

AGREEMENT

for

WASTEWATER
TREATMENT AND
DISPOSAL
SERVICES

between the

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

and the

TOWN OF AYER, MASSACHUSETTS

AGREEMENT
for
WASTEWATER TREATMENT AND DISPOSAL SERVICES

THIS AGREEMENT, made and entered into this 30th day of August, 2022, (hereinafter referred to as the "Agreement"), by and between the Massachusetts Development Finance Agency, known as MassDevelopment, established pursuant to Chapter 289 of the Acts of 1998, and existing under Chapter 23G of the General Laws, as amended (hereinafter referred to as the "Agency"), and the Town of Ayer, a body politic and corporate in the Commonwealth of Massachusetts (hereinafter referred to as "Ayer"),

WITNESSETH:

WHEREAS, the Agency is the owner of the property known as Devens on which the Agency operates and maintains a public wastewater collection, conveyance, treatment and disposal system, and

WHEREAS, Devens has developed a regional facility for the treatment and disposal of wastewater and septage at Devens that is currently used by Devens, Town of Shirley, Town of Ayer and MCI-Shirley, and

WHEREAS, Ayer entered into a 20 year agreement with MassDevelopment on December 23, 2001 to provide treatment and disposal of wastewater from Ayer in excess of Ayer's wastewater treatment plant design capacity, and

WHEREAS, Ayer has a need for continuing treatment and disposal of wastewater from Ayer in excess of Ayer's wastewater treatment plant design capacity, and

WHEREAS, the Agency and Ayer both intend to comply with the applicable federal, state and local laws, rules, orders and regulations governing wastewater collection, treatment and discharge, and

WHEREAS, the provision of wastewater treatment and disposal services is necessary to protect the public health, safety, and welfare; and

WHEREAS, under the laws of the Commonwealth of Massachusetts, the Agency and Ayer have the power to contract with one another for the provision of wastewater management services, and the Agency and Ayer for the aforesaid reasons desire to enter into an agreement whereby the Agency would treat and dispose of wastewater collected and delivered to the Devens wastewater system from Ayer;

NOW THEREFORE, WITNESSETH that in consideration of the mutual promises and covenants herein set forth, and in order to secure the services described below, the parties hereto, each binding itself, its respective representatives, successors, and assigns, do mutually agree as follows:

ARTICLE I

SHORT TITLE, DEFINITIONS AND CONSTRUCTION

Section 101. Short Title.

This Agreement may be referred to as the "2022 Devens - Ayer Wastewater Agreement".

Section 102. Definitions.

A. Definitions. For all purposes of this Agreement, and any amendments or other changes thereto, the following terms shall have the meanings set forth below.

1. "Agency Conveyance System" shall mean the interceptors, trunk sewers, pump stations, including the main pump station, and other ancillary facilities used to transport wastewater from the point of connection of the Ayer - Devens Connection Facilities to the Agency Treatment Plant.
2. "Agency Treatment Plant" shall mean the wastewater treatment facility, residuals facilities, effluent discharge pipes, rapid infiltration beds and other ancillary facilities at Devens to which the Agency Conveyance System discharges.
3. "Annual Capital Cost" shall mean the total annual principal and interest payments on debt instruments used to finance the Agency Treatment Plant and the Agency Conveyance System.
4. "Annual Operating Cost" shall mean the total annual cost incurred by the Agency for operation and maintenance of the Agency Treatment Plant and Agency Conveyance System, including (1) administrative and insurance costs; (2) costs required to fund reserve accounts; (3) inspection fees; (4) capital repair and replacement costs; and (5) other costs necessary for operation and maintenance of the Agency Treatment Plant and Agency Conveyance System.
5. "Average Daily Flow" shall mean the total annual wastewater flow measured at a metering station divided by the number of days in the year.
6. "Ayer" -The Town of Ayer or the Town acting by and through its Select Board in its authority as the Ayer Sewer Commissioners.
7. "Ayer - Devens Connection Facilities" shall mean the pumping facilities, force main, metering equipment and other ancillary facilities necessary to convey excess wastewater flow from the Ayer System to the point of connection with the Agency Conveyance System.
8. "Ayer System" shall mean the publicly owned wastewater collection, pumping, treatment and disposal facilities within the Town of Ayer, excluding the Ayer- Devens Connection Facilities.
9. "Base Flow" shall mean the annually agreed upon minimum flow, which shall be no less than 50,000 gallons per day.
10. "BOD (Biochemical Oxygen Demand)" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20° C, expressed in milligrams per liter.
11. "Building Drain" shall mean that part of the lowest level of horizontal piping of a building

drainage system, which receives the wastewater from the plumbing inside the walls of the building and conveys it to the building sewer that begins five (5) feet outside the inner face of the building wall.

12. "Building Sewer" shall mean the pipe extension from the Building Drain, commencing at a point five (5) feet outside the inner face of the building wall and extending to a Sanitary Sewer or other place of discharge.
13. "Capital Improvement" shall mean permanent improvements to the Agency Conveyance System or the Agency Treatment Plant that have an estimated cost in excess of \$10,000 and have an anticipated useful life of more than one (1) year.
14. "Capital Repair and Replacement" shall mean the repair or replacement of roads, buildings, structures, grounds, equipment, replacement parts and spare parts undertaken as part of the operation and maintenance of the Agency Conveyance System or Agency Treatment Plant and not included in the Initial Capital Cost for Phase I or Phase II of the Agency Treatment Plant.
15. "Change in Law" means the occurrence of any of the following after the execution of this Agreement: (a) the enactment, adoption, modification, repeal or formal change in interpretation of any state, federal or local law or regulation; (b) the issuance or modification of an order, decree or judgment by any federal, state or local court, administrative agency or governmental body acting in a judicial capacity; or (c) the suspension, termination, denial, failure to issue or to renew any permit, license, approval or other legal requirement or authorization, or to any material change in the terms thereof, so as to change or otherwise affect the ability or means of the Agency to operate and maintain the Agency Treatment Plant or Agency Conveyance System or to significantly increase the cost of such operation and maintenance.
16. "Contract Date" shall mean the date this Agreement takes effect following its acceptance by the Board of Directors of the Agency and the Ayer Board of Selectmen, and its execution by Ayer and the Agency.
17. "Contract Year" shall mean a one-year period commencing on July 1, and ending on June 30 in each year during the term of this Agreement, and which, in the case of the first Contract Year, shall be the period beginning on the Contract Date and ending on the next June 30.
18. "Customer" shall mean a public entity or private company, which discharges wastewater, biosolids or other acceptable material to the sewer system, or treatment plant of one of the Users of the Agency Treatment Plant and which has not purchased Reserved Capacity at the Agency Treatment Plant.
19. "Daily Average" shall mean the sum of the measurements made over any given twenty-four (24) hour period divided by the number of measurements made.
20. "Dedicated Costs" shall mean the total annual capital and operation and maintenance costs for a particular wastewater treatment or conveyance facility, such as a pump station, force main or connecting sewer, used exclusively by a single User, 100% of such cost to be paid by the User as part of its Initial Capital or annual O&M Assessments in accordance with Article III of this Agreement.
21. "DEP" shall mean the Massachusetts Department of Environmental Protection.

