TOWN OF WEST WARWICK

RESOLUTION

OF

TOWN COUNCIL

NO. 99-47

SUBJECT: INTERMUNICIPAL AGREEMENT WITH THE TOWN OF COVENTRY

RESOLVED, that the members of the West Warwick Town Council, Acting as a Sewer Commission, be authorized to sign and cause to be executed the attached Intermunicipal Agreement for Wastewater Services between the Towns of West Warwick and Coventry.

PASSED AND APPROVED ON THIS 20th DAY OF JULY, 1999.

APPROVED:_____
CARL BROWN, JR., TOWN COUNCIL PRESIDENT

ATTEST:_____
DAVID D. CLAYTON, TOWN CLERK

A TRUE COPY
ATTEST:

SEWER COMMISSION CLERK

A TRUE COPY
ATTEST:

SEWER COMMISSION CLERK

FIRST AMENDED AND RESTATED

INTERMUNICIPAL AGREEMENT FOR WASTEWATER SERVICES BETWEEN THE TOWN OF WEST WARWICK AND THE TOWN OF COVENTRY

THIS AGREEMENT made this 20th day of JULY A. D. 19 99 by and between the TOWN of WEST WARWICK, a municipal corporation of the State of Rhode Island, by and through the WEST WARWICK SEWER COMMISSION, hereinafter collectively referred to as "WEST WARWICK," and the TOWN of COVENTRY, a municipal corporation of the State of Rhode Island, hereinafter referred to as "COVENTRY."

WITNESSETH:

WHEREAS, WEST WARWICK has constructed and has in operation a municipal wastewater treatment plant and other appurtenant facilities, located in WEST WARWICK, to collect, treat and dispose of the wastewater for the residents of WEST WARWICK, as well as portions of COVENTRY, WARWICK, SCITUATE, CRANSTON AND WEST GREENWICH; and

WHEREAS, the Federal government is empowered under Public Law 95-217, as amended, to make Federal grants for the construction of public treatment works, and to impose conditions on the award of such grants; and

WHEREAS, WEST WARWICK has accepted State and Federal grants for the construction of public wastewater treatment works, and must abide by the applicable State and Federal laws, rules and regulations; and

WHEREAS, WEST WARWICK wastewater treatment operation is regulated by Rhode Island Pollutant Discharge Elimination System Permit No. RI 0100153; and

WHEREAS, the State and Federal grants received by WEST WARWICK reflect inclusion of wastewater flows from COVENTRY as the basis for the design of the funded facilities as a condition of said grants; and

WHEREAS, WEST WARWICK and COVENTRY mutually agree it is in the best interest of both municipalities and the State of Rhode Island to enter into an Agreement whereby WEST WARWICK would receive, treat and dispose of wastewater from COVENTRY; and

WHEREAS, wastewater collection and disposal is a mutual problem involving financing, construction, operation and maintenance of facilities; and

WHEREAS, WEST WARWICK and COVENTRY have previously entered into an Agreement for "Sewer Construction and Sewage Disposal," dated November 28, 1983, and a supplemental Agreement regarding

"Payments Owed by the Town of COVENTRY to the Town of WEST WARWICK for Sewer Construction Costs," dated October 6, 1994; and

WHEREAS, certain modifications and/or additions have been made to the wastewater collection and treatment facilities of WEST WARWICK in order to collect and treat the wastewater from COVENTRY; and

WHEREAS, additional modifications are required to be made to the wastewater collection system in order to convey wastewater from COVENTRY; and

WHEREAS, the aforementioned previously executed Agreements only address the secondary upgrade to the status of the Regional Project, and

WHEREAS, Rhode Island Department of Environmental Management (RIDEM) developed a Consent Agreement (No. 90-6679) which mandated that the WEST WARWICK treatment system shall be upgraded to produce an effluent quality of a tertiary level. These improvements have been dictated by the need to improve the quality of the Pawtuxet River to Class C waters; and

WHEREAS, COVENTRY is obligated to share in the capital cost of the required upgrades which have been deemed necessary by RIDEM and WEST WARWICK. Percentage of COVENTRY'S share is presented in Appendix "A"; and

