



STAFF REPORT

AGENDA ITEM #: 23-67
COUNCIL MTG OF: June 6, 2023
FROM: Dave Caron, Town Administrator
OFFERED BY: Michael Fowler, Public Works Director
PREPARED BY: Thomas Carrier, Deputy Public Works Director
SUBJECT: Intermunicipal Agreement Between the Town of Derry and the Town of Londonderry for Wastewater Service.

PURPOSE

The purpose of this document is to present to the Council, for their consideration and approval, amendments to the Intermunicipal Agreement (IMA) between Derry and Londonderry for Wastewater Service.

TOWN ADMINISTRATOR COMMENTS:

The Council is urged to support Resolution #2023-042 to add provisions to the IMA as requested by NHDES which have minimal significance to operations.

BACKGROUND

In February 2021, the Towns of Derry and Londonderry approved a revised IMA by which Derry provides wastewater service to the Town of Londonderry. Per the IMA, Londonderry is treated as a single large user and is subject to compliance with Derry's Sewer Use Ordinance. Section 2.6 of the IMA requires Londonderry to adopt and administer an Industrial Pretreatment Program (IPP) meeting the requirements of the US EPA under 40 CFR Part 403, including enforcement and compliance activities.

On December 16, 2022, NH DES conducted an IPP Compliance Inspection of Londonderry's program. A review of the Derry-Londonderry IMA was conducted by NH DES as part of that inspection. Alexis Rastorguyeff, NH DES IPP Supervisor, made the following comments relative to the IMA:

- *Definitions of several terms which have critical applications within the IMA, that are not defined in the IMA (BOD, TSS, significant industrial user, industrial user, commercial user), are required.*
- *A procedure in the IMA for addressing/resolving disputes between Derry and Londonderry, short of IMA termination, is required.*
- *A mutual periodic review by Derry and Londonderry of the IMA is required.*
- *A map of Derry's sewer service area in Londonderry, delineating the appropriate ownership and rights-of-way, needs to be included in the IMA.*

DISCUSSION

In response to NH DES' inspection comments, Londonderry and Derry are jointly recommending that the IMA be amended to incorporate the following:

- Add definitions to the IMA consistent with the definitions used in Derry's Sewer Use Ordinance. (*See new Article VIII – Definitions, pg. 14*)
- Add an arbitration clause to the IMA, based on similar language in Derry's Wholesale Water Agreement with Manchester Water Works, which provides for dispute resolution using binding arbitration under the statutory provisions on NH RSA 542. (*See Article II new Section 2.8, pg. 9*)
- Add a provision for a joint meeting between Derry and Londonderry to review the IMA, at least every five (5) years. (*See Article IV – Joint Meetings, pg. 13*)
- Add a map to the IMA of Londonderry's service area. (*See Exhibit 1.0, pg. 19*)

Attached is a copy of the draft amendments for your reference.

FISCAL IMPACT

The proposed amendments do not change the substance of the IMA and will have no fiscal impact.

RECOMMENDED ACTION BY COUNCIL

Please see Resolution #2023-042.



RESOLUTION

Number 2023-042

To Amend the Intermunicipal Agreement with the Town of Londonderry
to Provide Wastewater Services

WHEREAS, Section 5.1 of the Town Charter designates the Town Council as the governing and legislative body of the Town, and

WHEREAS, the Department of Public Works has maintained a lengthy relationship with the Town of Londonderry by providing wastewater disposal services; and

WHEREAS, the Town Council approved a revised Intermunicipal Agreement with Londonderry pursuant to Resolution #2021-015; and

WHEREAS, the New Hampshire Department of Environmental Services has requested amendments to the Agreement to include definitions, periodic review period and a dispute resolution process.

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Town Administrator and the Town Council Chair are hereby authorized to execute an Intermunicipal Agreement, pursuant to RSA 149-I:4, between the Towns of Derry and Londonderry to continue providing Wastewater Services by adding definitions, a periodic review period and a dispute resolution process.

This Resolution shall take effect immediately upon its passage.

Adopted: June 6, 2023

Attest:

X _____

Charles Foote, Council Chair

Date: _____

X _____

Cristina Guilford, Town Clerk

Date: _____