



GLOUCESTER CITY COUNCIL
Budget & Finance Committee
Thursday, April 3, 2014 – 5:00 p.m.
1st Fl. Council Committee Rm. – City Hall

AGENDA

(Items May be taken out of order at the discretion of the Committee)

1. *Memorandum from General Counsel re: Gloucester/Rockport Intermunicipal Agreement (IMA) for sewer services*
2. *Special Budgetary Transfer Request (2014-SBT-21) from Police Department*
3. *Special Budgetary Transfer Request (2014-SBT-22) from Police Department*
4. *Special Budgetary Transfer Request (2014-SBT-23) from Police Department*
5. *Special Budgetary Transfer Request (2014-SBT-24) from Police Department*
6. *Special Budgetary Transfer Request (2014-SBT-25) from Department of Public Works*
7. *Special Budgetary Transfer Request (2014-SBT-26) from Department of Public Works*
8. *Special Budgetary Transfer Request (2014-SBT-27) from Department of Public Works*
9. *Special Budgetary Transfer Request (2014-SBT-28) from Department of Public Works*
10. *Special Budgetary Transfer Request (2014-SBT-29) from the City Clerk's Office*
11. *Supplemental Appropriation-Budgetary Request (2014-SA-63) from the Mayor's Office*
12. *Memo from City Auditor regarding accounts having expenditures which exceed their authorization
And Auditor's Report*

COMMITTEE

Councilor Melissa Cox, Chair
Councilor William Fonvielle, Vice Chair
Councilor Paul McGeary

CC: Mayor Carolyn Kirk
Jim Duggan
Kenny Costa
John Dunn
Suzanne Egan
Police Chief Leonard Campanello
Mike Hale

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

City Hall
Nine Dale Avenue
Gloucester, MA 01930



TEL 978 281-9727
FAX 978 281-9734

CITY OF GLOUCESTER
DEPARTMENT OF LAW

MEMORANDUM

TO: Carolyn A. Kirk, Mayor

FROM: Suzanne P. Egan *SPE*
General Counsel

DATE: March 17, 2014

SUBJECT: Gloucester/Rockport Intermunicipal Agreement (IMA)

Attached please find the Rockport Long Beach - Gloucester Intermunicipal Agreement (IMA) for sewer services. This IMA was originally agreed to on October 5, 2000 for a ten year period to provide sewer service for the seasonal homes located in the Long Beach area of Rockport. This extends the term of the agreement for an additional ten years.

There are two substantive changes to the document.

1. The original agreement noted that the homes on Long Beach would be occupied from May to September. This agreement lengthens the season to April to October.
2. The original agreement provided that if requested by Rockport, the City was required to accept additional users although no additional flow. This agreement gives the City the right to evaluate whether the additional users will have a negative impact on the system prior to agreeing to additional users.

City Council approval is required to enter into an IMA. Kindly forward this to the Council for their consideration.

Enclosure

INTERMUNICIPAL AGREEMENT
FOR
WASTEWATER COLLECTION, TREATMENT AND DISPOSAL
BETWEEN
CITY OF GLOUCESTER, MASSACHUSETTS
AND
TOWN OF ROCKPORT, MASSACHUSETTS

Preamble

THIS AGREEMENT made and entered this _____ day of _____, 2014, and executed in quadruplicate (each executed copy constituting an original) between the City of Gloucester (hereinafter "Gloucester") and the Town of Rockport (hereinafter "Rockport").

WITNESSETH:

WHEREAS, the City of Gloucester owns and operates a wastewater treatment system; and

WHEREAS, Rockport has constructed a sewer system to the Rockport Gloucester line where it connects with the Gloucester sewer system; and

WHEREAS, Gloucester, in and under the terms and conditions as listed herein, has sold wastewater treatment and disposal capacity to Rockport; and

WHEREAS, Rockport, in and under the terms and conditions as listed herein, has purchased wastewater treatment and disposal capacity from Gloucester; and

WHEREAS, as a condition of this agreement, Rockport agrees that the use of the cottage colony at Long Beach in Rockport shall remain seasonal; and

WHEREAS, the parties recognize that Gloucester must implement and enforce a pretreatment program to control discharges from certain users of its wastewater treatment system under the Clean Water Act, 42 U.S.C. '1251 et seq. and requirements set forth at 40 CFR Part 403; and

WHEREAS, the parties are authorized by Chapter 40, Section 4 and 4A of the General Laws to enter into an Intermunicipal Agreement for the purpose of the City of Gloucester supplying wastewater treatment and disposal to the Town of Rockport, subject to authorization by the Gloucester City Council and the Rockport Town Meeting and Board of Selectmen; and

WHEREAS, at present there are no existing facilities in the Long Beach area of Rockport to be served by the proposed sewer system which will discharge industrial waste subject to Gloucester's pretreatment program to the Gloucester system; and

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. Term/Purpose/Intent

1.1 The term of this Agreement shall be for a period of ten (10) years from date hereof, unless sooner terminated as herein provided. Rockport shall have the sole and exclusive option to extend this Agreement for a second ten (10) year term upon notification to Gloucester on or before the end of the eighth (8) year of this Agreement of its intention to exercise this option. The parties intend that the municipal corporations entering into this Agreement are the sole and exclusive beneficiaries of the Agreement. Subject to the terms and limits of this Agreement and of applicable state and federal law, the City of Gloucester, acting through its Department of Public Works, will provide sewer service to the Town of Rockport as shown on the map in the Appendix in consideration for payment of applicable sewer use rates and fees. The City and Town shall meet at a minimum of once every five years to discuss the contract including but not limited to rate setting and capital forecasts.

