

## **Explanatory Note**

### **Shared Services Agreement for Sanitary Sewers**

### **Town of Niagara and Niagara Falls Water Board**

Pursuant to the agreement that follows, the Water Board treats and disposes of effluent from certain parts of the Town of Niagara. These locations are indicated on the map near the end of the agreement, which was authorized by the governing boards of both bodies in December 2014 and has a 10-year term.

The wastewater plant serving the City of Niagara Falls has treated effluent from parts of the Town of Niagara since the 1970's. Prior to 2014, the Town was paying for this service based on a formula that used the Town's water billings, rather than the actual amount flowing into the Water Board's treatment system, to set the billed amount.

The 2014 agreement provides that the Water Board will bill the Town based on the metered flow into the Water Board's system, and set an initial base rate per million gallons. The new rate and method of calculating flow were phased in gradually beginning in 2015. This method of calculating the charge for treating wastewater from the Town of Niagara resulted in an increase in the amount that the Water Board bills to the Town, compared to 2014 rates. The Water Board directly bills Significant Industrial Users located in the Town.

The Water Board bills the Town as a bulk customer. It does not bill individual residential or commercial customers in the Town, and it is solely within the Town's discretion how it passes on the cost of treating the wastewater at issue. In addition to sewer rates based upon consumption, Town residents also typically pay a sewer district tax.

The Water Board does not own any of the sewers in the Town of Niagara. The cost of maintaining the conveyance system located in the Town is borne by Town residents, and the rate charged to the Town may be considered to reflect the fact that the Town bears this expense.

The agreement negotiated between the Town and Water Board in 2014 is reproduced on the pages that follow this explanatory note.

**SHARED SERVICES AGREEMENT  
FOR SANITARY SEWERS**

This AGREEMENT, made and entered into as of December 3, 2014 by and between the Niagara Falls Water Board, a public benefit corporation having its principal office at 5815 Buffalo Avenue, Niagara Falls, New York ("Water Board") and the Town of Niagara, a municipal corporation having its principal office at 7105 Lockport Road, Niagara Falls, New York ("Town"), acting for and on behalf of itself and the Town of Niagara Sewer Improvement Area, which area has been established pursuant to the provisions of Article 12-C of the Town Law of the State of New York.

**WITNESSETH**

WHEREAS, certain areas of the Town of Niagara, known as areas "A", "C", and "I", as set out in the map attached as Exhibit A to this Agreement, discharge into the sanitary sewer system now operated by the Water Board (the "NFWB System"); and

WHEREAS, the Water Board acquired the NFWB System from the City of Niagara Falls on or about September 25, 2003, and has since that time continued to accept into the NFWB System for treatment and disposal the effluent from certain areas of the Town, subject to the terms and conditions set forth in one or more agreements by and between the Water Board and the Town; and

WHEREAS, the Shared Services Agreement for Sanitary Sewers by and between the Water Board and the Town dated December 14, 2010 has, per its terms and timely notice from the Water Board to the Town of its decision not to renew said agreement, expired as of December 15, 2011; and

WHEREAS, certain properties in the Town now have or may in the future have a direct connection to the NFWB system, ("Direct Dischargers"), including but not limited

to properties in areas known as "A", "C", and "I", which are directly billed by the NFWB; and

WHEREAS, any significant Industrial Users ("SIUs") located in the Town and which ultimately discharge to the NFWB's system are required by Federal and State law to have an agreement with the Water Board and be billed directly by the Water Board; and

WHEREAS, the Water Board and Town desire to enter into this Agreement with an effective date of January 1, 2015 and to provide payment by the Town for services provided by the Water Board from that time pursuant to the terms of this Agreement; and

WHEREAS, the parties hereto, pursuant to the relevant provisions of the General Municipal Law, desire to enter into this Agreement so as to provide to the respective public corporations the provision by the Water Board of sewage conveyance, treatment, and disposal, the use by the Town of the NFWB System, the establishment of provisions for flow monitoring, charges for conveyances, treatment and disposal of sewage, and the prompt and efficient adjudication of any disputes which may hereafter arise.