WHEREAS, WEST WARWICK and COVENTRY are authorized by law to enter into contracts with each other for the purpose of aiding in the prevention or abatement of water pollution and/or to make mutually suitable arrangements for the disposal of wastewater;

WHEREAS, COVENTRY, as a participating municipality has or is in the process of fulfilling its financial obligation and WEST WARWICK has fulfilled its obligations to expand their wastewater treatment facility as provided in the previous agreement dated November 28, 1983; and

WHEREAS an amendment to the original agreement dated November 28, 1983 is necessary in order to address the financial obligations to meet the requirements of RIDEM Consent Agreement (No. 90-6679) as well as updating the procedural issues in administration of the agreement before and after the completion of the project; and

WHEREAS, the acceptance and execution of this Amendment, represents the acknowledgment of the parties that the obligations of COVENTRY, as a participating municipality, and the Town of WEST WARWICK as set forth in the original agreement have been met and this amendment is intended to redefine the procedure issues to be followed by COVENTRY, as a participating community and as such, upon execution of this agreement the prior agreement dated November 28, 1983 will become null and void and of no further force and effect.

NOW, THEREFORE, in consideration of these premises and the mutual undertaking of the parties hereto, the parties agree as follows:

1. DEFINITIONS AND REPRESENTATIONS

1.1 For all purposes of this Agreement and amendments thereto, the following listed terms shall have the meanings set forth below:

A. "Average Daily Flow" shall mean the total annual volume of wastewater recorded at a metering station or other point divided by the number of days in the year.

B. "Biochemical Oxygen Demand" (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under the standard laboratory procedure of five (5) days, at 20 degrees C expressed in terms of weight and concentration (milligrams per liter).

C. "Building Service Connection" shall mean the service extension from a residential, commercial, industrial or other building to the public sewer (or other place of disposal), also called a house connection. This is generally a 4 inch or 6 inch diameter pipe.

D. "Capital Cost" shall mean the costs of planning, design, financing, and construction of wastewater works, including but not limited to engineering and legal fees, easements and other interests in real estate, and amortization costs.

E. "Class C Waters" shall mean waters that are suitable for fish, shellfish and wildlife habitat; suitable for recreational boating and industrial cooling; good aesthetic values.

F. "COVENTRY Flow" means the amount of wastewater flowing from COVENTRY into the WEST WARWICK System as determined by Article 4 hereof.

G. "COVENTRY Interceptor Areas" are as defined in COVENTRY's approved Facilities Plan.

H. "COVENTRY O & M Share" means that portion of the annual cost of operation and maintenance, determined in accordance with Article 4 hereof.

I. "COVENTRY Project Share" means and is limited to the amount of the total project costs allocated to COVENTRY in accordance with the percentages of each item of the project cost listed on Appendix "A".

J. "COVENTRY System" means the sanitary sewer interceptor lines, lateral sewer lines and other appurtenances located, or to be located in the Town of COVENTRY which are intended to convey wastewater from sources in COVENTRY to the WEST WARWICK System.

K. "Disposal" shall mean the disposition of wastewater or sludge by WEST WARWICK after treatment by its wastewater treatment plant.

L. "Domestic Wastes" means liquid wastes:

(i) From the noncommercial preparation, cooking, and handling of food; or

(ii) Containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities, and institutions. It shall not contain groundwater, storm water, surface water, or cooling water or industrial wastewater.

M. "Dwelling Unit" shall mean a house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants have either:

(i) Direct access from the outside of the building or through a common hall; and/or

(ii) Complete kitchen facilities for the exclusive use of the occupants.

N. "Easement" shall mean a legal right for specific use of land owned by others.

O. "Fiscal year" means the annual accounting period commencing July 1 and ending June 30 of each year. The fiscal year is denoted by the calendar year in which the fiscal year ends (i.e., FY96 ends in June 1996).

P. "Holding Tank Waste" means the wastewater from a domestic Individual Sewerage Disposal System.

Q. "Industrial Wastewater" means the liquid wastes resulting from the processes employed in industrial, manufacturing, trade, or business establishments, as distinct from domestic wastes.

R. "Infiltration" shall mean the water entering a sewer system from the ground through such means as defective pipe, pipe joints, connections or manhole walls. Infiltration does not include and is distinguished from inflow.

