined in section 1 of this Agreement shall be deemed to be direct users of Gardiner's treatment plant, and as such to be subject to the permitting requirements and enforcement provisions of Gardiner's wastewater pretreatment ordinance.

Upon adoption of equivalent local industrial pretreatment ordinances, Randolph and Farmingdale shall in all cases have the first option to initiate enforcement proceedings for violations of their respective ordinances occurring within their municipal boundaries. In adopting local ordinances for this purpose, Randolph and Farmingdale shall specify whether enforcement proceedings under their local ordinances are to be initiated by their respective code enforcement officers or other local enforcement officials, or by the Superintendent.

ii. Prior to approving a new sewer connection permit or granting local land use permit approval to certain new development projects requiring a sewer connection, as listed below, Gardiner, Randolph and Farmingdale shall require the person applying for the permit concerned to obtain certification in writing from the Superintendent that the anticipated wastewater discharges from the new project shall not, in combination with other existing discharges, cause Gardiner, Randolph or Farmingdale to exceed their respective discharge limitations as set out in section 3 above. This requirement shall apply to all new development projects of the following types that require a public sewer connection:

- New commercial, manufacturing or industrial buildings and building expansions.
- New commercial restaurants.
- New multi-family residential projects, including apartment complexes; condominium and time share projects; hotels and motels; nursing and boarding homes; dormitories; congregate housing and assisted living facilities, that contain ten (10) or more individual rental rooms or residential dwelling units.
- New residential subdivisions containing five (5) or more residential lots.
- New hospital projects.

The Superintendent shall act promptly on all requests for certification under this subsection, and shall not unreasonably withhold approval of any such request. For purposes of this subsection, “anticipated wastewater discharges” shall be based on certified engineering estimates provided by the permit applicant.

iii. In addition to the foregoing requirements, Randolph and Farmingdale shall provide the Superintendent with a copy of each new sewer connection permit issued by them, at the time of issuance of such permits.

## 9. Existing Facilities.

### (a) *Sewage Collection Systems.*

1. During the term of this Agreement, Randolph and Farmingdale shall each remain solely responsible for the maintenance, repair, replacement, extension and improvement of the existing sewage collection systems located within their respective municipal boundaries. The expense of maintaining, repairing, replacing, etc. these systems shall be borne solely by Randolph and Farmingdale, respectively. As part of its obligation under this subsection, Randolph shall monitor, maintain, repair and replace as needed the existing pump station and force main under the Kennebec River, currently utilized to discharge wastewater from Randolph to the treatment plant.

2. During the term of this Agreement, Gardiner shall remain solely responsible for the maintenance, repair, replacement, extension and improvement of that portion of the sewage collection system located within Gardiner’s municipal boundaries

that is utilized solely for collection of wastewater from properties located in Gardiner or West Gardiner. The expense of maintaining, repairing, replacing, extending and improving that portion of Gardiner's sewage collection system shall be borne solely by Gardiner, and shall not form a basis for the periodic sewer rate charges to Randolph and Farmingdale under section 5 above.

(b) *Facilities for Common Service.* During the term of this Agreement, the treatment plant, as defined in the Recitals above, consisting of the City of Gardiner's wastewater secondary treatment plant / pollution control facility and new primary clarifier located on River Avenue in the City of Gardiner, Maine, plus all sewer mains, force mains, pumping stations, and facilities, structures and appurtenances thereto located within the City of Gardiner and utilized in whole or part to conduct wastewater from Randolph and Farmingdale to the River Avenue treatment plant, shall be maintained, repaired, and replaced by Gardiner as needed, as "facilities for common service" to Randolph, Farmingdale and Gardiner. Facilities for common service shall include, in addition to the treatment plant, Kennebec interceptor and Kennebec relief interceptor, the Maine Avenue pump station; Maine Avenue pump station force main; and Cobbosseecontee interceptor. The cost of maintaining, repairing and replacing the existing treatment plant shall be treated as a common cost of the three municipalities, a proportionate share of which shall be recovered by Gardiner from Randolph and Farmingdale as part of the periodic sewer rate charges under section 5 above.