22. "Design Capacity" shall mean the design flow of the Agency Conveyance System, and the Average Daily Flow of the Agency Treatment Plant permitted by the DEP and used for the sizing of unit processes and associated facilities.
23. "Devens" shall mean that portion of the former Fort Devens conveyed by the U.S. Army to the Agency and operated by the Agency.
24. "Disposal" shall mean the disposition of wastewater and residuals by the Agency after treatment at the Agency Treatment Plant.
25. "Domestic Wastewater" shall mean the wastewaters discharged from residential, sanitary facilities, such as toilets, sinks, urinals, showers, and laundries as defined in the Sewer Use Rules and Regulations.
26. "Easement" shall mean an acquired legal and enforceable right for a specific use of land owned by another person.
27. "Escalation Index" shall mean the Consumer Price Index-All Urban Consumers, All Items, for Boston – Cambridge Newton, MA - NH as defined and compiled by the United States Bureau of Labor Statistics.
28. "Escalation Factor", in the case of any dollar amount that was specified as of or before the Contract Date, shall mean, as of the date of application, the Escalation Index as of the date of application divided by the Escalation Index as of the Contract Date. The Escalation Factor will be multiplied by the dollar amount in question, as of the Contract Date, to produce the dollar amount as of the date of application. "Escalation Factor", in the case of any dollar amount that is specified as of a date after the Contract Date, shall mean, as of the date of application, the Escalation Index as of the date of application divided by the Escalation Index as of the date when such dollar amount was specified. The Escalation Factor will be multiplied by the dollar amount in question, as of the date that it was specified, to produce the dollar amount as of the date of application. In either case, where amounts are to be adjusted annually, the Escalation Index as of the Contract Date shall be the Escalation Index as of January 1, 2022 and the Escalation Index as of the date of application shall be the Escalation Index as of the immediately prior January 1. Annual escalations shall take effect as of the beginning of a Contract Year and shall apply for the full Contract Year.
29. "Fiscal Year" shall mean the period beginning July 1 and ending June 30 of the following calendar year.
30. "Force Majeure" means any act, event or condition or any combination thereof that is beyond the reasonable control of the Party relying on the same and that (i) materially interferes with its performance of its obligations or (ii) significantly increases the cost of performance of its responsibilities. Force Majeure includes the following categories of events, as well as other events that are unforeseen and not otherwise anticipated, specifically or by reasonable implication by the provisions of this Agreement:
 - (i) naturally occurring events such as landslides, lightning, earthquakes, hurricanes, tornadoes, or floods,
 - (ii) civil disturbances such as acts of a declared public enemy, wars, declared terrorist incident riots or blockades,
 - (iii) unexpected receipt of wastewater that exceeds the design capacity or capability of

- (iv) labor disputes and strikes,
- (v) loss of utility services necessary for operation of the Agency Treatment Plant,

31. "Industrial Wastewater" shall mean the wastewater from industrial or manufacturing processes or from a commercial, governmental or institutional activity, including restaurants and cafeterias, as defined in the Sewer Use Rules and Regulations.
32. "IPP" or "Industrial Pretreatment Program" shall mean a program administered and enforced by the applicable User for providing services with respect to sampling, inspecting, analyzing and record-keeping with respect to compliance by industrial and certain commercial Customers with the applicable Sewer Use Rules and Regulations, including technically based local limits.
33. "Infiltration" shall mean water entering a sewer system from the ground through such means as defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include and is distinguished from inflow, as defined in the Sewer Use Rules and Regulations.
34. "Inflow" shall mean water discharged to a sewer system (including service connections) from such sources as roof leaders, cellar, yard, and area drains; foundation drains; cooling water discharges; drainage from springs and swampy areas; manhole covers; cross-connections from storm sewers; catch basins; stormwater runoff; street wash waters; and drainage in general, as defined in the Sewer Use Rules and Regulations.
35. "Initial Capital Assessment" shall mean each User's share of the Initial Capital Cost of Phase I of the Agency Treatment Plant and the Agency Conveyance System, figured as the proportion of the User's designated Reserved Capacity to the Design Capacity of the Agency Treatment Plant and the proportion of the User's designated Reserved Capacity to the Design Capacity of the Agency Conveyance System, respectively.
36. "Initial Capital Cost" shall mean the total cost of planning, design, construction and engineering services during construction of Phase I of the improvements to the Agency Treatment Plant and Agency Conveyance System, less Dedicated Costs for capital facilities paid for directly by certain Users. The Initial Capital Cost shall be the actual costs for the design and construction of Phase I improvements.
37. "Maximum Daily Flow" shall mean the highest total flow measured at a metering station over any given twenty-four (24) hour period.
38. "MCI-Shirley" shall mean the Massachusetts Correctional Institution state prison in Shirley operated by the Massachusetts Department of Correction (hereinafter known as the "DOC") and its wastewater system, which discharges to the Agency Conveyance System.
39. "Mixed Flow" shall mean the combined municipal flow of the Town of Ayer as normally enters the Ayer Wastewater Treatment Facility.
40. "Monthly Average" shall mean the sum of the measurements made over any given thirty (30) day period divided by the number of measurements made.
41. "Operating Year" shall mean the same as Fiscal Year, such year being divided into four quarters, as described in Section 308.

42. "Operation and Maintenance (O&M) Budget" shall mean the annual Operation and Maintenance Plan (O&M Plan) and associated budget prepared by the Agency for the cost of labor, utilities, chemicals, metering, sampling and monitoring, materials and other costs associated with operation and maintenance of the Agency Treatment Plant and the Agency Conveyance System.
43. "Operation and Maintenance (O&M) Assessment" shall mean the quarterly charge to a User by the Agency for operation and maintenance costs to provide conveyance and treatment services to the User and shall be computed in accordance with Section 303.
44. "Agency's Wastewater O&M Contractor" shall mean the private company hired by the Agency to operate the Agency Treatment Plant and the Agency Conveyance System.
45. "Person" shall mean any individual, firm, company, association, society, corporation or group.
46. "Phase I" shall mean the initial Capital Improvements undertaken in 1999 involving construction of the Agency Treatment Plant.
47. "Phase II" shall mean the program of Capital Improvements anticipated to be required to meet more stringent effluent limitations or to receive wastewater flows greater than the Design Capacity of the Agency Treatment Plant constructed during the Phase I period.
48. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
49. "Projected Average Daily Flow" shall mean the annually agreed upon average daily flow to be transferred from Ayer to the Agency Treatment Plant, which shall be no more than Ayer's Reserved Capacity.
50. "Public Sewer" shall mean a pipe or conduit for carrying wastewater, which is owned, maintained, and controlled by a public authority.
51. "Regional Interceptor" shall mean a sewer pipe that receives wastewater from more than one User and conveys it to the Agency Treatment Plant.
52. "Reserved Capacity" shall mean the capacity in the Agency Treatment Plant or the Agency Conveyance System that has been bought or contracted for by a User for the use of that User.
53. "Sanitary Sewage" shall mean liquid and solid human and domestic wastes conveyed by water. Groundwater, stormwater, roof and surface runoff, uncontaminated cooling water, non- contact process water and industrial wastewater are not sanitary sewage.
54. "Sanitary Sewer" shall mean a public sewer, which is designed to carry sanitary sewage, pretreated industrial wastewater, and limited amounts of infiltration and inflow.
55. "Septage" shall mean the wastes from holding tanks, such as chemical toilets, campers, or trailers, and wastes from septic tanks and cesspools.
56. "Sewerage Works" shall mean all facilities for collecting, pumping, treating, and disposing of wastewater.