1.2 This Agreement shall not take effect until it has been authorized by the Mayor of the City of Gloucester and the City Council and the Rockport Town Meeting and Board of Selectmen and the Massachusetts Department of Environmental Protection ("the DEP") and the U.S. Environmental Protection Agency (the "EPA") as may be required by law.

1.3 Gloucester shall use its best efforts to be at all times in compliance with the NDPDES permit issued for the facility and to comply with all state and federal laws,

regulations, water quality standards, orders, decrees of any state and/or federal governmental authority having jurisdiction over the treatment and disposal of waste waters.

1.4 Characteristics of waste delivered to the facility by or from Rockport shall at all times conform to standards set by Rules and Regulations of the EPA and the DEP and Gloucester's Sewer Use Ordinance, all as issued and amended from time to time.

1.5 Town of Rockport has adopted a sewer use by-law which incorporates the pertinent terms of this agreement. No sewage will be accepted until the sewer by-law is in place.

1.6 The City of Gloucester shall amend its sewer ordinance to the extent necessary to incorporate the pertinent terms of this Agreement.

2. Amendments

2.1 No officer, official, agent, or employee of Gloucester or Rockport shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind Gloucester or Rockport by making any promise or representation not contained herein except by an amendment, in writing, executed by both municipal corporations in the same manner as this Agreement is executed. Neither party may rely on any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of the other party as having changed, modified or amended this Agreement. Neither party shall be construed as waiving any provision of the Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by either party shall not be construed as waiver of any term or condition hereto nor shall it limit the legal or equitable remedies available to that party.

3. Assignment

3.1 This Agreement shall not be assigned or transferred by either party, without the express written consent of the other party given with the same formalities as are required for the execution of this Agreement.

4. Hold Harmless/Indemnification

4.1 . To the extent permitted by law, Rockport hereby agrees to indemnify and save harmless Gloucester or its agents against any and all liability or claims arising from the negligent or willful acts or omissions of Rockport or its agents or employees relating to Rockport's performance under this Agreement, including but not limited to liability deriving from state and federal environmental administrative findings or orders or actions or claims for damages on account of injury to person, or property or the environment caused by any act or omission of Rockport, its agents or employees or any fine, penalties or monetary awards which arise out of Rockport's acts or omissions under the terms of this Agreement.

4.2 To the extent permitted by law, Gloucester hereby agrees to indemnify and save harmless Rockport or its agents against any and all liability or claims arising from the negligent or willful acts or omissions of Gloucester or its agents or employees relating to Gloucester's performance under this Agreement, including but not limited to liability deriving from state and federal environmental administrative findings or orders or actions or claims for damages on account of injury to person, or property or the environment caused by any act or omission of Gloucester, its agents or employees or any fine, penalties or monetary awards which arise out of Gloucester's acts or omissions under the terms of this Agreement.

5. Force Majeure

5.1 No failure or delay in performance shall be deemed to be a breach of this Agreement when such failure or delay is occasioned by or due to any Act of God, strike, lockout, war, riot, epidemic, explosion, sabotage, breakage or accident to machinery or lines or pipe, the binding order of any court or governmental authority, or any other cause whether of the kind herein enumerated or otherwise not within the control of the party against whom a breach is alleged.

6. Reports/Records/Rate Schedules

6.1 Annually, during the first week of January, Rockport and Gloucester shall mutually exchange records from each municipality pertaining to the flows. The records shall include the daily flow for each month. The annual flow data will be reconciled

against the allocated treatment capacity for the Town and the City. The Town and the City shall also, at this time, furnish data on the expected flows for the upcoming year, the amount of committed but unconnected capacity, and uncommitted capacity.

6.2 Annually in the first week of January, or upon Gloucester's request, Rockport shall provide reports and records giving the names and addresses of all Rockport's Long Beach customers and as shown on the Map in the Appendix showing the location from which sewage is being accepted, character of occupancy, and amount of sewage produced on a monthly basis by each customer and any other reports, records or data reasonably required by Gloucester.

6.3 Rockport shall furnish sewer system plans as Gloucester may request from time to time.

6.4 Rockport shall notify Gloucester in writing and keep Gloucester informed of the name and title of its official or officials responsible for sewage services in Rockport and for implementation of the terms of this Agreement. Gloucester and Rockport shall notify each other within 30 days in writing of any changes in personnel.