#### 10. Future Expansions and Upgrades.

(a) *Planning.* Gardiner's treatment plant superintendent shall issue a written notice to the municipality concerned whenever that municipality's monthly or peak hourly discharges to the treatment plant exceed eighty percent (80%) of the applicable discharge limit under section 3 above. If a municipality's representative receives written notice for any three consecutive months that its "monthly average daily flow" to the treatment plant has exceeded eighty percent (80%) of its discharge limit, or receives notice that its "peak hourly discharge" to the treatment plant has exceeded eighty percent

(80%) of its discharge limit on three or more consecutive days for each of three consecutive months, that municipality, within ninety (90) days thereafter, shall submit a written abatement plan to the superintendent, including an implementation timetable, of steps to be taken by that municipality to prevent its discharge from exceeding the applicable discharge limit. The written abatement plan and implementation timetable must be reasonably acceptable to the superintendent. Steps to be taken under the written plan shall include one or more of the following:

1. Construction of stormwater separation and / or detention projects in the municipality concerned.

2. Groundwater infiltration reduction through repair or replacement of existing sewage collection lines.

3. Regulatory measures and / or enhanced enforcement programs, *e.g.*, roof and floor drain disconnection ordinances.

4. Regulatory limitations on new development projects or sewer connections.

5. Purchase of additional discharge capacity from another party to this Agreement having excess discharge capacity. For purposes of this subsection, a municipality shall be deemed to have “excess discharge capacity” only if that municipality’s highest monthly discharge volume (monthly average daily flow) over the most recent eighteen month period would be less than eighty percent (80%) of that municipality’s remaining discharge limit, following the transfer.

Purchase of additional discharge capacity shall be upon such terms, and for such consideration, as the municipalities concerned may agree. The municipalities concerned shall provide written notice of the completed transfer of capacity to all parties to this Agreement and to the superintendent. The written notice of transfer shall operate as an amendment to section 3 of this Agreement. Following notice of the transfer, any rate or portion of a rate or other charge that is calculated or apportioned on the basis of the parties’ discharge limits under section 3 of this Agreement shall thereafter be calculated or apportioned on the basis of the parties’ respective discharge limits as so amended.

If a municipality fails to provide an acceptable written abatement plan when required to do so under this subsection, or fails to take the steps required by an approved plan within the timetable provided, the superintendent shall suspend the issuance of new sewer connection permits, wastewater pretreatment permits, and certifications under subsection 8(b)(2) above, for the categories of projects listed in that subsection, in the municipality concerned, until such time as an acceptable plan is presented or the required abatement steps are taken.

In the event that total monthly discharges from the treatment plant (monthly average daily flow) from all three municipalities combined exceed eighty percent of the treatment plant's operational treatment capacity for any three consecutive months as determined by the Superintendent, the Superintendent shall provide written notice of those occurrences to all three municipalities. Within thirty (30) days after receipt of such notice, the Advisory Committee, as approved by the Gardiner City Council, shall meet for the purpose of developing a recommended abatement plan and / or new facilities plan that shall be sufficient to accommodate the anticipated future wastewater treatment needs of the parties and to prevent the treatment plant from exceeding its operational treatment capacity or licensed permit capacity. The Advisory Committee shall be authorized to engage necessary engineering assistance for this purpose. In the event the Advisory Committee's plan requires construction of new facilities, the parties agree that they shall take all steps necessary to finance and commence construction of such new facilities at such time as total wastewater discharges from the treatment plant from all three municipalities regularly exceed ninety percent (90%) of the treatment plant's operational treatment capacity, as determined by the superintendent; subject however to approval and appropriation of necessary funds by the Gardiner City Council, with proportionate debt service costs to be included in future rates.

(b) *Cost Allocation.* All costs incurred by the Advisory Committee, as authorized by the Gardiner City Council, and all costs of any new facilities for common service constructed as a result of the joint planning committee's recommendations (including site acquisition, engineering, legal, capital construction, financing and debt service costs) shall be deemed to be common expenses of the parties to this Agreement, and shall be

apportioned between them on the basis of their respective reserved shares of the treatment plant's operational or permitted capacity. The cost of such new facilities may be met by a single *pro rata* contribution from each municipality at the time of project construction, or by annual contributions toward payment of project debt service, as the parties may agree.

Failure of any municipality to appropriate the agreed amounts for such new facilities shall constitute a notice of withdrawal from this Agreement by that municipality as provided in section 18 below.

#### 11. Sewer Ordinances.

All parties to this Agreement agree to adopt or maintain in force and implement sewer use ordinance, a wastewater pretreatment program, a system of sewer use charges and a system of industrial cost recovery in accordance with the requirements of the State of Maine Department of Environmental Protection and the U.S. Environmental Protection Agency. The sewer use ordinances adopted by Randolph and Farmingdale shall be at least as stringent as Gardiner's wastewater pretreatment and sewer ordinances, Title 27, Chapters 2 and 5, Gardiner Code, as in effect on the effective date of this Agreement, with respect to limitations on waste discharge.