57. "Sewer Use Rules and Regulations" shall mean the Devens Sewer Use Rules and Regulations, as amended from time to time by the Agency, including the industrial pretreatment requirements, governing connection and discharge to the Agency Conveyance System.
 58. Intentionally Deleted.
 59. "Storm Drain" (or "Storm Sewer") shall mean a public sewer pipe, which is designed to carry storm and surface water drainage, but not wastewater.
 60. "TSS (Total Suspended Solids)" shall mean solids that either float on the surface of, or are suspended in, water, wastewater, or other liquids, and which are removable by laboratory filtering, expressed in milligrams per liter.
 61. "Total Nitrogen" shall mean the quantity of nitrogen measured under standard laboratory procedure, expressed as nitrogen in milligrams per liter.
 62. "Total Phosphorus" shall mean the quantity of phosphorus measured under standard laboratory, expressed as phosphorus in milligrams per liter.
 63. "Treatment" shall mean the processing of Wastewater by the Agency at the Agency Treatment Plant so that it is suitable for disposal.
 64. "Unit Cost of Treatment" shall mean the cost per gallon for conveyance and treatment of wastewater at the Agency Treatment Plant estimated and established annually in the O&M Budget and charged to all Users of the Agency Treatment Plant in accordance with terms and conditions of this Agreement.
 65. "User" shall mean any town, city, wastewater authority or other public entity, including MCI-Shirley, or private owner entering into an agreement with the Agency for wastewater conveyance, treatment or disposal services and has purchased Reserved Capacity at the Agency Treatment Plant.
 66. "User Charges" shall mean charges levied by each User or the Agency upon the residential, commercial and industrial Users in proportion to their use of Sewerage Works of the User or the Agency. As required by Section 204 (b) (1) (A) of Public Law 92-500, as amended, and by regulations promulgated by the U.S. Environmental Protection Agency, such charges must, to the extent possible, distribute the Operation and Maintenance Assessment (including Capital Repair and Replacement) costs to each user in proportion to the User's contribution to the total loading of the User's or Agency's Sewerage Works.
 67. "Wastewater" shall mean the combination of Sanitary Sewage, pretreated Industrial Wastewater and Infiltration and Inflow transported in the Agency Conveyance System and discharged to the Agency Treatment Plant.
 68. "Wastewater Advisory Committee" shall mean the committee composed of representatives of Ayer, Shirley, MCI-Shirley and the Agency, which shall provide review, comments, and advice to the Agency regarding capital and operations and maintenance issues, treatment and conveyance system costs, and other matters affecting the Sewerage Works of the parties.
- B. Construction. This Agreement, except where the context indicates otherwise, shall be construed as follows:

1. Definitions include both singular and plural,
2. Pronouns include both singular and plural and include both genders, and
3. Terms not specifically defined herein shall have their commonly understood meaning or the meaning ascribed to them by virtue of their use in the context of sewage and septage transport and disposal.

ARTICLE II

GENERAL PROVISIONS

Section 201. Obligations of Ayer. Ayer understands and agrees to the following obligations, limitations, and commitments, made as part of this Agreement.

- A. Sewer Use By-law. Ayer agrees to adopt, implement and enforce rules and regulations related to use of the Ayer System. Said rules and regulations shall be acceptable to federal and state authorities and to the Agency. Such rules and regulations shall prescribe conditions and requirements for use of the Ayer System so as to comply with all limitations set forth in the Sewer Use Rules and Regulations of the Agency.

Ayer shall notify the Agency of any Notices of Non-Compliance (NON) or other regulatory actions received from the DEP or any other State or Federal Agency.

Ayer shall provide a report to the Agency of all Industrial Discharge Permits issued and any NON or other violations issued to dischargers to the Ayer system. Such report can be either in summary form or by providing copies of such documents to the Agency.

Ayer shall provide the Agency with a copy of the Monthly Sampling Report provided to DEP.

Ayer shall enforce in a reasonable manner, consistent with Applicable Law, all rules and regulations of Ayer, including the Sewer Use By-law and other regulations related to the IPP. At the request of the Agency, Ayer shall consider for adoption other rules, regulations, and by-laws reasonably related to such matters. At the request of the Agency or its contractors, Ayer shall promptly and diligently move to enforce rules, regulations, and by-laws intended to secure the effective performance of the IPP against any user that is in violation of any Applicable Law with respect thereto.

- B. Wastewater Capacity and Strength Limitations. Subject to maximum flow provisions of Section 305 of the Agreement, Ayer agrees not to exceed its designated Reserved Capacity at the Agency Treatment Plant and in the Agency Conveyance System on a weekly basis.

Ayer's Reserved Capacity at the Agency Treatment Plant and in the Agency Conveyance System is designated by this Agreement as an Average Daily Flow of 350,000 gallons per day (GPD) with wastewater strength that does not exceed an average monthly load of BOD of 1580 lb/day and TSS of 1620 lb/day, excluding septage disposed of at the Agency Treatment Plant.

Ayer agrees that the total flow discharged from Ayer to the Agency Treatment Plant via the Agency Conveyance System will comply with the local limits and other limitations and conditions of the Agency's Sewer Use Rules and Regulations.

Notwithstanding the maximum flow provisions as provided in Section 305 of this Agreement, the

Agency agrees, upon request from Ayer, to accept from Ayer wastewater flow from Ayer's wastewater treatment facility (WWTF) in excess of 1.5 times Ayer's Reserved Capacity during upgrades, improvements, and repairs of the Ayer WWTF undertaken by Ayer. Ayer shall provide written notice ninety (90) days in advance of its need to divert wastewater flow in excess of 2.0 times its Reserved Capacity and shall provide the Agency with a schedule of such upgrade or improvement project with an estimated completion date. Ayer's wastewater flow to the Agency during this period shall be measured and Ayer shall make capital and operation and maintenance payments for such actual measured flow consistent with the provisions of Article III of this Agreement. Transfer of flow during the period of construction of upgrades or improvements to the Ayer WWTF shall not be considered a case of incapacity or emergency under the following provision below.

Notwithstanding the maximum flow provisions as provided in Section 305 of this Agreement, in case of incapacity or emergency at the Ayer WWTF, the Agency shall endeavor, subject to available capacity, to accept all or a portion of the wastewater flow from the Ayer WWTF during the period of such emergency or incapacity. Ayer shall provide notice to the Agency of Ayer's need for emergency capacity in advance of such need. Ayer's wastewater flow to the Agency during the period of emergency or incapacity shall be measured and Ayer shall make payment for such actual measured flow consistent with the provisions of Article III of this Agreement. Upon, or as soon as practicable after, request by Ayer to transfer wastewater during a period of incapacity or emergency, Ayer shall provide to the Agency a schedule for correction of the incapacity or emergency situation including an estimate of the total duration of the transfer. Ayer shall undertake all reasonable efforts to correct the incapacity or emergency situation to minimize the duration of the transfer to the Agency WWTF.