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, it is covenanted and agreed as follows:

1. Any and all agreements by and between the Water Board and Town related to sanitary sewers are hereby rescinded and superseded by this Agreement.
2. The Water Board and the Town hereby agree that as to any SIU Agreements which are in effect during the term of this Agreement, neither party will, unless required to do so by Federal or State law, invoke any termination provisions thereof unless or until this Agreement is no longer in force and effect, or unless delivery of a notice of termination pursuant to the terms of any SIU Agreement will not result in the termination of the SIU Agreement prior to the expiration or termination of this Agreement.
3. The Water Board will accept into the NFWB System for treatment and disposal the effluent of the Town, subject to the terms of this Agreement, from sanitary sewer users

located within those areas of the Town identified as areas "A", "C", and "T", as set out in the map attached as Exhibit A.

4. Except for Direct Dischargers and SIUs, any sanitary sewer users within areas "A", "C", or "T", shall be subject to this Agreement, and effluent from said new users shall be treated by the Water Board pursuant to this Agreement. It shall be the responsibility and right of the Town to determine if any new user should be permitted to connect to the system, based on applicable laws and regulations of New York State and the Town. The Town shall be responsible for the connection of any such new sanitary sewer users to the NFWB System, including but not limited to the installation of any connection and conveyance systems and all costs associated therewith.

5. Except for Direct Dischargers and SIUs, for the areas within the Town designated as areas "A", "C", and "T", the rate the Town shall pay the Water Board for all services provided pursuant to this Agreement (the "Rate") shall be the initial rate of \$2,413.52 per million gallons. The Rate for each year shall be established pursuant to the relevant provisions of the Water Board's rules and regulations and applicable law. Any change in the Rate (on a percentage basis) shall not exceed the rate change (on a percentage basis) for the Water Board Commercial, Small Industrial and Residential (CSIRU) (or then equivalent) rate class. Direct Dischargers and SIUs shall be billed by and pay directly the Water Board at the then applicable rates established by the Water Board for such users.

6. The amount the Town shall pay the Water Board for all services provided by the Water Board pursuant to this Agreement shall be based on an average monthly flow calculated by semi-annual (Spring and Fall) flow monitoring periods each of a minimum of 14 (fourteen) days duration at the locations A3, C1, C2, I1, I2 and I3 set forth on Exhibit B. The Water Board shall cause the flow monitoring to be performed, the Town shall be provided 30 days written notice of the commencement of such monitoring, and the cost of such monitoring shall be shared equally by the Water Board and the Town. Because these monitoring locations do not reflect all the points of interconnection between the Town and the NFWB System, ten (10) percent will be added to the average of total measured flow (the "Monthly Billing Flow"). The Rate will be applied to the Monthly Billing Flow to calculate the Town's payment for all services hereunder (the "Calculated Charge").

7. The Water Board shall bill the Town equal quarterly installments of the Calculated Charge, to be paid to the Water Board by the Town within 45 days of receipt.

8. In the event that the infrastructure, both within the Town and the NFWB System, connecting area "A", area "C", or area "I" to the NFWB System falls into disrepair, or is otherwise not functioning properly, and it is economically impractical for either the Water Board or the Town to repair said infrastructure, the Town may alter its system to provide for the most economical disposal of effluent, so long as the revised infrastructure does not impact any industry delivering sewage for treatment pursuant to an SIU agreement.

9. The Town will use its best efforts to minimize infiltration into sanitary sewer infrastructure and eliminate inflow of stormwater into sanitary sewer infrastructure in the Town. The Town will take all reasonable measures to assure that new development in areas "A", "C" and "I" is designed and constructed to minimize any infiltration and exclude storm water inflow from entering the NFWB System. The Water Board shall, together with the Town, be allowed to conduct investigations of suspected illegal and/or improper discharges which enter the NFWB System. These investigations may include identifying illegal discharges from sources within the Town. Upon notification, the Town shall promptly address any illegal discharges. If it is determined that wet weather flow received from the Town in Area "I" is contributing to sanitary sewer overflows in the NFWB System, the Town shall investigate, develop and use its best efforts to implement corrective actions.