Gardiner's treatment plant superintendent shall periodically recommend such amendments and revisions to the parties' respective ordinances as may be necessary due to changes in federal or state law, amendments to Gardiner's wastewater pretreatment and sewer ordinances, or changes to Gardiner's wastewater discharge license.

If not in force as of the effective date of this Agreement, Randolph and Farmingdale shall, within one year after the effective date, develop and present to their voters at town meeting an ordinance or amendments to their respective sewer ordinances providing for a system of industrial user permits and industrial wastewater pretreatment that is no less restrictive than the City of Gardiner's industrial wastewater pretreatment ordinance (Exhibit C, attached), to apply to all industrial users and significant industrial users receiving sewer service from the town concerned. The draft ordinance or amendments shall be submitted to Gardiner's Superintendent, prior to presentation to the

town voters, for certification as to their compliance with this requirement. Such ordinance or amendments shall designate an enforcement official. The designated enforcement authority shall be the town's code enforcement officer or other town enforcement official or, in default a designation or appointment, Gardiner's Superintendent. Such ordinance or amendments shall grant the enforcement official full authority to conduct administrative inspections, issue citations, and initiate necessary court proceedings to enforce the provisions concerned.

Failure to adopt or update, or subsequent repeal of, the ordinance or amendments required by this section shall constitute a notice of withdrawal from this Agreement by the municipality concerned as provided in section 18 below.

## 12. Ordinance Enforcement.

Randolph and Farmingdale shall report each known violation of applicable wastewater pretreatment or sewer ordinance provisions occurring within their respective municipal boundaries to the Superintendent, together with a report of enforcement action taken or planned with respect to the violation concerned.

In the event the Superintendent shall independently be made aware of individual industrial wastewater pretreatment or other sewer ordinance violations in Randolph or Farmingdale that require enforcement so as to prevent harm to the treatment plant or violations of the treatment plant's wastewater discharge license, the Superintendent shall first refer the matter to the responsible officials of the municipality concerned for appropriate action. In the event the municipal officials fail to take appropriate action on any such violation in a timely manner, the Superintendent may give a notice of violation to the individual user concerned and take all other necessary enforcement action under the applicable ordinances. In the event that Gardiner is required to take court action for this purpose, all costs of prosecution, net of any fines, or attorney's fees recovered, shall be charged to and payable by the municipality in which the violation has occurred. Such costs of prosecution shall be in addition to all monthly sewer rates and other charges otherwise provided in this Agreement.

13. Records.

Gardiner, Randolph and Farmingdale mutually agree that all pertinent books, documents, papers and records of any of them relating to operation of the treatment plant or to other aspects of this Agreement shall at all reasonable times be available for inspection by the parties' respective municipal officials, consistent with provisions of Maine's Freedom of Access law, 1 MRSA sc. 401 *et seq.*

14. Advisory Board.

The existing Advisory Board as constituted and established pursuant to section 12 of the parties' prior agreement dated September 29, 1971 shall continue as an Advisory Board under this Agreement, until expiration of the terms of those currently holding office. Upon expiration of the terms of those currently holding office, new members shall be appointed with the powers and duties as provided in this section.

(a) *Composition and Term.* The Advisory Board shall consist of the Superintendent, who shall serve as a non-voting, *ex officio* member, three representatives from Gardiner, one of whom shall serve as chairman, and two representatives each from Randolph and Farmingdale., to be appointed or elected as each municipality may provide. Advisory Board members shall be appointed or elected by each municipality for staggered two-year terms. Members may be re-appointed or re-elected to additional consecutive or non-consecutive terms. Vacancies occurring during the term of a particular member shall be filled by appointment by the municipal officers of the municipality concerned.

(b) *Duties.* The Advisory Board shall review and provide advisory comments to the Gardiner City Council and to the Randolph and Farmingdale Selectmen concerning all aspects of treatment plant operation. Matters to be reviewed by the Advisory Board shall include the following items:

- i. Annual treatment plant operating budget and reserve requirements, as proposed by the Superintendent;
- ii. Rate schedule changes;

- iii. Physical plant expansions and upgrades;
- iv. Major equipment purchases;
- v. Discharge license amendments and revisions;
- vi. Proposed sewer ordinance amendments;
- vii. Sewer project grant applications;
- viii Proposed sewer system extensions;
- ix Proposed amendments to this Agreement; and
- x. Other matters, as required.

In addition to the items listed above, the Advisory Board shall have final authority to approve annual changes to the cost allocation schedule between Gardiner, Randolph and Farmingdale (Exhibit A) as provided in section 5(a) above.