- C. Notification Requirements. Ayer shall provide the Agency with seven (7) days verbal notice of a planned shutdown or reduction of Ayer's wastewater processing capabilities or change in process or schedule that will significantly impact the rate or quality of flows conveyed to Devens. Such verbal notice shall be followed by a written confirmation to the Devens Utility Manager and the Agency's Wastewater O&M Contractor, Veolia or its successor, within 48 hours.

Ayer shall provide verbal notice to the Devens Utility Manager and the Agency Treatment Plant O&M contractor within one hour (1) hour of the discovery of any equipment failure that can significantly impact flow to the Agency Treatment Plant. For this purpose, "significantly" shall be defined as changes in total daily flow, flow rate or pollutant concentration that would adversely impact the ability of the Agency's wastewater plant operator to meet discharge permit limitations or inhibit normal operations of the Agency's wastewater plant, including the rapid infiltration beds. Failure by Ayer to provide notice as required above shall not in itself be considered a material breach of this Agreement.

Under no circumstances shall Ayer transfer more than 2.0 times its Reserved Capacity without prior notification to and approval of the Devens Utility Manager and the Agency's Wastewater O&M contractor.

- D. Transfer of Reserved Capacity. In the event that Ayer desires to increase or decrease its Reserved Capacity in the Agency Treatment Plant through transfer of Reserved Capacity to or from the Agency or another User, such transfer shall be accomplished in accordance with the terms and conditions in Article III, Section 311 of this Agreement and only with prior written request to and approval of the Agency. Should Ayer determine at any time after construction of the Agency Treatment Plant that it has excess capacity that it will not use in the future, the Agency shall have first right to receive the transfer of such excess capacity under Section 311 of this Agreement.

- E. Renegotiation of Reserved Capacity and Base Flow. Prior to the tenth anniversary of this Agreement, Ayer shall notify the Agency of a desire to extend this Agreement for another ten year period or to negotiate the Reserved Capacity in the Agency Treatment Plant. Notification and changes to this Agreement shall be in accordance with Article IV, Sections 405 and 415.
- F. Ayer - Devens Connection Facilities. Ayer agrees to bear the full capital and annual costs of facilities planning, other studies, permits, design, construction, operations and maintenance required for facilities to transport wastewater from the point of connection of the Ayer System to the Agency Conveyance System.
- G. Charges and Fees. Ayer agrees to make payment of all invoices, charges and fees for the capital and operating costs of wastewater conveyance and treatment services, including penalties for late payment and capital cost adjustments due to Change In Law, in accordance with applicable provisions of Article III of this Agreement. Ayer's account shall be credited with any overpayment, including any interest earned thereon, that is determined by the parties to have been made by Ayer after resolution of any billing dispute. The Agency shall make a good faith effort to resolve billing errors prior to the payment of the invoice in question.
- H. Control of Infiltration and Inflow. Ayer agrees that it will design, construct and maintain the Ayer System so as to control Infiltration and Inflow to the Agency Conveyance System to the standards defined by the DEP and as contained in the Inflow/Infiltration Report for the Town of Ayer prepared by ARCADIS and submitted to the DEP in April 2018, and reviewed and approved by the DEP, and that, in the future, Ayer will undertake studies and other measures as necessary to identify, quantify and remediate excessive Infiltration or Inflow in the Ayer System in accordance with the Agency's and Ayer's Sewer Use Rules and Regulations. Excessive Infiltration or Inflow shall be determined based upon applicable regulations as promulgated by the DEP or any Administrative Consent Order as entered into between Ayer and the DEP, whichever is more stringent.
- I. Conformance to Law. Ayer agrees to abide by, and conform to, all applicable laws of the United States and the Commonwealth of Massachusetts, together with such rules and regulations as the Agency may promulgate from time to time with regard to the Agency Treatment Plant and the Agency Conveyance System. Ayer shall be responsible for the operational and cost impacts, including penalties and fines as well as repair, clean-up or extraordinary maintenance costs, resulting from improper discharge of liquid or other material into the Ayer System that is in violation of the Agency's Sewer Use Rules and Regulations for Devens.
- J. Participation in Wastewater Advisory Committee. Ayer shall have the right, but not the obligation, to designate up to two persons to represent Ayer on the Wastewater Advisory Committee, which shall perform oversight and review activities as defined in Article IV, Section 418.
- K. Limitation of Rights. Nothing in this Agreement shall be construed as a grant by the Agency of any exclusive right or privilege. Ayer agrees to comply in all respects with the Sewer Use Rules and Regulations of the Agency.
- L. Provision of Services to Other Communities. The Agency shall have the right, at its sole discretion, to enter into agreements and to provide wastewater conveyance or treatment or residuals management services to other municipalities, agencies, businesses or other entities outside of the borders of Ayer. Such services or agreements with other entities shall not relieve the Agency of, nor significantly interfere with, its obligations to Ayer under this Agreement.

Section 202. Obligations of the Agency. The Agency agrees to the following obligations, limitations and commitments, made as part of this Agreement:

- A. Treatment and Disposal of Ayer Wastewater. The Agency agrees to accept, at the points of delivery shown in Exhibit A, treat, and dispose of up to an average daily flow of 350,000 GPD of Mixed Flow wastewater from Ayer during the term of this Agreement, subject to the volumetric and strength limitations and other provisions of this Agreement.
- B. Septage Disposal. The Agency agrees to accept septage generated by persons or entities located within Ayer, subject to the ability of the Agency Treatment Plant to receive, store and treat such septage at the time of delivery and provided that such septage is in conformance with Ayer's Sewer Use By-law. Rates for septage disposal shall be established annually as part of the annual Operations and Maintenance Budget for the Agency Treatment Plant. Certification of the origin of septage delivered to the Agency Treatment Plant will be required by the Agency. Septage accepted by the Agency under this agreement shall be carried by haulers permitted by the Devens Enterprise Commission (DEC).
- C. Measurement of Wastewater Flows and Strengths. Ayer and the Agency shall be jointly responsible for and shall undertake the measurement of wastewater flows from Ayer. Flow measurements shall be taken by wastewater flow meters located at the Ayer Main Pump Station.

Flow measurement data from the meters at the Ayer WWTF shall be electronically transmitted directly to the Agency. Costs of metering and telemetry equipment at the Ayer WWTF, including the cost of installation, maintenance, operation, reading, and testing of such equipment shall be borne by Ayer. At Ayer's expense, all such meters shall be inspected at least quarterly and calibrated at least annually. A copy of the inspection and calibration reports shall be provided to the Agency and the original kept on file in Ayer. The Agency may install and operate, at its own expense, additional flow meters as required to monitor flows from the Ayer Main Pump Station.

If determined in the sole discretion of the Agency that it is necessary to sample the strength of wastewater from Ayer, the Agency may at its own cost undertake appropriate sampling on a periodic basis and at such points as it determines necessary. Such samples, if needed, shall be taken by the Agency or its contractor in such manner and with such frequency as to ensure collection of a fair representation of the strength of Ayer's wastewater. Records and results of sampling of wastewater strength shall be on file at the Agency and a copy shall be provided to Ayer directly from the laboratory performing the analyses. The Agency reserves the right to incorporate the systemwide cost of wastewater strength sampling into the Unit Cost for Treatment in the Annual O&M Budget.