10. The Water Board will maintain its sewage treatment plant, pumping stations, and all facilities and pipes for the transmission of effluent from the Town in good condition and working order, so as to seek to assure uninterrupted service to the Town. The Town shall be responsible for the upkeep and maintenance of all facilities that transport effluent to the NFWB System that are located within the Town.

11. The effluent which is discharged into the NFWB System shall meet the applicable requirements established by Federal and State law as well as NFWB's rules and regulations.

12. Upon reasonable request by the Town, the Water Board shall provide full and complete information concerning its costs of operation, its maintenance schedules, and

such other information as shall be reasonably necessary to allow the Town to adequately assess the Water Board's performance of its obligations under this Agreement.

13. The parties covenant and agree that they shall provide one another with mutual assistance in the operation and maintenance of all sanitary and storm sewers covered by this Agreement, to the full extent allowed by law. This assistance and cooperation shall include the temporary lending of equipment, consultation on common issues of concern, temporary assignment of employees and such other activities which the parties agree will lead to the effective and efficient provision of said services.

15. The employees of each party, when carrying out duties assigned by supervisors pursuant to the shared services provisions of this Agreement, shall not, for any purpose, be considered an employee, agent, or representative of the other party.

16. In the event the Town fails to make any payments required by this Agreement in a timely manner, the Water Board shall, by first-class registered or certified mail, receipt requested, inform the Town of this failure by notifying the following:

- a. Supervisor of the Town of Niagara  
7105 Lockport Road  
Niagara Falls, New York 14305
- b. Water Superintendent of the Town of Niagara  
7105 Lockport Road  
Niagara Falls, New York 14305
- c. Account Clerk of the Town of Niagara  
7105 Lockport Road  
Niagara Falls, New York 14305

Upon receipt of such notice, the Town shall immediately pay any amounts owing, or, if the amount claimed is in dispute, inform the Water Board in writing, by registered mail sent to the individual who sent the notice to the Town, of the nature of the dispute, including the amount in dispute. If only a portion of the amount is in dispute, the Town shall immediately pay those amounts which are not in dispute.

17. The term of this Agreement shall be for ten (10) years, subject to renewal for periods of five (5) years. The first renewal shall be automatic, unless at least six months

prior to the expiration of the ten year term, a party serves notice to the Executive Director of the NFWB and the Supervisor of the Town of its intent to terminate or renegotiate the Agreement. The parties may agree to subsequent renewals, following the first renewal, but such agreement must be in writing, at least six months prior to expiration.

18. Each individual executing this Agreement represents and warrants (i) that all actions necessary to enter into the Agreement have been undertaken, and (ii) that said individual has been duly authorized to execute the Agreement on behalf of said party.

19. The quarterly portion of the Calculated Charge calculated pursuant to paragraph 6 shall be billed to and paid by the Town on an initial phased basis as follows:

2015:	sixty-two percent (62%) of the Calculated Charge
2016:	seventy-five percent (75%) of the Calculated Charge
2017:	eighty-eight percent (88%) of the Calculated Charge

Starting in 2018 and for all years beyond, the Town will be billed and pay one hundred percent (100%) of the Calculated Charge.

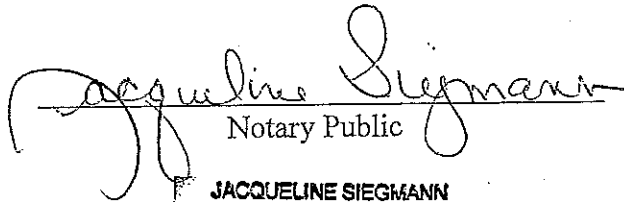
20. This Agreement shall bind the parties hereto and their successors and assigns.