S. "Inflow" shall mean the 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; drains from springs and swampy areas; manhole covers; cross-connection from sewers; catch basins; stormwater runoff; street wash waters; and drainage in general. Infiltration/inflow is the total quantity of water entering a sewer system from both infiltration and inflow.

T. "Maximum Daily Flow" shall mean the highest total volume measured at a metering station or other point over a continuous twenty-four hour period.

U. "Measured Wastewater Flow" means the total unadjusted flow volume recorded at flow metering devices, referred to in Article 4 hereof.

V. "Monthly Average" shall mean the total volume or quantity for a calendar month divided by the number of days in that month.

W. "Net Capital Cost" shall mean the capital cost after deduction of federal and state grants and other capital income such as earnings on the investment of bond proceeds.

X. "North Branch Interceptor" means an underground interceptor sewer collecting wastewater from the northeast area of COVENTRY, as well as parts of CRANSTON and SCITUATE, running parallel to the North Branch of the Pawtuxet River, and transporting said wastewater to the WEST WARWICK system at the town line on Main Street (Route 115).

Y. "Operation and Maintenance Costs" or "O & M Costs" includes the total annual expenses actually incurred by WEST WARWICK in the operation and maintenance of the Regional Wastewater Treatment Facilities pursuant to a budget covering the categories of annual operating and maintenance costs described in Article 4 hereof.

Z. "Participating Municipality" means any one of the following municipal corporations: WEST WARWICK, COVENTRY, SCITUATE, WEST GREENWICH, CRANSTON and WARWICK. The term "Participating Municipalities" is the collective designation for more than one Participating Municipality.

AA. "Peak Hourly Flow" shall mean the highest volume of wastewater recorded at a metering station or other point over a continuous sixty minute period.

AB. "Person" shall include an individual, trust, firm, joint stock company, corporation (including a quasi-government corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department, bureau, agency or department of state of federal government (including quasi-government corporation) or of any interstate body.

AC. "Pretreatment" shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to an acceptable state prior to or in lieu of discharging or otherwise introducing such pollutants into a water pollution control facility. The reduction or alteration can be obtained by physical, chemical, or biological processes, except as prohibited by Title 40, Code of Federal Regulations, Section 403,6(d).

AD. "Pretreatment Standards" means all applicable Federal rules and regulations implementing section 403 of the Act, as well as any nonconflicting State or local standards. In cases of conflicting standards or regulations, the more stringent thereof shall be applied.

AE. "Regional Interceptors" shall mean the interceptor sewers that will service the Participating Municipalities in WEST WARWICK. They are the Maisie Quinn Interceptor, Upper Maisie Quinn Interceptor, Maisie Quinn Connecting Sewer, Clyde Interceptor, Natick Relief Sewer and Natick Interceptor, COVENTRY North Branch, COVENTRY New London Turnpike.

AF. "Regional Project(s)" shall mean the development, design and construction work performed in connection with upgrading and expanding the existing WEST WARWICK wastewater

collection and treatment system to transport, treat and dispose of wastewater from COVENTRY and other Participating Municipalities.

AG. "Regional Pumping Stations" shall mean pumping stations which service the Participating Municipalities that are located in WEST WARWICK. They are the Clyde Pumping Station and Glen Drive Pumping Station.

AH. "Regional System" shall mean those portions of the WEST WARWICK system which handle wastewater from COVENTRY and WEST WARWICK.

AI. "Regional Wastewater Treatment Facility" shall mean the wastewater treatment facility, including an arrangement of devices and structures used for treating wastewater, industrial wastes and sludges, located in WEST WARWICK which was constructed and upgraded to treat wastewater generated in the Participating Municipalities.

AJ. "Reserve Capacity" shall mean the hydraulic limits based upon the flow presented in Exhibit A and the associated organic load for Domestic Waste for BOD and total suspended solids of 250 mg/l each.

AK. "Rhode Island Department of Environmental Management" (RIDEM) shall mean the State agency which administers and regulates wastewater discharges.