Ayer agrees to provide unlimited rights of access to the metering and sampling facilities within Ayer to the Agency or its contractor. The Agency shall notify Ayer reasonably in advance of the days and times that access to the flow meters is required or sampling is to be done.

In case of missing or inaccurate flow records or wastewater sampling data, due to faulty meter operation or otherwise, an estimate of flow volume or strength shall be made by the Agency based on the most representative records of previous measurements. In such case, the said estimates shall be used by the Agency to establish Ayer's payments to the Agency in accordance with Article III of this Agreement for the period of missing or inaccurate data. Ayer shall not be responsible for any costs associated with such estimating made necessary by such missing or inaccurate records or data. The Agency shall inform Ayer in writing when such estimates are

being used by the Agency to establish Ayer's payments, and the Agency shall provide Ayer with all data utilized to calculate the estimated payments.

- D. Rates for Wastewater Services. The Agency shall compute rates annually for use of the Agency Treatment Plant and the Agency Conveyance System and shall present the proposed rates to Ayer at least sixty (60) days prior to the intended implementation date. Should Ayer question or require additional information regarding computed rates, such questions or requests shall be submitted in writing to the Agency. Ayer may request, and the Agency shall provide, a review and meeting to address the request or issues.
- E. Records, Accounts and Audits. The Agency shall keep books of records and accounts, in which complete and correct entries shall be made of all its transactions with Ayer, which, together with all other books and papers dealing with the Agency Treatment Plant and the Agency Conveyance System, shall at all reasonable times be subject to the inspection of any officer or agent of Ayer, including representatives of the Wastewater Advisory Committee, the Board of Sewer Commissioners or other duly authorized representatives of Ayer. The Wastewater Advisory Committee shall have the right to review the Agency's annual financial statements and accounts
- F. Participation in Wastewater Advisory Committee. The Agency shall designate up to two persons to serve on the Wastewater Advisory Committee, which shall perform oversight and review activities as defined in Article IV, Section 418.

ARTICLE III

PAYMENTS FOR TREATMENT AND CONVEYANCE SERVICES

Section 301. General. Payments by Ayer to the Agency, shall include the Initial Capital Assessment, which shall be in proportion to Ayer's Reserved Capacity of the Agency Treatment Plant and the Agency Conveyance System, and calculated in accordance with Section 302; and the Operation and Maintenance Assessment, which shall be Ayer's proportional share of the operation and maintenance expenses for the Agency Treatment Plant, computed in accordance with section 303.

Section 302. Initial Capital Assessment. Ayer shall make payments to the Agency equal to Ayer's proportionate share of the annual amount required for amortization of the Initial Capital Cost of the Agency Treatment Plant and the Agency Conveyance System, with additional annual cost in the amount of 0.3 percent of the Initial Capital Assessment for administration of the capital account. Ayer's share shall be determined on the basis of its Reserved Capacity at the Agency Treatment Plant and in the Agency Conveyance System in proportion to the total Design Capacity of the Agency Treatment Plant and the Agency Conveyance System.

Section 303. Intentionally Deleted.

Section 304. Operation and Maintenance (O&M) Assessment. Ayer shall make payments to the Agency equal to Ayer's proportional share of the Annual Operating Cost of the Agency Treatment Plant and Agency Conveyance System. Said share shall be determined on the basis of the average daily flow discharged by Ayer to the Agency Treatment Plant and Agency Conveyance System in proportion to the total average daily flow of the Agency Treatment Plant and Agency Conveyance

System. Average Daily Flow used to compute the O&M Assessment to Ayer shall be estimated using available recorded amounts from the immediately preceding calendar year, adjusted for the current year using projections of flow from the O&M Plan.

Ayer's share of the O&M Assessment shall be, on a per unit basis, the same approved unit cost per unit of flow and strength as established by the Agency's Board of Directors and charged to all other Users of the Agency Treatment Plant and the Agency Conveyance System. The Wastewater Advisory Committee shall have the right to review and comment on the proposed rates before presentation to the Board of Directors. Costs for operation and maintenance of metering and sampling equipment used in establishing wastewater flows and strengths from the Ayer System shall be as specified in Section 202.C. See Exhibit B attached hereto as a sample budget.

Section 305. Maximum and Minimum Flow Assessments. The O&M Assessment shall be subject to a minimum flow charge of the Unit Cost of Treatment times the Base Flow for any period of seven consecutive days during which the average flow falls below the Base Flow, and a maximum flow charge of a total of 1.5 times the Unit Cost of Treatment for daily flow over 2 times the Base Flow for any period of seven consecutive days, unless Ayer has notified the Agency and the Agency has approved in writing such increased or reduced flow. Any of the terms and conditions in this section regarding maximum and minimum flow rates may be changed with written consent of both parties.

Section 306. Intentionally Deleted.

Section 307. Budget Preparation. By February 28 of each year, the Agency shall prepare and submit to Ayer an O&M Budget for the upcoming Operating Year, which includes estimated Agency expenditures, estimated contributions by the Users of average daily flow, and estimated payments by the Users.

Section 308. Capital Improvements Due to Change in Law. The Agency shall have the right to modify the Initial Capital Assessment and the subsequent capital assessments of each user as necessary to amortize debt incurred due to capital modifications to the Agency Treatment Plant and the Agency Conveyance System resulting from Change in Law. Such modifications to the capital assessments shall be made in proportion to the Reserved Capacity of each user existing at the time of the Change in Law. The Agency shall, to the extent possible, provide Ayer with notice at least sixty days before any capital improvement due to change in law is undertaken by the Agency, and shall include in that notice an estimate of the total cost of the capital improvement and the proportional share to be assessed to Ayer.

Section 309. Billing Cycle and Late Payments. The Agency shall bill Ayer for its share of the net annual capital cost and of the net operating costs based on actual flow, subject to terms of Section 305 above, on a monthly or quarterly basis, at the Agency's discretion, provided, however, that Agency shall notify Ayer in writing in advance of any change in billing schedule; such amounts to be based on the annual O&M Budget prepared in accordance with section 306. If billed on a quarterly basis, the billing periods shall be: (1) July 1 through September 30; (2) October 1 through December 31; (3) January 1 through March 31; and (4) April 1 through June 30. Ayer shall make payments to the Agency no later than thirty days after receipt of each bill. Agency may assess a late payment penalty

at a rate no greater than 1.5% per month to be assessed on amounts not paid within thirty (30) days of the date of the invoice.

Section 310. Payment Adjustments. Within two months after the conclusion of each Operating Year, the Agency shall compute revised payments due from Ayer based on actual Agency expenditures and actual wastewater flow (and wastewater characteristics, if necessary) contributed by each User during the preceding year. The Agency shall provide Ayer with a copy of all data and computations used by the Agency in determining any revised payments due from Ayer. Any underpayments or overpayments shall be billed or refunded as one transaction within 30 days of the close of the fiscal year.