7. Inspections

7.1 Gloucester has the right to inspect facilities and equipment in Rockport which may affect the sewage system. These inspections and any inspections permitted under this Agreement may include any and all reasonable tests Gloucester deems necessary. Rockport hereby consents to Gloucester's entry onto or into property of Rockport for the purpose of any inspection or repair, installation or maintenance which Gloucester may require under this Agreement. Gloucester will not, except as expressly set forth in this Agreement, perform any work in Rockport but will require work, as needed, to Gloucester's specifications for all extensions of sewer lines.

8. Remedies

8.1 In addition to the remedies, power and authority which the Department of Public Works has under ordinances of the City of Gloucester, the following remedies apply:

a) If either party fails to fulfill any material obligation or condition of this Agreement, the other party has the right to terminate this Agreement by giving ninety

(90) days notice, in writing, of its intent to do so. Upon receipt of such notice, the party shall have the right to prevent termination by curing the default within sixty (60) days. Termination shall not release Rockport from its obligation to pay all bills or sums due in accordance with this Agreement.

b) Both parties reserve the right, either in law or equity, by suit and complaint in the nature of mandamus, or other proceeding, to enforce or compel performance of any or all covenants herein.

c) Any bill remaining unpaid after the thirtieth day from the date of billing or the due dates as specified in this Agreement, whichever is later, shall bear interest in accordance with General Laws.

d) If an administrative agency, board, commission or division of the state or federal government or any court impairs, alters, restricts or limits, directly or indirectly Gloucester's rights, powers or authority to maintain, sell, contract for, or permit sewage disposal as described in this Agreement, Gloucester, in its sole discretion, may terminate and void this Agreement by written notice to Rockport. Termination under this clause shall not release Rockport from its obligation to pay any sums due and all bills owed for services previously rendered unless to do so would be in violation of a final administrative or judicial decree, order or ruling. The notice of termination under this subsection shall be given within five business days after Gloucester receives written notice of the action or decision of such agency, board, commission, division or court. It is the intent of this notice provision to give Rockport as much advance notice as possible consistent with Gloucester's need to terminate. Gloucester will notify Rockport of the formal institution of any proceedings or the issuance of any formal order so that Rockport may, if it chooses, participate in such proceedings or challenge any such order.

e) If either party fails to perform any obligation under this Agreement, the other party may perform on behalf of the defaulting party and charge the reasonable costs thereof, including administrative time, to the defaulting party as a sum due under the Agreement provided written notice is given to the defaulting party allowing it a reasonable time to cure the default.

f) Gloucester may in its sole discretion immediately stop providing service to Rockport: (1) if Rockport fails to cure any default within sixty (60) days after

written notice as provided in paragraph 8.1(a); or (2) if Rockport or any *consumer* utilizing Rockport's access to Gloucester's sewer system, by intent violates or fails to comply with any notice, ordinance, regulation or order of the City permitted or required under EPA's pretreatment regulations or (3) if after notice to Rockport and Rockport having an opportunity to cure the violation, violates any requirement imposed by the EPA regulating wastewater discharge or treatment. This paragraph shall not apply in the event that Rockport takes and completes appropriate enforcement action against one of its consumers as a result of such violation.

g) The remedies set forth in this Agreement are cumulative. The election of one does not preclude use of another.

h) In the event that Gloucester terminates this Agreement for any reason, other than a threat of imminent harm to Gloucester wastewater treatment plant, Gloucester shall not be obligated to continue to accept and treat wastewater from Rockport even if Rockport is unable to implement an alternative wastewater treatment disposal plan. Rockport shall have the right to request an extension of any termination date if Rockport uses its best efforts to adopt such an alternative plan as soon as practicable.

9. Emergencies

9.1 Each party shall immediately notify the other of any emergency or condition in either party's system of which it learns which may affect the sewer disposal system in either municipality.

10. Meter Readings

10.1 The Town of Rockport and the City of Gloucester will jointly determine the sewer usage of the Long Beach Area properties on a quarterly basis by taking readings of the Pump Run-Time Hour Meters of the Long Beach Pump Station. These readings shall be taken on or about January 14, April 14, and October 16 of each year that this agreement is in effect so that this usage can be billed to the Town of Rockport by the City of Gloucester DPW Director. An invoice will be generated and sent to Rockport within thirty (30) days.

10.2 If Gloucester determines that the Pump Run-Time Meters have registered incorrectly, the DPW Director shall prepare an estimate of the amount of sewage accepted from the Long Beach Sewer Area for the purposes of billing Rockport. Gloucester shall present evidence to Rockport demonstrating that the Pump Run-Time Hour Meters have registered incorrectly, justifying its estimate of sewage flow for the billing period. The estimate shall be based upon the average of three (3) preceding similar quarterly billings, exclusive of incorrect readings. When less than three (3) correct readings are available, fewer readings, including some obtained after the period of incorrect registration, may be used. If the Town determines that the Pump Run-Time Hour Meters have registered incorrectly, the Town, in like manner, may present evidence to Gloucester justifying the Town's estimate of sewerage flow for the billing period. In the event that a dispute arises under this paragraph, the parties agree to meet in good faith to resolve the dispute.

