

THIS WATER/SEWER RATE AGREEMENT (hereinafter referred to as the “Agreement”) is made as of this 1st day of July, 2021 (the “Effective Date”), by and between the City of Concord, NH, a New Hampshire municipal corporation (the “City”) located at 41 Green Street Concord, NH 03301 and Wheelabrator Concord Company LP, incorporated in the State of New Hampshire, having a principle place of business at 100 Arboretum Drive, Suite 310, Newington, New Hampshire 03801 (“Wheelabrator”). The City and Wheelabrator are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

I. Purpose of the Agreement.

The purpose of this water and sewer use agreement (“Agreement”) is to establish appropriate water and sewer rates for Wheelabrator at its property in the City is located at 11 Whitney Road (“Subject Property”). This Agreement is made between the parties in accordance with City Ordinance 9-1-9 (water rate), and City Ordinance 9-3-5 (wastewater rate).

The Subject Property has the following two accounts with the City: (1) Account: 620312, which is an eight (8) inch meter account; and (2) Account: 620313, which is a four (4) inch meter account. The Subject Property has water meters to determine water usage from the City for billing purposes. It also uses water from the Merrimack River, which is not metered. Due to Wheelabrator’s business which evaporates a certain, and unquantified, amount of water used from the City and the Merrimack River, it is not appropriate to bill wastewater based on water consumption. Therefore, the Parties have agreed upon an alternative billing process to calculate an appropriate charge for Wheelabrator’s use of the City’s sewer system.

Historically, the City has measured Wheelabrator’s sewer rates through use of the meter located at the Hannah Dustin Pump station in the City. This was an appropriate measure of Wheelabrator’s sewer use because Wheelabrator was the primary customer for water and sewer from this pump station.

However, due to recent and future development within the vicinity of the Hannah Dustin pump station, the Parties recognize that it will no longer be appropriate to measure Wheelabrator’s sewer rate from this pump station. Therefore, in accordance with the terms and condition set forth in the Agreement the Parties have agreed to set Wheelabrator’s sewer rate based upon Wheelabrator’s five (5) year water and sewer average as measured at the Hannah Dustin pump station for the years 2016-2021.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

II. Water and Sewer Rate for Accounts 620312 and 620313.

A. The Concord City Council (“City Council”) shall establish the water and sewer rates as it deems appropriate. The rates set forth in section II, D and E below, are the current rates approved by the City Council. The Parties agree that these rates are subject to change at

any time and for any reason by the City Council. In the event that the City Council changes the rates, the City shall, within thirty (30) days of the effective date of the rate change, provide notice to Wheelabrator of the new rate change and such notice shall constitute an amendment to section II, D and E of this Agreement.

B. Water and sewer service charges are due and payable monthly and within thirty (30) days of the date of bill. Failure or neglect to pay water service charge bills within thirty (30) days of the date of the bill shall result in the adding of one and one-half (1½) percent interest (eighteen (18) percent per annum) on water and sewer service charges then unpaid.

C. Wheelabrator maintains two meters for water located at the Subject Property, which are: (1) Account 620312, which is an eight (8) inch meter account; and (2) Account 620313, which is a four (4) inch meter account.

D Account 620312 Current Rate Charges.

1. Water Fixed Charges shall be \$445.33 per month.
2. Water Volumetric Charges shall be \$2.91 CCF per month.
3. Sewer Fixed Charges shall be \$692.09 per month.
4. Private Fire Line/Hydrant Charges shall be \$113.27 per month

E. Account 620313 Current Rate Charges

1. Water Fixed Charges shall be \$139.17 per month.
2. Water Volumetric Charges shall be \$2.91 CCF per month.
3. Sewer Fixed Charges shall be \$216.28 per month.

III. Term and Termination.

The Term of this Agreement shall commence on the Effective Date and shall terminate on July 1st, 2050, unless otherwise terminated by the City or extended by the Parties. ("Termination Date"). The City may terminate this Agreement at any time and for any reason.

IV. Choice of Law and Venue.

This Agreement shall be governed by and construed under, and pursuant to the laws of, the State of New Hampshire, exclusive of the laws relating to conflict of laws. Any dispute under this Agreement shall be resolved within the venue of the Merrimack County Superior Court in the State of New Hampshire, or its equivalent jurisdictional successor.

V. Binding Effect.

The rights granted to Wheelabrator under this Agreement are not assignable absent the express, written consent of the City (mere performance of the Investigative Activities by contractors and others acting under Wheelabrator shall not be an assignment of Wheelabrator's

rights under this Agreement). Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors.

VI. Notices.

The giving of notice hereunder shall be by delivery in hand or by mailing by certified mail, return receipt requested, or by overnight mail using a recognized carrier such as USPS or FedEx with receipt, or courier,

to Wheelabrator:

with a copy to:

to City of Concord:

Earle M Chesley, P. E, General Services Director
City of Concord
41 Green Street
Concord, NH 03301

with a copy to:

or to any other address specified in a written notice sent to the City, or Wheelabrator, as appropriate, by the Party changing its address. Any notice hereunder shall be deemed effective upon delivery in hand with a receipt therefore having been obtained or upon the first attempted delivery by mail or courier whether or not such delivery is accepted by the addressee.

VII. Waiver.

The provisions of this Agreement may be waived or modified only by instruments in writing executed by each of the parties hereto. No waiver by any Party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or consent to any subsequent breach of the same or any other provision.

VIII. Severability.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated unless such ruling shall materially alter the economic effect of this Agreement.

IX. Headings.

The paragraph headings contained in this Agreement are for reference and convenience only, and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

X. City Authorization.

The City Council authorized the City Manager to execute this Agreement on __.

XI. Complete Agreement and Modification.

The terms of this Agreement shall supersede the terms of any prior agreements between the Parties involving water and wastewater rates. This Agreement may not be modified or amended unless mutually agreed upon in writing by the Parties with reference made to this Agreement.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW*

IN WITNESS WHEREOF, each Party and the individual executing this Agreement represent and warrant that the individual executing this Agreement has been duly authorized to enter into this Agreement, and to bind the Party on whose behalf such individual is executing.

This Agreement is acknowledged this _____ day of _____, 2021

For the CITY OF CONCORD:

By: Thomas J. Aspell, Jr., City Manager

This Agreement is acknowledged this _____ day of _____, 2021

For Wheelabrator Concord Company LP:

By: , President