STATE OF NEW YORK            )  
  : ss.  
COUNTY OF NIAGARA         )

On this 3<sup>rd</sup> day of December, 2014, before me, the subscriber, personally appeared Sylvia Virtuoso, to me known, who being by me duly sworn, did dispose and say that she resides in the Town of Niagara, New York; that she is the Deputy Supervisor of the Town of Niagara, the municipal corporation described in and which executed the foregoing instrument; that she knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that it was thereto affixed by direction of the Town Board of the Town of Niagara; that she signed her name thereto as Deputy Supervisor by like direction of said Town Board.

  
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Notary Public

JACQUELINE SIEGMANN  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN NIAGARA COUNTY  
NO. 01616171343  
MY COMMISSION EXPIRES JULY 23, 20 15

Exhibit A

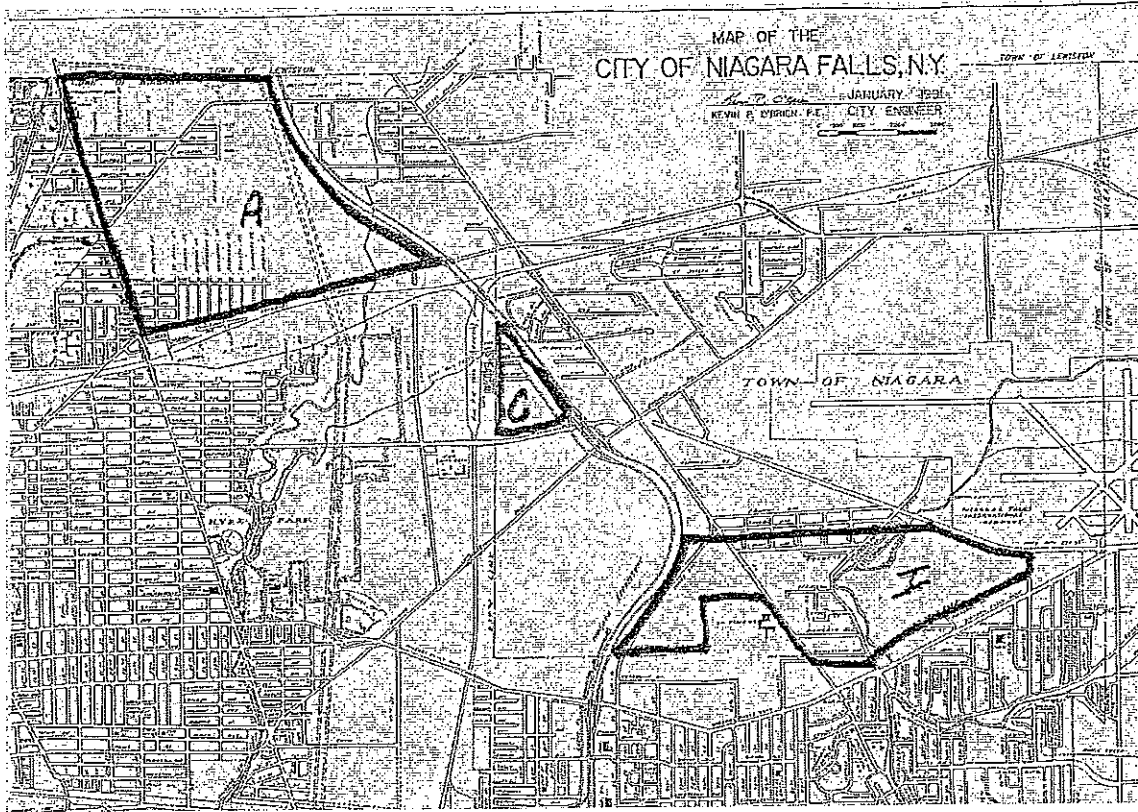


Exhibit B

Monitoring Point	Sewer Size	Location
A3	12"	Hyde Park Blvd. & Rhode Island Avenue
C1	12"	MH in field northwest of Forest Glen
C2	10"	Porter Road opposite from Sam's Club
I1	15"	Military Road & Rick Manning Drive
I2	10"	Anthony Street near Zito Street
I3	12"	Factory Outlet Blvd. north of Mooradian Drive