10.3 Gloucester and Rockport may perform periodic inspections and/or tests of the Long Beach Pump Station Pump Run-Time Hour Meter. The Pump Run-Time Hour Meters are to be immediately repaired if found to be malfunctioning or inoperable at any time. Representatives from both municipalities are free to observe the repairs. Rockport shall bear the expense of the repairs to the Pump Run-Time Hour Meters.

11. Rockport/Gloucester Employees

11.1 Employees, servants, or agents of either municipality shall not be deemed to be agents, servants or employees of the other municipality for any purpose including but not limited to either Workers' Compensation or unemployment insurance purposes.

12. Method of Supply

12.1 Rockport agrees to purchase sewer disposal services and capacity from Gloucester in accordance with the terms and conditions of this Agreement. Rockport shall be entitled to discharge a total of 35,000 gallons per day of Normal Strength Wastewater into Gloucester's sewer collection system at one or more metered location(s) at the City of Gloucester line. Discharges in excess of this daily limit shall constitute grounds for default and shall be subject to a penalty of \$5,000 per day under Gloucester Ordinance Section 23-41.

12.2 The Town agrees to maintain an inflow and infiltration program, which shall be subject to a periodic review by the City of Gloucester. The Town also agrees to ensure that no storm water will be discharged to the system. The City agrees that no penalty for violation of the 35,000 gallons per day limit shall be imposed if said discharge violation is caused by an inflow and infiltration event so long as the Town promptly takes action to rectify the inflow and infiltration which caused the excess discharge. The City agrees that if the violation is caused by an inflow and infiltration event, Rockport is not in default so long as the Town promptly takes action to rectify the inflow and infiltration which caused the excess discharge.

12.3 Gloucester and Rockport shall monitor wastewater flow during subsequent years of this Agreement in order to determine actual daily wastewater flow. After adequate wastewater flow information is obtained, and to the extent that the actual daily flow is less than the 35,000 gallons per day purchased by the Town, Rockport shall have the right to request of the Gloucester City Council to approve other Rockport residents to connect to the sewer system at Long Beach. In no event shall the total daily flow from Rockport consumers exceed 35,000 gallons per day.

12.4 Gloucester may undertake a review as to the impact of any additional connections by Rockport to the Gloucester wastewater system. Provided Gloucester finds that there will not be adverse impact to its sanitary system, Gloucester may approve all connections by Rockport to the Gloucester wastewater system. Approval of said connections shall not be unreasonably withheld. Rockport shall construct and maintain a flow measuring station at each approved connection, suitable to continuously measure and record all flows entering the Gloucester sewer system. Gloucester shall have the right of access to said metering stations for purposes of inspection and data acquisition. Gloucester must approve the measuring system design before Rockport begins construction.

13. Use Restriction

13.1 Subject to applicable law, Rockport shall use the sewage capacity furnished under this Agreement solely for its municipal wastewater and for wastewater generated by residential properties only.

13.2 Rockport shall continue to limit the use of cottages at Long Beach to seasonal use and occupancy from April 1st to December 1st.

14. Reserved Capacity

14.1 Gloucester agrees to permit Rockport to discharge flow of up to 35,000 gallons per day through the Long Beach connection area with the Gloucester sewer system during the term of this Agreement. Any discharge in excess of 35,000 gallons per day shall be grounds for default, and/or the implementation of fines.

However, so long as Rockport, in a reasonable amount of time, moves to correct or address any event(s) causing such excess daily discharge, then Rockport shall not be in default and no fine shall be imposed for that month unless an excess daily discharge is repeated within the same calendar month.

15. Funding and Appropriations

15.1 Rockport shall appropriate annually sufficient money to pay for its obligations under this Agreement.

16. Capacity Purchase Price

16.1 Rockport has paid a Capacity Purchase Price of \$175,000.00 to the City of Gloucester. It is the intent of the parties that the Capacity Purchase Price represents a portion of the costs that Rockport would have been required to expend to construct its own wastewater treatment facility. The Capacity Purchase Price paid by the Town shall be a one-time charge. The City of Gloucester shall not, as a precondition for renewal of this Agreement, require the Town to pay an additional Capacity Purchase Price or any other fee for the privilege of renewing this Agreement, unless the daily flow of 35,000 gallons per day is increased.

17. Capital Improvement Provision

17.1 a) All construction documents will be submitted to Gloucester for review. The design shall be approved by Gloucester prior to construction; such approval shall not be unreasonably withheld.

b) Rockport agrees to indemnify and save harmless Gloucester from any and all actions for damages arising out of the installation and/or construction of said sewers within the City of Gloucester. The installation and construction of sewers by Rockport shall be in conformity with all requirements of the General Laws, including without limitation General Laws Chapter 30, section 39M, relating to public construction projects. Rockport shall also furnish proof of liability insurance equal to 5% of the value of the contract.

c) All permits, environmental or otherwise, required for the project will be obtained by Rockport.

d) The parties agree that upon completion of the said sewers and subject to the approval of the City of Gloucester, title to the sewers in Gloucester constructed by Rockport and the operation and maintenance of said lines shall be assumed by Gloucester. Gloucester is permitted at its convenience to make sewer connections to the said sewers.