Section 311. New Users and Transfer of Reserved Capacity. Should the Agency enter into an agreement for wastewater conveyance or treatment services with a User not currently served by the Agency Treatment Plant or the Agency Conveyance System, Agency shall provide Ayer with a copy of such agreement and the new User shall be required to pay the Agency an Initial Capital Assessment calculated to reimburse the Agency and the existing User(s) for the principal and interest payments made on that portion of their Reserved Capacity to be assigned to the new User. Said Initial Capital Assessment shall also include a carrying charge based upon the average annual interest rates offered by commercial savings banks during the period that principal and interest was paid by the existing Users for the portion of the Reserved Capacity to be transferred. The Initial Capital Assessment shall be refunded by the Agency to the existing Users in proportion to the amount of Reserved Capacity obtained from each existing User to accommodate the new User.

Transfer of Reserved Capacity between Ayer and other Users already being served by the Agency Treatment Plant or the Agency Conveyance System shall likewise be in accordance with the above procedure and Section 201.D of this Agreement. Throughout the term of this Agreement, the Agency shall have first right to receive the transfer of excess Reserved Capacity from Ayer in accordance with the above terms should Ayer decide at its sole discretion to transfer such excess capacity.

In addition to said Initial Capital Assessment, any new User shall make principal and interest payments to the Agency as they come due for the Reserved Capacity assigned to the new User in accordance with the terms of this Agreement. Ayer shall no longer be liable for future principal and interest payments in connection with the Reserved Capacity transferred from Ayer to any new User.

Section 312. Expansion and/or Upgrading of Agency Sewerage Works. Should the Agency expand the capacity of any of its Sewerage Works solely to accommodate a User or Users other than Ayer, Ayer shall not be liable for the capital costs incurred by the Agency for said expansion. Should the Agency provide, at Ayer's request, additional Reserved Capacity for use by Ayer in any of the Agency's Sewerage Works (i.e., Reserved Capacity in excess of that indicated in Article II, Section 201.B of this Agreement), Ayer shall make payments of principle and interest to the Agency in accordance with the provisions under which the additional Reserved Capacity is financed, and in the proportion of Ayer's additional Reserved Capacity to the total additional Reserved Capacity provided.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 401. Status of Former Agreements. This Agreement supersedes all written or unwritten agreements for treatment services between the Agency and Ayer and constitutes the entire agreement between the Agency and Ayer for wastewater management services; provided, however, that the Agency retains full rights and authority to enforce the provisions of any preceding or currently existing agreement as it pertains to any outstanding indebtedness to the Agency.

Section 402. Incurring of Debt. Nothing in this Agreement shall be construed so as to prevent either Ayer or the Agency from incurring any debt necessary to ensure the sufficiency of funds required to construct, maintain and operate their respective Sewerage Works.

Section 403. Severability. If any clause or provision of this Agreement or its application shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

Section 404. Status of Legal Representatives, Successors and Assigns. The Agency and Ayer agree that each one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors, and assigns of the parties hereto.

Section 405. Amendments To This Agreement. The provisions, terms and conditions of this Agreement shall be modified only by written amendment, executed with the same formality as this Agreement. This Agreement may be amended in whole, or in part, by the parties as follows:

- A. Proposed amendments to this Agreement may be offered by either Party, directly, or through the Wastewater Advisory Committee, which shall make its recommendations to the Ayer Select Board and Agency leadership.
- B. If both parties unanimously agree to the amendment to this Agreement, it shall be submitted in writing to the Parties and shall become effective upon approval and execution by the Signatories of the Parties.

Section 406. Force Majeure. The performance of either party hereunder shall be excused if such party is reasonably precluded from performance by the occurrence of a Force Majeure event. Such excuse of performance shall be only to the minimum extent reasonably forced on such party by such event and such party shall continue to perform all other responsibilities under this Agreement. The occurrence of a Force Majeure event may occasion an adjustment in costs payable under this Agreement, but the existence of such costs shall not, in and of itself, excuse performance by either party. A party relying on the occurrence of a Force Majeure event as an excuse for non-performance shall as soon as is reasonably possible upon becoming aware of such event and its consequences notify the other party of such event and its consequences and shall take all reasonable efforts to eliminate the cause of such non-performance and to resume full performance in accordance with this Agreement.

Section 407. Third Parties. The Agency is not responsible for any facility not included in its Sewerage Works or for any facility it does not control or for which it is not responsible for operating, and in the event that a facility of a third party shall be involved in the furnishing of service to, or the

receipt of service from Ayer, the Agency shall not be responsible for regulation, control or compliance of such facility or third party in order for Ayer to fulfill its responsibilities under this Agreement. Ayer assumes sole responsibility for any and all discharges to the Ayer System and for full compliance with this Agreement in light of such discharges. Ayer shall ensure that all Users and customers of the Ayer System comply with the Ayer's Sewer Use By-law, as adopted and amended from time to time by Ayer. Ayer is not responsible for any facility not included in its Sewerage Works which it does not control or have the responsibility to control.

Section 408. Assignment. Each of the parties shall have the right to assign its rights and obligations under this Agreement to its duly authorized public or quasi-public successors, assigns or affiliates and shall notify the other party no later than ninety (90) days prior to such assignment. This Agreement may not be assigned to a private entity by either party without approval by the other party, in writing, which approval shall not be unreasonably withheld or delayed. This Agreement in its entirety shall be binding upon the successors, assigns and affiliates of each party. The Agency shall have the right to contract with another party or other parties to provide planning, design, construction, contract operations, asset management, billing or other services necessary to provide wastewater services to Ayer and fulfill its responsibilities under this Agreement.

Section 409. Default and Right to Cure.

- A. The following will be deemed a default by Ayer and a breach of this Agreement: (i) non-payment of charges and assessments if such charges and assessments remain unpaid for more than thirty (30) days after receipt of written notice of such failure to pay from Agency; or (ii) Ayer's failure to perform any other material term or condition under this Agreement within sixty (60) days after receipt of written notice from the Agency specifying the failure. No such failure, however, will be deemed to exist if Ayer has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Ayer. If Ayer remains in default beyond any applicable cure period, the Agency will have the right, at its sole discretion, to exercise any and all rights and remedies available to it under law and equity, including the reselling of capacity allocated to Ayer pursuant to this Agreement.
- B. The following will be deemed a default by the Agency and a breach of this Agreement: the Agency's failure to perform any material term or condition under this Agreement within sixty (60) days after receipt of written notice from Ayer specifying the failure. No such failure, however, will be deemed to exist if the Agency has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the Agency. If the Agency remains in default beyond any applicable cure period, Ayer will have the right to exercise any and all rights available to it under law and equity.

Section 410. Waiver. Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time said right or rights or any other right it may have hereunder.

Section 411. Subsurface Conditions. Except to the extent attributable to wastewater received from

Ayer under this agreement, Ayer shall not be held responsible for the presence of, nor costs or expenses related to the presence, identification, remediation or other results of, contamination, hazardous materials, unexploded ordnance, or other known or unknown environmental contamination conditions existing at the Agency Treatment Plant, including the Rapid Infiltration Basins, upon the date of execution of this Agreement.