AL. "Rhode Island Pollutant Discharge Elimination System" (RIPDES) means the Rhode Island system for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing discharge permits and imposing and enforcing pretreatment requirements pursuant to Title 46, Chapter 12 of the General Laws of Rhode Island and the Clean Water Act.

AM. "Sanitary Sewer" shall mean a sewer which carries sewage and to which storm, surface, and groundwater are not intentionally admitted.

AN. "Septage Waste" means the wastewater from a domestic Individual Sewage Disposal System.

AO. "Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments.

AP. "Shall" is mandatory; "May" is permissive.

AQ. "Significant Industrial User" (SIU) means any industrial user of the Participating Municipalities wastewater treatment system whose flow exceeds:

(i) An average of 25,000 gallons per day of process wastewater to the wastewater treatment system (excluding sanitary, non-contact cooling or boiler blowdown wastewater); or

(ii) Five (5) percent or more of the average dry weather hydraulic or organic capacity of the wastewater treatment system; or

(iii) Whose wastewater concentration of BOD and total suspended solids exceeds 250 mg/l; or

(iv) A federal EPA categorical industry; or

(v) Industries with sanitary or non-toxic discharges using solvents, toxic chemicals and/or hazardous chemicals that could potentially be discharged into the sewers.

AR. "Sludge" shall mean waste containing varying amounts of solid contaminants removed from water, sanitary sewer, wastewater or industrial wastes by physical, chemical and biological treatment.

AS. "Storm Drain" (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

AT. "Storm Water" means any flow occurring during or immediately following any form of natural precipitation and resulting therefrom.

AU. "Total Flow" means the total amount of wastewater flowing into the WEST WARWICK system, and includes the wastewater contributed to such system by the Participating Communities.

AV. "Total Suspended Solids" means the total suspended matter that floats on the surface of, or is suspended in, wastewater, or other liquids, and which is removable by laboratory filtering.

AW. "Toxic Waste" shall mean any substance listed as toxic under section 307(a)(1) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., listed under the Hazardous Substances Right-to-Know Act, R.I.G.L. §28-21-1 et seq., and as may otherwise be designated by the town.

AX. "User Charges" shall mean charges levied in proportion to the use of wastewater works. As required by State Law and by regulations promulgated by the U.S. Environmental Protection Agency, such charges must, to the extent possible, distribute operation and maintenance (including replacement and necessary additional requirements) cost to each user in proportion to the user's contribution to the total loading of the wastewater works, where construction of such works may have been financed in part by a Federal grant.

AY. "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which is discharged into or permitted to enter the Town's wastewater treatment system.

AZ. "Wastewater Treatment System or Wastewater Treatment Facility" means any devices, facilities, structures, equipment or works owned or used by the Participating Municipalities for the purpose of the transmission, storage, treatment, domestic or industrial wastes, including intercepting sewer, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances, extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide standby treatment units and clear well facilities; and any work, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues from such treatment.

BA. "WEST WARWICK System" means the existing WEST WARWICK wastewater collection and treatment system that are not part of the Regional Project.

2. GENERAL AGREEMENT

2.1 WEST WARWICK agrees to receive for treatment and disposal, subject to such limitations and exceptions as provided for in this Agreement, all wastewater emanating from within COVENTRY, including all industrial and commercial wastewater. WEST WARWICK agrees to reserve 2.25 million gallons per day of the total capacity of both liquid and solid treatment with an equivalent or organic loading of 4700 pounds per day of BOD and total suspended solids, in the collection and disposal system for COVENTRY for the duration of this Agreement.

2.2 COVENTRY agrees to construct and maintain, at its own cost, the sewer collection system, including collector and interceptor sewers, pumping facilities and sewer force mains, within COVENTRY required to convey wastewater to the WEST WARWICK sewer system, except as provided for in this Agreement.

2.3 COVENTRY agrees to pay it share of the cost to upgrade the interceptor sewers and pumping stations located in WEST WARWICK. COVENTRY'S share shall be based upon a percentage of the total average daily flow of the regional wastewater flow as presented in Appendix A.