17.2 In the event that the Gloucester Department of Works performs capital improvements on a portion of the City system affected by Rockport effluent, or if Gloucester is directed or ordered by EPA, DEP or any other Agency or Court of the state or federal government to provide a higher degree of treatment at the facility in the future, or otherwise to modify the process from that used or in place at the time of execution of this Agreement, the total cost of such replacement or additional facilities shall be apportioned between the parties as set forth in paragraph 17.3 of this Agreement.

17.3 In the event that Gloucester undertakes capital improvements to the Gloucester wastewater treatment facility which become necessary after the date at which flow first passed from Rockport to Gloucester, and Gloucester opts to recover the capital costs of such improvements through betterments to its residents rather than incorporation of debt service costs into the rate structure, Rockport shall pay to Gloucester its proportional share of Gloucester's annual debt service. Such proportional share shall be determined by dividing the Rockport design flow by the then applicable Gloucester design capacity. At the time of execution of this Agreement, Rockport's share of such capital improvements is 0.00488 percent.

17.4 The Town of Rockport shall upon advance notice have the right to inspect and audit at the City of Gloucester's offices any and all cost records of the City relating to the construction, expansion, replacement, modification, operation and maintenance of the plant and facilities as stated in this Article, at the City of Gloucester Office.

17.5 User Rate/Rate Setting. The rate to be charged based on the quarterly readings from the master meter shall be the same rate paid by Gloucester residential users.

17.6 Gloucester shall provide to Rockport all necessary permanent and temporary construction easements for sewer lines, pump stations and other appurtenant facilities located in Gloucester, but constructed by Rockport pursuant to this Agreement.

18. Sewer Use Ordinance, Bylaws and Regulations

18.1 For purposes of this section and related sections the term "regulations" shall also mean by-law. Rockport's sewer use regulations shall be no less stringent in every particular and, as broad in scope as, or stricter than the current Gloucester Sewer Ordinance. The Rockport regulations shall in any event be consistent with and meet all requirements of the EPA as presently codified at 40 CFR part 403 and as the same may from time to time be amended.

18.2 Rockport's adoption of such valid regulations and its establishment of local limits as set forth in this section at (18.5) shall constitute a condition precedent to the existence of this Agreement. Gloucester shall have no obligation to accept wastewater from Rockport until the regulations are duly enacted and effective.

18.3 Rockport has submitted its regulations to Gloucester for review within ninety (90) days of the date of execution of the Agreement of October 5, 2000 and has obtained Gloucester's approval of said regulations.

18.4 Whenever Gloucester revises its sewer use ordinance, it will forward a copy of the revisions to Rockport. Rockport will adopt revisions to its sewer regulations that are at least as stringent in every particular and as broad in scope as those adopted by Gloucester. Rockport will submit its proposed revisions to Gloucester for review within thirty days of its receipt of Gloucester's revisions and will adopt its revisions within sixty (60) days of receiving approval from Gloucester.

18.5 Rockport has adopted pollutant specific local limits which address the same pollutant parameters and are at least as stringent as the local limits enacted by Gloucester. If Gloucester makes any revisions or additions to its local limits, it will forward those revisions to Rockport which will adopt such revisions within 30 days after receipt thereof.

18.6 Any proposed by-law changes shall be placed on the warrant for the next regularly scheduled Town Meeting. Failure to timely adopt or amend a sewer use by-law shall be grounds for default.

19. Enforcement Authority

19.1 Gloucester may: (1) enforce the terms and conditions of all permits issued by it under this Agreement; (2) conduct inspections, sampling and analysis of permitted users; and (3) perform any other technical or administrative duties it deems appropriate. In addition, Gloucester may, as agent of Rockport, take emergency action to stop, prevent or lessen any discharge which presents, or may present an imminent or immediate threat or danger to the health, safety or welfare of human beings or which reasonably appears, in its discretion, to threaten the environment or which threatens to cause interference, pass through or sludge contamination.

19.2 Rockport shall have the duty to administer and enforce its sewer regulations. Upon Rockport's failure to enforce, Gloucester may take any enforcement action which it deems necessary or which is necessary to enforce or compel compliance with EPA pretreatment standards, regulations and policies. Gloucester may, upon such failure, take any action under Rockport's sewer use regulations which Rockport could take including but not limited to enforcement by administrative fines, or civil or criminal enforcement in any appropriate court. Rockport's regulations restates this agency and requires any Rockport consumer to consent formally to the provisions of this agency. All administrative and judicial civil penalties and fines assessed by or for Gloucester pursuant to this agency authority shall be the property of, and paid, to Gloucester.

19.3 Rockport will continue to reimburse Gloucester for all Gloucester's reasonable costs incurred in implementing and enforcing Rockport's sewer use regulations within thirty days after receipt of an accounting of all such costs.

19.4 A repeated failure by Rockport to enforce its regulations and the terms of this Agreement shall constitute grounds for default and/or the implementation of fines.