Section 412. Indemnification. Notwithstanding anything to the contrary in this Agreement:

- A. To the extent permitted by law, Ayer shall indemnify, and hold harmless the Agency, its elective and appointive officers, and its duly authorized employees and contractors (collectively, the "Agency Indemnitees" for purposes of this Section 412) from (i) any costs, expenses or liabilities, (including costs, expenses or liabilities to third parties) for bodily injury (including death), damage to tangible property, or (ii) any fines or penalties for violations of applicable law to the extent that they are directly caused by, or arise from, Ayer's breach of this Agreement or the negligent or wrongful intentional acts or omissions of Ayer or its agents, servants, contractors, subcontractors, customers, or employees. Ayer shall not be responsible to the Agency Indemnitees for any liability for bodily injury, including death, or claims for property damages or any fines or penalties arising out of circumstances that are not caused by Ayer's breach of this Agreement or by the negligence or wrongful intentional acts or omissions of Ayer, its employees, servants, contractors, subcontractors, customers, or agents or that are caused by the negligent or wrongful intentional acts or omissions of the Agency Indemnitees or are attributable to Force Majeure.
- B. To the extent permitted by law, the Agency shall indemnify, and hold harmless Ayer, its officers, directors, employees and contractors (collectively, the "Ayer Indemnitees" for purposes of this Section 412) from (i) any costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) for bodily injury (including death), damage to tangible property or (ii) any fines or penalties for violations of applicable law to the extent that they are directly caused by, or arise from the Agency's breach of this Agreement or the negligent or wrongful intentional acts or omissions of the Agency or its agents, servants, employees, contractors or subcontractors. The Agency shall not be responsible to the Ayer Indemnitees under this section for any liability for bodily injury, including death, or claims for property damages or any fines or penalties arising out of circumstances that are not caused by the Agency's breach of this Agreement or by the negligent or wrongful intentional acts or omissions of the Agency, its agents, servants, employees, contractors or subcontractors or that are caused by the negligent or wrongful intentional acts or omissions of the Ayer Indemnitees or are attributable to Force Majeure.
- C. In the event of a claim for indemnification by either party, the party claiming the indemnity shall immediately notify the other party (the "Indemnifying Party") of the claim and the Indemnifying Party shall have the right but not the obligation to assume the defense against the claim, and the right to approve the settlement of the claim.
- D. Each party's indemnification shall include the reimbursement to the other of all legal fees and expenses reasonably incurred, unless it is determined that such other party bears responsibility for the claims asserted.

Section 413. Limitation on Extent of Damages. It is the intent of the parties hereto that any damages on account of breach of this Agreement and any indemnification amounts payable under Section 412 or otherwise shall be limited to the actual, out-of-pocket expenses of the other party and that, except as otherwise specifically stated in this Agreement, damages and indemnity amounts shall not be measured by such intangible factors as loss of business opportunity, good will or reputation. In the absence of willful misconduct or grossly negligent action or failure to act, it is the intent of the parties hereto that punitive damages not be awarded. The parties hereto, and, in the case of indemnity obligations under Section 412, the Agency Indemnitees and the Ayer Indemnitees, shall be entitled to damages or indemnities only as principal and not as the representative of any other interest, group or class. Sections 412 and 413 shall survive the expiration or termination of the Agreement.

Section 414. Dispute Resolution. In the event of dispute under this Agreement, the parties may agree to mediate the dispute as follows:

Notice The moving party shall notify the other of the nature of the dispute and the issue or issues that are contested through a brief written statement of its position along with a request that the matter be mediated.

Response The non-moving party shall respond in writing within fifteen (15) calendar days briefly stating its position regarding the disputed issues and identifying any additional issues. Both statements of the issues and positions shall be provided to a third party mediator to be agreed to by the parties within thirty (30) calendar days of the moving party's notice. If the parties cannot agree to a mediator, the parties shall request that the state office of dispute resolution or a registered mediation service designate a mediator.

Mediation The mediator shall consider the briefs along with any relevant witness testimony or oral arguments requested by either party. The mediator shall attempt to get the parties to resolve their differences and if this is not possible, shall render a written decision detailing the most reasonably equitable resolution of the matter or matters in dispute.

Cost The cost of the mediation shall be borne equally by the parties, unless the mediator concludes in his/her decision that either party was unreasonably disputing the contested matter or matters, in which case the party determined to be unreasonably disputing a matter shall bear all costs.

To the extent the parties do not agree to mediate a dispute, such dispute shall be resolved by referral to a Massachusetts court of competent jurisdiction.

Section 415. Notice. Any notices required to be given under this Agreement shall be in writing and shall be delivered or mailed to the parties at the following addresses:

Notices to MassDevelopment:

Executive Vice President, Devens
MassDevelopment

33 Andrews Parkway
Devens, Massachusetts 01434
Fax 978-772-7577

with a copy to:

General Counsel
Massachusetts Development Finance Agency
99 High Street
11th Floor
Boston, MA 02110

Notices to the Town of Ayer:

Board of Water and Sewer Commissioners / Selectboard
One Main Street
Ayer, Massachusetts 01432
FAX 978-772-8222

with a copy to:

Ayer Department of Public Works
25 Brook Street
Ayer, Massachusetts 01432
FAX 978-772-8244

All notices concerning non-compliance with state, federal or local regulations, permits or other legal requirements shall be given in the most expeditious manner possible and shall include, at a minimum, both facsimile and mailed notice.

Section 416. Effective Date, Duration and Termination. This Agreement shall be effective as of the date of its acceptance by the Agency's Board of Directors and execution by the parties. This Agreement shall be in full force and effect and shall be binding on Ayer and the Agency for a period of ten (10) years commencing with the date first entered above. The Parties may extend the Agreement for an additional ten (10) years with re-negotiation of Reserved Capacity for wastewater flow, strength and payment provisions. All other existing terms of the current Agreement will remain in full force and effect.

Section 417. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this Agreement shall be brought in courts within the Commonwealth of Massachusetts. Ayer and the Agency shall comply with all applicable laws, regulations and codes in performance of this Agreement.

Section 418. Wastewater Advisory Committee. The Agency and Ayer shall have the options, rights

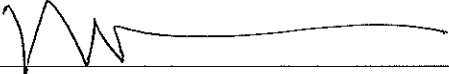
and obligations, as defined elsewhere in this Agreement, to serve on the Wastewater

Advisory Committee, which shall provide review, comments, and advice to the Agency regarding capital and operations and maintenance issues, treatment and conveyance system costs, and other matters affecting the Sewerage Works of the parties and matters regarding this Agreement. The Wastewater Advisory Committee shall meet at regularly scheduled intervals and shall have the right to define additional procedures and policies for the Committee that are not contrary to this Agreement and that allow the Committee to fulfill its obligations under the Agreement. Meetings of the Committee shall be attended by the operator of the Agency Treatment Plant and other Users served by the Agency Treatment Plant, if any.

Section 419. Points of Contact. The Agency shall be responsible for providing Ayer with the names and numbers for primary and secondary contacts of the Agency and the Agency's O&M Contractor. Ayer shall be responsible for providing the Agency with the names and numbers for primary and secondary contacts of Ayer.

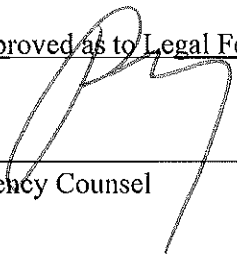
IN WITNESS WHEREOF, the parties have hereunto set their hands and fixed their seals as of the first date above written.

