

**STAFF REPORT**

AGENDA ITEM #: 21-22  
COUNCIL MTG OF: February 16, 2021  
FROM: M. Fowler, Public Works Director; T. Carrier, Deputy Public Works Director  
OFFERED BY: M. Fowler, Public Works Director; T. Carrier, Deputy Public Works Director  
PREPARED BY: M. Fowler, Public Works Director; T. Carrier, Deputy Public Works Director  
SUBJECT: Intermunicipal Agreement Between the Town of Derry and the Town of Londonderry for Wastewater Service.

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**PURPOSE**

The purpose of this document is to present to the Council, for their consideration and approval, a revised Intermunicipal Agreement (IMA) between Derry and Londonderry for Wastewater Service. This IMA was approved by the Londonderry Town Council at their 2/1/2021 meeting.

**TOWN ADMINISTRATOR COMMENTS:**

Staff has spent a considerable amount of time working with special counsel to review and revise the 1981 agreement which was severely outdated, updating processes between the Towns, adjusting regulatory framework and clarifying financial responsibilities. The agreement also protects the Town from overburdening our system caused by development in Londonderry. The Council is urged to support the Resolution.

**BACKGROUND**

In July 1981 Derry and Londonderry executed an intermunicipal agreement for wastewater service, later amended in March of 1991, whereby Derry reserved for the Town of Londonderry 329,600 GPD of Wastewater Treatment Plant capacity. Additional capacity, under the existing IMA, is available to Derry and Londonderry up to the Plant's total 4.02 MGD capacity on a first come first served basis.

The existing IMA outlines a complicated procedure for allocating costs for the upgrade of the Plant which effectively states that each municipality will pay their flow-proportional share of the costs to expand the plant. It is unclear if that flow is actual or planned.

In 2001 the Derry Town Council reviewed the Wastewater Facility Plan and opted to not expand the Plant beyond its 4.02 MGD capacity primarily due to the substantial costs associated with constructing a secondary treatment facility and upsizing the effluent sewer discharge pipeline to the Merrimack River. This decision resulted in the redistribution of treatment capacity between Derry and Londonderry whereby Derry would limit Londonderry's capacity to 500,000 GPD.

Londonderry has expressed concern over this limit as the Woodmont Orchards project is projecting 1 MGD of future sewer discharge. Londonderry's sewer master plan projects an additional 500,000 GPD for other municipal expansions. Londonderry has an agreement with Manchester which provides Londonderry sufficient capacity to meet their projected flows. Londonderry prefers to discharge to Derry since its infrastructure is in place and piping to Manchester would require significant capital cost. Manchester's user rate to Londonderry of ~\$0.811 per 100 cft (748 gals) is significantly less than Derry's rate of \$3.44 per 100 cft.

On June 12, 2020, in accordance with the existing IMA, Derry's Town Administrator notified Londonderry of Derry's intent to terminate the Agreement and to revise it for the purpose of clarity and ease of administration. Londonderry has been amenable to revising the Agreement.

#### DISCUSSION

The proposed IMA treats the Town of Londonderry as a single customer. As such, Londonderry continues to pay Derry at Derry's prevailing retail sewer usage rate and will be subject to compliance with Derry's Sewer Use Ordinance as any other user. Derry reserves for Londonderry a maximum sewer capacity of 500,000 GPD provided Londonderry pays Derry's wastewater accessibility fee (WWAF) for that capacity. The IMA calls for a 12-year payment schedule in increments of 25,000 GPD per year at Derry's prevailing WWAF.

As a single large user, Londonderry would not be subject to any other capital costs to upgrade the Wastewater Treatment Plant including the restoration of Lagoon 3. Those costs would be reflected in Derry's WWAF and user rates. This will result in Londonderry's financial obligation to Derry being based on their actual flows and purchased capacity.

Derry and Londonderry staff drafted a new IMA which was reviewed by legal counsel and insurance carriers for both Towns. The proposed IMA, which includes the basic substantive elements discussed with the Town Council at a prior meeting, had been approved by the Londonderry Town Council.

#### Key Elements:

- Term: 15 Years with automatic renewals every 5 years thereafter.
- Reserved Treatment Capacity: 500,000 GPD. *"Derry will not reserve more than 500,000 gpd capacity for Londonderry, which shall include any amounts previously reserved under the temporary discharge from the EPA Tinkham Superfund site treatment facility. However, Derry may allow Londonderry to purchase capacity in excess of 500,000 gpd with the approval of the Derry Town Council should Derry, in its sole discretion, determine that additional capacity is available and not required by Derry in accordance with Derry's Wastewater Facility Plan or the Derry Master Plan as may be updated from time to time."*
- Initial reserved capacity is 200,000 GPD. Londonderry current average max monthly flow is 140,000 GPD. Londonderry to purchase additional capacity up to 500,000 GPD at 25,000 GPD increments annually (12 payments) at Derry's prevailing wastewater accessibility fee currently at \$3.40/GPD.
- Discharge Quality: Subject to Derry Sewer Use Ordinance. Avg. BOD Limit = 300 mg/l; Avg. TSS 370 mg/l. Exceedances may be subject to rate surcharges by Derry.
- Charges: Londonderry is charged Derry's prevailing retail rate currently at \$3.44/100 cubic feet. Londonderry is charged Derry's prevailing WWAF currently at \$3.40/GPD.

#### FISCAL IMPACT

Under the new Agreement Londonderry continue to pay Derry its billed retail rate of \$3.44 per 100 cubic feet (748 gallons). Derry's current projected usage revenues from Londonderry for FY2021 is \$205,000. In addition, Derry will receive a minimum \$85,000 per year for 12 years in

wastewater accessibility fee revenues. This equates to \$1,020,000 total revenue using Derry's current WWAF rate of \$3.40/GPD.

In the event that future major upgrades to Derry's WWTP are required, the Derry Town Council will then consider and approve a cost recovery method that may include an increase in the wastewater accessibility fee, an increase in retail rates or some combination which would be applicable to all new and expanding Derry uses including remaining payments by Londonderry under the IMA.

#### RECOMMENDED ACTION BY COUNCIL

Please see Resolution #2021-015