19.5 The parties will review and revise this Agreement to ensure compliance with the United States Clean Water Act, 42 U.S.C. '1251' et seq. and the rules and regulations promulgated thereunder as necessary, but at least once every three years on a date to be determined by the parties.

20. Definitions of Terms

"EPA" shall mean the United States Environmental Protection Agency or where appropriate the Regional Water Management Division Director or other authorized official of the agency.

"Gloucester" or "City" shall mean the City of Gloucester or where appropriate the City of Gloucester acting by and through its Department of Public Works.

"Rockport" or "Town" shall mean the Town of Rockport.

"Act" or "the Act" shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act as amended. 33 U.S.C. 1251, et seq.

"DEP" or "MA DEP" shall mean the Massachusetts Department of Environmental Protection.

"Discharge" or "indirect discharge" shall mean the introduction of pollutants into the public owned treatment works from any non-domestic source regulated under the Act.

"BOD" or "Biochemical Oxygen Demand" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 deg. centigrade expressed as a concentration (e.g. as mg/l).

"Person" shall mean every individual, partnership, corporation, municipal corporation, water district, firm, association or group of individuals.

“Rockport’s customer or consumers” shall mean those persons in Rockport to whom Rockport sells or distributes sewage disposal from Gloucester under this Agreement as designated on the Map in Appendix. Only persons who reside on the town property at Long Beach pursuant to a town lease and those persons jointly designated by the Town and the City of Gloucester to utilize the balance of the 35,000 gallons per day capacity in accordance with Section 12.3 shall be Rockport customers or consumers. For purposes of this definition and this agreement, the area and persons covered by this agreement shall be limited to the attached Map which is incorporated herein.

“Normal Strength Sewage (Wastewater)” as expressed or referred to in this Agreement shall be defined as sewage having a five day biochemical oxygen demand (BOD) less than or equal to 250 mg/L and a total suspended solids concentration less than or equal to 300 mg/L based upon a 24 hour composite sample comprised of at least 6 discrete samples.

“User” as used herein shall mean a source discharge or indirect discharge.

“TSS” or “total suspended solids” shall mean solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

“Seasonal” shall mean April 1st to December 1st.

Any word or phrase used in this Agreement not otherwise expressly defined herein shall have the meaning assigned to them as set forth in the Gloucester Sewer Ordinance.

21. Service of Notice

21.1 All notices or communications permitted or required by this Agreement must be in writing except in emergencies, and shall:

As to Gloucester, be delivered or mailed by certified mail, return receipt requested, to the Department of Public Works Director, at the office of the Department of Public Works, 22 Poplar Street, Gloucester, MA 01930.

As to Rockport, be delivered or mailed by certified mail, return receipt requested, to the Board of Selectmen, Town Office Building, 34 Broadway, Rockport, MA 01966, and the office of the official designated by Rockport pursuant to Section 6.4 of this Agreement.

22. Extension of Term

22.1 If Rockport has exercised its option to extend this Agreement for a second ten (10) year term, the parties during the 18th year of this Agreement, unless it is sooner terminated, shall meet to negotiate in good faith for an extension or renewal of this Agreement subject to authorizations that may be required by then applicable law. This acknowledgment that the term of the Agreement, including any new terms or conditions, may be extended, does not impose on either party any express or implied obligations with regard to the potential negotiations or Agreement. Neither party has implied obligation to extend or renew the terms of the Agreement (with or without modifications).

23. Forum and Choice of Law

23.1 This Agreement and any performance under it shall be interpreted and governed in accordance with the laws of the Commonwealth of Massachusetts except for those requirements, terms, duties and conditions regulated by federal law. Any and all proceedings or actions relating to the subject matter herein shall be brought and maintained in the courts of the Commonwealth which shall have exclusive jurisdiction thereof. Any term or word used herein not otherwise defined shall have the same meaning as the term or word is defined in the Gloucester Sewer Ordinance.

24. Dispute Resolution

If any dispute arises regarding the interpretation of this Agreement or over the extension of the term under Paragraph 23, either party may initiate mediation through a mutual agreed upon dispute resolution organization.

25. Regulatory Authority

25.1 This Agreement is subject to the lawful rules, regulations, decisions, order or directives of the EPA and of any agency of the state and federal government with

jurisdiction over the parties or subject matter of the Agreement. Any and all conditions, rules, regulations, orders or other requirements heretofore or hereafter placed upon Gloucester or Rockport by the EPA or by the DEP or any other agency, division, office or department of the United States or the Commonwealth of Massachusetts or by any court of competent jurisdiction and by any other applicable Federal, state or county agency, shall be construed to become a part of this Agreement unless the Agreement is terminated hereunder. Further, any additional costs placed upon Gloucester as a result of any orders of the above-referenced court or agencies in connection with the supplying of sewage disposal to Rockport by Gloucester shall be borne by Rockport in the same proportion as provided in Section 17.3.