2.4 The COVENTRY sewer system shall connect with and into the WEST WARWICK sewer system at the following locations along the COVENTRY-WEST WARWICK town line:

A. the existing sewer on Main Street (Route 115);
B. a proposed sewer on Pulaksi Street;
C. the existing sewer on Tiogue Avenue (Route 3), North Road Terrace;
D. the existing sewer on New London Turnpike;
E. at other lesser points of connection where existing sewers enter WEST WARWICK, including but not limited to: Washington Street (Route 117), Harris Avenue, Park Avenue, Hebert Street, and Ames Street; and
F. at other points which are mutually agreed upon, where WEST WARWICK sewers are capable of handling additional flows. Negotiation of these points shall be in accordance with the requirements set forth in other section of this Agreement.

2.5 There are certain wastewater sources located in COVENTRY which are presently connected to the WEST WARWICK wastewater collection system. Such sources may continue to discharge wastewater to WEST WARWICK. (This provision does not include sources of wastewater covered under separate Agreements, as described in Article 11 hereof.)

2.6 For the design and construction of the North Branch Interceptor, COVENTRY shall enter into separate Agreements with the Town of SCITUATE and the City of CRANSTON.

3. PROJECT COSTS AND PAYMENT

3.1 Prior to execution of this Agreement, WEST WARWICK has completed work on upgrading and expanding the Regional Wastewater Treatment Facility to provide secondary wastewater treatment for an average daily flow of 7.89 million gallons per day of wastewater from all sources tributary to the facility. In addition, WEST WARWICK has begun work on upgrading and expanding portions of its wastewater collection system addition, including the East Natick Interceptor, portions of the Maisie Quinn Interceptor, the Clyde Pumping Station and Force Main and portions of the Clyde Interceptor, which will transport wastewater from COVENTRY to the Regional Wastewater Treatment Facility. This work included provisions for treating and disposing of an average daily wastewater flow 2.25 million gallons per day and an organic concentration of BOD and total suspended solids of 4700 pounds per day from COVENTRY.

3.2 Prior to execution of this Agreement, COVENTRY has paid to WEST WARWICK a total of approximately $1,200,427 for its share of project costs for the secondary upgrade/expansion of the WEST WARWICK wastewater facilities. In addition, on October 6, 1994, COVENTRY and WEST WARWICK entered into an Agreement whereby COVENTRY would pay to WEST WARWICK an additional $501,000 for its share of these project costs. The sum of these amounts ($1,701,427) represents COVENTRY'S cost to meet the secondary treatment requirements to accommodate for the reserved capacity of 2.25 million gallons per day (average daily flow) and an organic load of BOD and total suspended solids of 4700 pounds per day, as well as its share of all facilities planning costs for the Tertiary Treatment Project currently being proposed for the Regional Wastewater Treatment Facility.

3.3 On 28 February 1999, the Rhode Island Department of Environmental Management approved an amendment to the Tertiary Treatment Facilities Plan. The average design flow is 10,500,000 gallons per day of wastewater from all sources tributary to the facility. COVENTRY's wastewater contribution to the Tertiary Facility shall remain at 2.25 million gallons per day and an organic concentration of BOD and total suspended solids of 4700 pounds per day.

3.4 WEST WARWICK is currently completing the planning of a Tertiary Treatment Project, which will upgrade the Regional Wastewater Treatment Facility to provide advanced wastewater treatment and improve the quality of the effluent discharged to the Pawtuxet River. COVENTRY was given a final copy of the Tertiary Facilities Plan which outlines the estimated costs to design, construct and operate the proposed improvements, including the anticipated amount of any Federal and/or State grants and loan assistance to be received; the proposed wastewater flows to be used in design of the improvements; and the calculated COVENTRY share of such project costs.

3.5 WEST WARWICK is required by the Tertiary Consent Agreement RI 90-6679 to have a preliminary design report issued within six (6) months of DEM approval of the Facilities Plan, twelve (12) months later have fifty-percent design plans, and six (6) months to complete one hundred percent design plans.

3.6 Project costs for the Tertiary Treatment Project, and any other Regional Project projects, shall include the total cost of construction and equipment, the cost of design, engineering and supervisory costs, inspection, legal costs, costs of acquiring real and personal property in WEST WARWICK for said treatment facilities, fiscal costs, financing costs, and all other costs of establishing the project and making it ready for operation, including the cost of borrowing in anticipation of Federal and/or State aid. The Net Capital Cost shall be the project cost less any State and/or Federal aid received.