(c) *Meetings.* The Advisory Board shall meet regularly, at least four (4) times per year, on dates determined by the Board. The Board may conduct additional special meetings as needed.

(d) *Freedom of Access.* In conducting its meetings, the Board shall comply with the public notice and open meeting provisions of Maine's Freedom of Access law, 1 MRSA sec. 401 *et seq.*

#### 15. Arbitration Committee.

(a) *Composition..* Disputes concerning the proper interpretation or application of this agreement that cannot be resolved by the Advisory Board shall be referred by the Advisory Board to a Arbitration Committee consisting of five (5) members. Gardiner, Randolph and Farmingdale shall each select one representative to serve on the Committee. The three representatives shall select a fourth and fifth member mutually satisfactory to them, with one of the additional members so selected to serve as Chairman.

(b) *When to be Created..* The selection and formation of the Arbitration Committee shall proceed promptly, to provide for an initial meeting of the Arbitration Committee within thirty (30) days after the call therefore by the Advisory Board, except

that when the Advisory Board declares the need for emergency resolutions, the Arbitration Board shall be formed to meet within fourteen (14) days after the call therefore.

(c) *Effect of Decision.* The decisions of the Arbitration Committee shall be non-binding and advisory with respect to all parties as regards any disputes arising under this Agreement.

(d) *Limitations.* Arbitration under this section shall not be required or allowed with respect to emergency orders, permitting decisions and certifications of the treatment plant superintendent issued under sections 6(d) and 8(b) above.

16. Amendments.

Except as provided in section 10(a) above with respect to purchase of additional capacity, no amendment to this Agreement shall be effective unless approved by the respective legislative bodies and executed in writing by the respective municipal officers of Gardiner, Randolph and Farmingdale.

17. Termination and Withdrawal.

(a) *Termination by Agreement.* This Agreement may be terminated at any time by mutual agreement of all three municipalities, approved and executed in writing by a majority of their respective municipal officers. Following termination, each municipality shall remain responsible for payment of its *pro rata* portion of the cost of the primary clarifier project and associated treatment plant upgrades constructed under the parties' prior agreement, plus its *pro rata* portion of the cost of any new treatment plant facilities constructed during the term of this Agreement in accordance with section 10 above, including annual debt service payments. In addition, each municipality shall be responsible for its *pro rata* portion of such additional continuing costs, and such other charges, as the parties may agree. Upon termination of this Agreement, Gardiner shall

retain title to the treatment plant and all wastewater discharge licenses for the treatment plant. Randolph, Farmingdale and Gardiner shall each retain title to the sewage collection systems and other sewer facilities located in the municipality concerned.

(b) *Withdrawal.* Any party may withdraw from this Agreement by providing a written notice of withdrawal to the remaining parties. Such withdrawal must be approved by the municipality's legislative body prior to giving such notice. A notice of withdrawal given by Randolph or Farmingdale shall become effective at the end of the first full budget year following the giving of such notice. A notice of withdrawal given by Gardiner shall become effective at the end of the second full budget year following the giving of such notice. The municipality giving notice of withdrawal shall remain responsible for payment of all sewer rates and additional charges incurred by that municipality under section 5 above, pending the effective date of the withdrawal.

Following the effective date of withdrawal, the withdrawing municipality shall remain responsible for payment of its *pro rata* portion of the cost of the primary clarifier project and associated treatment plant upgrades constructed under the parties' prior agreement, plus its *pro rata* portion of the cost of any new treatment plant facilities constructed during the term of this Agreement in accordance with section 10 above, including annual debt service payments. In addition, the withdrawing municipality shall remain responsible for its *pro rata* portion of such continuing contractual costs, incurred prior to the notice of withdrawal, as may extend beyond the effective date of the withdrawal and that are not dependent on the volume of wastewater discharged to the treatment plant.

Following the effective date of withdrawal from of this Agreement, the withdrawing municipality shall retain title to the sewage collection system and other sewer facilities located in that municipality. In addition, if Gardiner is the withdrawing party, Gardiner shall retain title to the treatment plant and all wastewater discharge licenses for the treatment plant.