26. Severability, Headings, Integration

26.1 If any provision of this Agreement is declared or found illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall be enforced to the fullest extent permitted by law. The headings are used for reference only and shall not be a factor in the interpretation of this Agreement. This Agreement shall supersede all other verbal and written Agreements and negotiations by the parties relating to performance of the obligations under this Agreement and contains to full and complete and integrated agreement of the parties on the subject matters referred to herein. Any doubt as to meaning, any interpretation issue or any question as to intent of the parties shall be resolved to make this Agreement and the obligations of the parties under it, conforms to the letter purpose and intent of the EPA pre-treatment standards and the Act.

IN WITNESS WHEREOF, on the date first mentioned, the officials of the City of Gloucester and the Town of Rockport hereto execute this Agreement, in quadruplicate copies.

When executed, the Agreement shall be recorded in the office of the Clerk of each municipality.

CITY OF GLOUCESTER

(Seal of the City of Gloucester) By _____
Mayor of Gloucester

Approved as to form and legality By _____
City Solicitor

By _____
Director, Department of Public Works

TOWN OF ROCKPORT

(Seal of the Town of Rockport) By _____
Selectman

Approved as to form and legality By _____
Town Counsel

By _____
Rockport Commissioner of Public Works

By _____
Rockport Commissioner of Public Works

By _____
Rockport Commissioner of Public Works

**City of Gloucester
Special Budgetary Transfer Request
Fiscal Year 2014**

INTER-departmental requiring City Council approval - 6 Votes Required
 INTRA-departmental requiring City Council approval - Majority Vote Required

TRANSFER # 2014 SBT- 22 Auditor's Use Only

DEPARTMENT REQUESTING TRANSFER: Police

DATE: 3/6/2014 BALANCE IN ACCOUNT: \$ 158,198.54

(FROM) PERSONAL SERVICES ACCOUNT # 101000.10.211.51100.0000.00.000.00.051
Unifund Account #

(FROM) ORDINARY EXPENSE ACCOUNT # POLICE-UNIFORM, SALWAGE-PERM POS
Unifund Account #
Account Description

DETAILED EXPLANATION OF SURPLUS: LT. WILLIAMS, LT. AULD, AND OFFICER SARGENT
RETIRED IN FY14.

(TO) PERSONAL SERVICES ACCOUNT # 101000.10.210.51100.0000.00.000.00.051
Unifund Account #

(TO) ORDINARY EXPENSE ACCOUNT # POLICE-ADMIN, SALWAGE-PERM POS
Unifund Account #
Account Description

DETAILED ANALYSIS OF NEED(S): FUNDS NEEDED TO COVER CONTRACTUAL STEP RAISE FOR
GEN WHALEY PER UNION MOVED FROM GRADE 6 TO GRADE 7.

TOTAL TRANSFER AMOUNT: \$ 6,080.55 NEW BALANCE IN ACCOUNTS AFTER TRANSFER
 FROM ACCOUNT: \$ 152,117.99
 TO ACCOUNT: \$ -

APPROVALS: [Signature]
 DEPT. HEAD: [Signature] DATE: 3-6-14
 ADMINISTRATION: [Signature] DATE: 3/18/14
 BUDGET & FINANCE: _____ DATE: _____
 CITY COUNCIL: _____ DATE: _____

**City of Gloucester
Special Budgetary Transfer Request
Fiscal Year 2014**

INTER-departmental requiring City Council approval - 6 Votes Required
 INTRA-departmental requiring City Council approval - Majority Vote Required

TRANSFER # 2014-SBT- 24 Auditor's Use Only

DEPARTMENT REQUESTING TRANSFER: School Department

DATE: 3/6/14 BALANCE IN ACCOUNT: \$98,732.41

(FROM) PERSONAL SERVICES ACCOUNT # Unfund Account #
 (FROM) ORDINARY EXPENSE ACCOUNT # Unfund Account #
101000.29.370.53006.1410.00.270.00.052
School Department, Services
Account Description

DETAILED EXPLANATION OF SURPLUS: Payment to Police Department for GHS School Resource Officer - FY14

(TO) PERSONAL SERVICES ACCOUNT # Unfund Account #
101000.10.211.51100.0000.00.000.00.051
 (TO) ORDINARY EXPENSE ACCOUNT # Unfund Account #
Police-Uniform, Sal/Wage-Perm Pos
Account Description

DETAILED ANALYSIS OF NEED(S): To fund the position of the GHS School Resource Officer.

TOTAL TRANSFER AMOUNT: \$ 56,000.00 NEW BALANCE IN ACCOUNTS AFTER TRANSFER
 FROM ACCOUNT: \$ 42,732.41
 TO ACCOUNT: \$ 223,367.86

APPROVALS:
 DEPT. HEAD: [Signature] DATE: 3/6/14
 DEPT. HEAD: [Signature] DATE: 3/12/14
 ADMINISTRATION: [Signature] DATE: 3/18/14
 BUDGET & FINANCE: _____ DATE: _____
 CITY COUNCIL: _____ DATE: _____

**City of Gloucester
Special Budgetary Transfer Request
Fiscal Year 2014**

_____**INTER-departmental requiring City Council approval - 6 Votes Required**
 _____**INTRA-departmental requiring City Council approval - Majority Vote Required**

TRANSFER # 2014-SBT- 28 Auditor's Use Only

DEPARTMENT REQUESTING TRANSFER: _____ **DPW** _____

DATE: 3/11/2014 BALANCE IN ACCOUNT: \$ 16,566.76

(FROM) PERSONAL SERVICES ACCOUNT # _____ *Unfund Account #*
 (FROM) ORDINARY EXPENSE ACCOUNT # _____ *Unfund Account #*
101000.10.472.51990.0000.00.000.00.051
Facilities Energy Educational Stipend

Account Description
 DETAILED EXPLANATION OF SURPLUS: Account not used for part of the year.