3.7 COVENTRY shall be responsible for its share of the Net Capital Costs of such Regional Projects follows:

$$\frac{\text{(Net Capital Cost of the Project) x (COVENTRY'S Design Flow)}}{\text{(Total Facility Design Flow)}}$$

COVENTRY's Design Flow for each facility shall be the wastewater flow from COVENTRY tributary to the particular Regional Project facility.

3.8 COVENTRY shall pay its share of the design cost within thirty (30) days of the execution of the design contract. If there are any changes to the final design fee due to Addenda, the appropriate adjustments will be made at the conclusion of the design. COVENTRY will be invoiced, and within forty-five (45) days shall remit payment to WEST WARWICK

3.9 At the completion of the design phase, COVENTRY shall be given the option to pay its local share of the construction cost either in a lump sum payment based upon the bid price at the start of the construction phase or monthly, plus interest. The interest shall be based upon WEST WARWICK interest cost to offset the lag State and Participating Communities reimbursement. At the conclusion of the construction phase, adjustments will be made to reflect any change orders.

3.10 The amount of such progress payments made by COVENTRY to WEST WARWICK shall not exceed ninety-eight percent (98%) of the amount calculated as due from COVENTRY, with the remaining two percent (2%) being paid upon project completion. Monthly payments will be fifteen (15) days of receipt of such statements. If payment is not received within that time frame, WEST WARWICK will assess an additional one and one half percent (1½%) interest per month from the date of the invoice.

3.11 Upon completion of the Tertiary Treatment Project or other Regional Projects, and receipt by COVENTRY of a certificate from the WEST WARWICK Treasurer's Office certifying such completion and showing the final amounts paid by WEST WARWICK and COVENTRY on account of the Regional Project, COVENTRY will pay the balance of the COVENTRY share, within thirty (30) days of the receipt of such certificate.

A. The certificate of Project Completion shall include the certification by the authorized representative for WEST WARWICK and the consulting engineer for the project. Such certificate shall not be issued prior to substantial completion of the project and use of the project facilities is approved by the appropriate Federal and/or State regulatory agencies.

B. The final amount to be paid to WEST WARWICK on account of any Regional Project shall be verified by an dependent auditor selected by COVENTRY, at its own cost, if such an audit is determined to be necessary. This end of project audit will be conducted on behalf of COVENTRY within twelve (12) months of the final payment to WEST WARWICK.

C. The final project costs to be paid by COVENTRY and WEST WARWICK shall be subject to the final audit prepared on behalf of the Federal and/or State regulatory agencies funding the project(s).

4. OPERATION AND MAINTENANCE

4.1 WEST WARWICK shall continue to accept wastewater flows from all sources in COVENTRY which are currently discharging to the WEST WARWICK system. WEST WARWICK shall accept wastewater from new collection facilities in COVENTRY if capacity is available at the Wastewater Treatment Facility in the Regional Interceptor and Pumping Station, up to the reserved capacity identified hereinbefore, upon at least thirty (30) days notice from COVENTRY of completion of such wastewater collection facilities.

4.2 WEST WARWICK agrees to provide adequate and qualified operating personnel for the Regional Wastewater Treatment Facility, wastewater collection system and all components thereof.

4.3 The annual cost for operation and maintenance of the Regional Wastewater Treatment Facility shall be the basis of the operation and maintenance charge. The cost shall include wages, fringe benefits, maintenance, repairs, chemicals, utility costs, equipment rentals and replacements, administration costs and other costs related to the operation of the Regional Wastewater Treatment Facility. However, the annual O & M costs (a) shall not include any principal, interest or other charges in connection with any indebtedness incurred by WEST WARWICK, and (b) shall not include any WEST WARWICK expenses not directly attributable to, and included in, such annual budget of the Regional Wastewater Treatment Facility.

A. Any and all revenue generated at or by the operation of the Regional Wastewater Treatment Facility and wastewater collection system, including but not limited to: septage receiving/treatment fees; revenues from sale of composted sludge; and Federal, State and/or regional funding for operation and maintenance, or for any use of the facilities; shall be applied to the annual operation and maintenance budget, thereby reducing the operation and maintenance costs.