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY

By:  _____

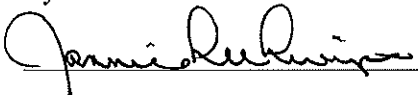
Its: Acting EVP, Devens _____

Date: August 30, 2022 _____

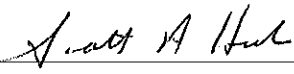
Approved as to Legal Form


Agency Counsel

TOWN OF AYER
By its Select Board

 _____

 _____

 _____

ATTEST
 _____

EXHIBIT A
Drawing of Ayer-Devens Sewer Connection Point

AYER SEWER CONNECTION
TO DEVENS SEWER SYSTEM
AT MH 1045

EXHIBIT A
DRAWING OF AYER-DEVENS
SEWER CONNECTION POINT

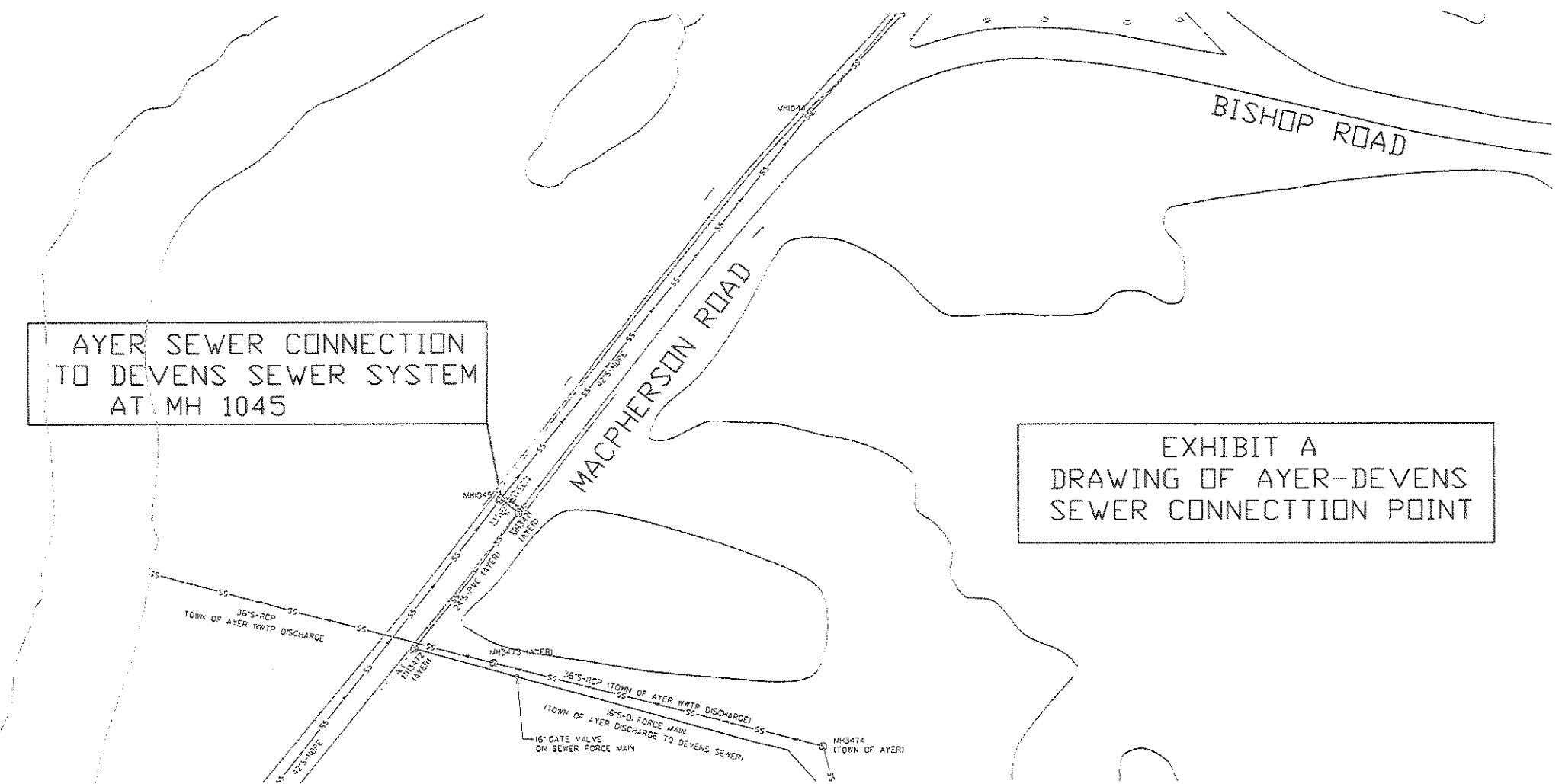


Exhibit B

Example of Annual Budget and Operation and Maintenance Assessment

EXHIBIT B
EXAMPLE OF ANNUAL BUDGET AND O&M ASSESSMENT

<p>MassDevelopment TOWN OF AYER ANNUAL WASTEWATER ASSESSMENT FY 2022 Estimate for July 2021 - June 2022 (calculated 2/11/21)</p>
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Total Annual Wastewater Flow at Devens WWTF (million gallons):	450
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WWTF O&M CHARGE	
Fixed O&M Cost (Suez Fees & DEP Permit Fee):	\$ 1,340,052
Variable O&M Cost (estimated cost of electricity paid by MassDev):	\$ 225,000
Subtotal - O&M Cost:	\$ 1,565,052
Annual SRF Loan Related Fees:	\$ 5,000
SRF Loan Reserve Funds Payments & Equipment Repairs:	\$ 120,000
Management & Administration:	\$ 172,000
Subtotal - Reserve Funds, Equip. Repairs & Admin. Fees:	\$ 297,000
Income from Septage & Special Wastewater Receiving:	\$ (425,000)
Interest on SRF Reserve Accounts:	\$ (25,000)
Subtotal - Operating Income:	\$ (450,000)
Total WWTF O&M Cost:	\$ 1,412,052
Unit Cost of Treatment (\$/1000 gallons):	3.1379
Estimated Ayer Flow to Devens WWTF (million gallons) for FY22:	40.0
Percent of Total Flow from Ayer:	8.89%
Total Ayer WWTF O&M Charge:	\$ 125,516

TREATMENT & TRANSPORT CAPITAL CHARGES	
Wastewater Treatment Facility Capital Charge	
Design Capacity of Devens WWTF Phase 1 (gal/day):	3,000,000
Ayer Reserved Capacity of WWTF (gal/day):	800,000
Ayer Percent Reserved Capacity of WWTF:	26.67%
WWTF SRF Loan Principal & Interest Repayment:	\$ 441,134
Ayer Share of WWTF Principal & Interest Repayment:	\$ 117,636
Nashua River Interceptor Capital Charge	
Design Capacity of Nashua River Interceptor (gal/day):	3,000,000
Ayer Reserved Capacity of Interceptor (gal/day):	800,000
Ayer Percent of Interceptor Usage: (1)	2.504%
Interceptor Principal & Interest Repayment:	\$ 104,891
Ayer Share of Interceptor Principal & Interest Repayment:	\$ 2,626
Annual Capital Admin. Per Sect. 302 (0.3% of Capital Acct. Share)	\$ 9,321
Total Ayer Capital Charge:	\$ 129,583

(1) Computed using weighted average of length and capacity usage

Total Annual Payment - Capital & O&M - FY 2022:	\$ 255,099
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