(TO) PERSONAL SERVICES ACCOUNT # _____ *Unfund Account #*
 (TO) ORDINARY EXPENSE ACCOUNT # _____ *Unfund Account #*
101000.10.472.52170.0000.00.000.00.052
Facilities Heating Oil

Account Description
 DETAILED ANALYSIS OF NEED(S): Funds needed to help lessen large FY14 deficit.

TOTAL TRANSFER AMOUNT: \$ 12,000.00 NEW BALANCE IN ACCOUNTS AFTER TRANSFER
 FROM ACCOUNT: \$ 4,566.76
 TO ACCOUNT: \$ 19,259.40

APPROVALS:  _____ DATE: 11 MAR 2014
 DEPT. HEAD: _____ DATE: 3/10/14
 ADMINISTRATION: _____ DATE: _____
 BUDGET & FINANCE: _____ DATE: _____
 CITY COUNCIL: _____ DATE: _____

**City of Gloucester
Special Budgetary Transfer Request
Fiscal Year 2014**

____ INTER-departmental requiring City Council approval - 6 Votes Required
 ____ INTRA-departmental requiring City Council approval - Majority Vote Required

TRANSFER # 2014-SBT- 29 Auditor's Use Only

DEPARTMENT REQUESTING TRANSFER: City Clerk's Office

DATE: 3/18/2014 BALANCE IN ACCOUNT: \$ 300.00

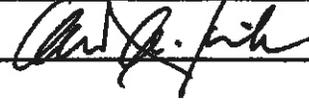
(FROM) PERSONAL SERVICES ACCOUNT # _____ *Unfund Account #*
 (FROM) ORDINARY EXPENSE ACCOUNT # _____ *Unfund Account #*
101000.10.161.58500.0000.00.000.00.058
City Clerk, Additional Equipment
Account Description

DETAILED EXPLANATION OF SURPLUS: Funds no longer needed - IT Dept to purchase recorder for Clerk of Committees

(TO) PERSONAL SERVICES ACCOUNT # _____ *Unfund Account #*
 (TO) ORDINARY EXPENSE ACCOUNT # _____ *Unfund Account #*
101000.10.161.54290.0000.00.000.00.054
City Clerk, Misc Spec Office Supplies
Account Description

DETAILED ANALYSIS OF NEED(S): To purchase LaserFische Product and Services for CityClerk's Office

TOTAL TRANSFER AMOUNT: \$300.00 NEW BALANCE IN ACCOUNTS AFTER TRANSFER
 FROM ACCOUNT: \$ 131.48
 TO ACCOUNT: \$ 431.48

APPROVALS:
 DEPT. HEAD:  DATE: 3/18/14
 ADMINISTRATION:  DATE: 3/18/14
 BUDGET & FINANCE: _____ DATE: _____
 CITY COUNCIL: _____ DATE: _____

**City of Gloucester
SUPPLEMENTAL APPROPRIATION - BUDGETARY REQUEST
Fiscal Year 2014**

****CITY COUNCIL APPROVAL- β VOTES NEEDED****

5

APPROPRIATION # 2014-SA- 63 *Auditor's Use Only*

DEPARTMENT REQUESTING TRANSFER: MAYOR'S OFFICE

APPROPRIATION AMOUNT: \$ 70,000.00

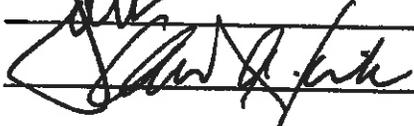
Account to appropriate from: *Unifund Account #* 101000.10.000.35900.0000.00.000.00.000
Account Description F/B - Undesignated
 Balance Before Appropriation _____
 Balance After Appropriation _____ #VALUE!

Account Receiving Appropriation: *Unifund Account #* 101000.10.472.52000.0000.00.000.00.052
Account Description Facilities, Contracted Services
 Balance Before Appropriation \$ 256,729.00
 Balance After Appropriation \$ 326,729.00

DETAILED ANALYSIS OF NEED(S): Fiscal 2014 Rent (\$56,000) and estimated Utilities (\$14,000)
for West Parish School swing space.

APPROVALS:

DEPT. HEAD:  DATE: 3/18/14

ADMINISTRATION:  DATE: 3/18/14

BUDGET & FINANCE: _____ DATE: _____

CITY COUNCIL: _____ DATE: _____