4.4 In March of each calendar year, COVENTRY shall provide a list of new ownership by plat and lot.

4.5 In May of each calendar year, WEST WARWICK shall prepare a budget for the upcoming fiscal year for operation and maintenance of the Regional Wastewater Treatment Facility. Copies of the budget shall be distributed to COVENTRY no later than June 1 of each year, such that COVENTRY may plan its user charge billings accordingly.

4.6 For the purposes of determining the "COVENTRY O & M share", the total measured (or estimated) wastewater flow from COVENTRY shall be determined based on the following methodology:

A. Wastewater flows shall be determined based on water use records. Wastewater flows shall be eighty percent (80%) of the water use for the properties, based on water meter records provided by Kent County Water Authority, billed directly to the properties by WEST WARWICK. COVENTRY users not connected to a public water supply will be billed at the fixed consumption established by WEST WARWICK.

B. Significant Industrial Users shall be billed directly by WEST WARWICK in accordance with WEST WARWICK'S Sewer Ordinance based upon flow excess concentration of organic loadings (BOD and total suspended solids).

4.7 WEST WARWICK shall maintain adequate records showing wastewater flow, capital costs, operation and maintenance costs and computation of the amount due from COVENTRY. Such records, as well as all parts of the regional wastewater collection and treatment system, shall be open and available for inspection by representatives of COVENTRY upon request.

4.8 No charges shall be billed to COVENTRY for annual operation and maintenance of the Regional Wastewater Treatment Facility or the WEST WARWICK system for any portion of the COVENTRY reserve capacity which is not being used by COVENTRY. No charges shall be assessed to COVENTRY for operation and maintenance of the WEST WARWICK local wastewater collection system.

5. <u>ASSESSMENTS</u>

5.1 Any parcel of land located in COVENTRY, from which the building service connection can conveniently and economically be tied directly into a sewer line located in, owned and maintained by WEST WARWICK, shall be allowed to do so upon receiving written permission from both COVENTRY and WEST WARWICK. Consistent with the WEST WARWICK Sewer Ordinance, these parcels shall be assessed a sewer assessment by COVENTRY and shall be considered a part of COVENTRY'S sewer capacity.

5.2 Any parcel of land located in COVENTRY from which the building service connection is tied directly to a sewer line located in, owned and maintained by WEST WARWICK, and any parcel located in COVENTRY, shall be assessed an annual sewer user charge by WEST WARWICK. This annual sewer user charge shall be based on water use records, as used for and at the same rates as if the parcel was located in WEST WARWICK.

5.3 Any Significant Industrial User located in COVENTRY shall be assessed directly by WEST WARWICK in accordance with the WEST WARWICK Ordinance and Pretreatment Program for annual permit fees and excess concentrations of BOD and total suspended solids. In the event that the metering devices are not installed or the SIU is connected directly to a WEST WARWICK line, WEST WARWICK shall also assess them for flow.

5.4 All parcels located in COVENTRY which are connected to the sewer collection system, except those parcels presently being assessed by WEST WARWICK as mutually agreed upon, shall be assessed a sewer assessment by COVENTRY based on the Sewer Ordinance adopted by COVENTRY.

5.5 The amount of any sewer assessments collected by WEST WARWICK from properties located in COVENTRY which were improperly collected and from which the building service connection is not tied directly into a sewer line located in, owned and maintained by WEST WARWICK shall be credited the individual and notify the owner of COVENTRY'S assessment plans. COVENTRY has one year from the date of each annual assessment to file an appeal stating the conditions why WEST WARWICK is not entitled to that assessment. WEST WARWICK will credit a maximum of one (1) year's fees to the individual.

6. REGULATIONS OF OPERATION

6.1 The Participating Municipalities shall comply with the Sewer Ordinances and Industrial Pretreatment Program as may be adopted by WEST WARWICK as amended. COVENTRY shall delegate to WEST WARWICK, through adoption of an Industrial Pretreatment ordinance, the enforcement of industrial pretreatment of wastes to insure wastewater is acceptable to meet local, State and Federal standards. The Regional Wastewater Treatment Facility shall be operated in such a manner that the effluent discharge into the Pawtuxet River complies with applicable State and Federal standards.