(c) *Termination for Default.* At any time during the initial term of this Agreement or any extensions or renewals hereof, in the event Randolph or Farmingdale shall have committed a serious breach of this Agreement by:

- Being more than one quarter in arrears on payment of sewer rates, additional charges, or capital project contributions required under this Agreement;
- Allowing additional sewer connections within their municipal limits when such additional connections have been suspended in that municipality by Gardiner's treatment plant superintendent in accordance with section 10(a) above; or
- Allowing discharge of industrial wastewater or other materials of such quality, or in such quantity, as to cause damage to the treatment plant or violations of the treatment plant's wastewater discharge license(s), by users who are not duly permitted under Gardiner's wastewater pretreatment ordinance, without taking appropriate enforcement action against the violator(s) in accordance with section 13 above;

and if said breach shall remain uncorrected by the municipality concerned for a period of thirty (30) days following a written demand for correction by Gardiner's treatment plant superintendent, then and in such event Gardiner, in its sole discretion, may serve a written notice of termination of this Agreement with respect to the municipality concerned, which notice shall take effect not less than thirty (30) days after service on the municipal officers of the municipality concerned. Following the effective date of such termination notice, the municipality concerned shall remain responsible for payment of all sewer rates and additional charges incurred by that municipality under section 5 above through and including such effective date, and for payment of its *pro rata* portion of capital project and continuing contractual costs as provided in subsection 18(b) above.

Following the effective date of termination under this subsection 18(c), the municipality concerned shall retain title to the sewage collection system and other sewer facilities located in that municipality. Gardiner shall retain title to the treatment plant and all wastewater discharge licenses for the treatment plant.

18. Miscellaneous Provisions.

(a) *Choice of Law; Venue for Suits.* This Agreement is made under and shall be construed and enforced in accordance with the laws of the State of Maine. No action between the parties to this Agreement to construe or enforce its terms shall be valid unless filed in the District or Superior Courts of Kennebec County, Maine, and otherwise shall be barred.

(b) *No Waiver of Immunities.* Except as expressly provided herein, nothing in this Agreement shall be deemed to waive or modify any immunity from judgment or suit, including limitations on damages, enjoyed by the respective parties under provisions of the Maine Tort Claims Act, 14 MRSA sec. 8101 *et seq.* or other provisions of law.

(c) *No Private Benefit.* Nothing in this Agreement shall be construed as creating any private right, benefit, claim or cause of action on the part of any private person or organization, it being the parties' intention that this Agreement is for the sole and exclusive benefit of the parties hereto.

(d) *No Sale or Assignment of Discharge Rights.* The rights granted to Randolph and Farmingdale under this Agreement to flow and discharge wastewater to Gardiner's treatment plant shall not be assigned, pledged, hypothecated, sold or transferred in any manner to any private person or to any public or private entity, except as permitted under section 10(a) above with respect to transfer of excess discharge capacity between the parties. Future connections to the Randolph and Farmingdale sewage collection systems shall be permitted only as allowed under this Agreement and in accordance with all applicable ordinance provisions.

(e) *Reservation of Title.* The parties to this Agreement respectively reserve title to all public sewage collection systems, easements, sewer mains, treatment facilities, pumps, pump stations, and other public sewer improvements and appurtenances thereto, now existing or hereafter located or constructed within their municipal boundaries. The

formulas provided in this Agreement for apportionment of sewer rates and other charges, and for payment of the cost of future facilities and treatment plant upgrades, shall not be deemed to convey or transfer title or fractional ownership interests, including equitable interests, in or to any such improvements to the parties collectively, or to any party individually other than the municipality where such improvements are located.

(f) *Third Party Claims.* Gardiner, Randolph and Farmingdale shall each be responsible for the investigation, defense and settlement of all third-party damage claims arising out of maintenance and operation of their respective sewage collection systems, including claims arising under 30-A MRSA sec. 3403. The investigation, defense and settlement of third-party damage claims arising out of maintenance and operation of the treatment plant, including all sewer mains, force mains, pumping stations and facilities, structures and appurtenances thereto located within the City of Gardiner and utilized in whole or part to conduct wastewater from Randolph and Farmingdale to the River Avenue treatment plant, shall be deemed to be a common expense of the parties, to be apportioned between them in the same manner as provided in this Agreement with respect to sewer rates.

(g) *Delegation of Authority.* Approval of this Agreement by the parties' respective legislative bodies shall constitute a delegation of authority to their respective municipal officers to take all municipal actions necessary to implement the provisions hereof, except where local legislative approval of the action concerned is expressly required by this Agreement or other provisions of law.

IN WITNESS WHEREOF, the parties have caused their undersigned municipal officers to execute this Agreement on their behalf this \_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF GARDINER

(By) \_\_\_\_\_ [etc.]

TOWN OF RANDOLPH

(By) \_\_\_\_\_ [etc.]

TOWN OF FARMINGDALE

(By) \_\_\_\_\_ [etc.]

[Add signature lines as needed. Add municipal clerks' certificates attesting the municipal officers' signatures.]

[Add Exhibits A through C.]

[Attach municipal clerks' certificates of authorizing votes by town meetings / Gardiner City Council.]