6.2 In exercising the foregoing reservations, permissions and rights of WEST WARWICK with respect to COVENTRY, WEST WARWICK agrees that it will not impose any standard or requirement which would be arbitrary, discriminatory or unreasonable or would treat the participant or users of the COVENTRY system on a different basis than is applicable to users similarly situated in WEST WARWICK or any other participating municipality.

6.3 WEST WARWICK and COVENTRY agree to maintain complete and accurate books and records concerning all matters relative to this Agreement and the performance thereof, to retain the same for a period of at least seven (7) years following the fiscal year to which such books and records relate, and to permit the agents, accountants and other duly authorized representatives of the other party to have access to all such books and records during reasonable business hours for the purpose of examining any of the same and making extracts or copies thereof. WEST WARWICK and COVENTRY agree to make available to the representatives and agents of the other party, all facilities and equipment related to the wastewater system of each, especially all meters, metering devices and records.

7. ALTERATIONS, ADDITIONS AND EXPANSION

7.1 WEST WARWICK may be required to alter, add or expand the Regional Wastewater Treatment Facility or Regional Interceptors as a result of DEM requirement or failure of the present components, or to meet the needs of Participating Municipalities. WEST WARWICK shall notify the Participating Municipalities affected by this action. The cost for these modifications shall be shared in accordance with Article 3.

7.2 When combined flows from the Participating Municipalities reaches eighty percent (80%) of the designed capacity of the Regional Wastewater Treatment Facility for a ninety (90) day period, or when the individual flow of any of the Participating Municipalities reaches 80% of their respective design capacity for a ninety (90) day period, WEST WARWICK shall cause a new projection of wastewater flows from the Participating Municipalities to be made. The Project Management Committee shall then determine the amount of expansion capacity for treatment facilities necessary, if any, to serve the Participating Municipalities. Before any expansion of capacity is made or before any major capital alteration or change in treatment is planned, the parties shall first negotiate and agree upon appropriate changes in the terms of this Agreement to assist with such expansion or changes and the method of financing the same. The method of financing shall provide for project costs to be shared proportionately by the Participating Municipalities, in the proportion of the increased design capacities provided by the expansion for the respective municipality.

7.3 If after completion of the Regional Project, improvements, alterations or additions (hereinafter "improvements") of a capital nature which do not increase the capacity of the Regional Wastewater Treatment Facility are deemed necessary, WEST WARWICK shall notify COVENTRY and the other Participating Municipalities of the nature of the improvements and other factors. COVENTRY and the other Participating Municipalities will be responsible for their proportional share.

7.4 If COVENTRY anticipates a major increase of flow as a result of new development, whether commercial, industrial or residential, which will cause COVENTRY'S need for capacity to exceed the capacity (hydraulic and/or organic) reserved through this Agreement, it may petition WEST WARWICK to increase its capacity. WEST WARWICK shall determine the amount of capacity available, the capacity the participant requires, the capacity of sewer lines to handle this increased flow and the cost required to purchase this capacity. Cost shall be based on:

$$\frac{\text{(Additional Capacity to be purchased) x (Total local cost of design \& construction)}}{\text{(Total capacity of WWTF)}}$$

7.5 If COVENTRY determines that it will not require the entire reserve capacity (hydraulic and organic) as set forth in this Agreement, and another Participating Municipality (or other person acceptable to WEST WARWICK) can be found who is in need of a portion of this unused capacity, COVENTRY may petition WEST WARWICK to transfer, sell, assigns or lease that portion of its reserved capacity to a Participating Municipality or third party upon such terms and conditions as COVENTRY shall deem acceptable. WEST WARWICK shall determine the amount of reserve capacity COVENTRY has available and the capacity of sewer lines to handle this increased flow.

In no event shall COVENTRY transfer, sell, assigns or lease more than ten (10%) percent of its reserve capacity in any calendar year to any Participating Municipality or third party. Any and all monies received by COVENTRY as a result of any such transfer, sale, assignment or letting shall be placed in a separate account to be used solely for server associated debt retirement, maintenance and repairs of wastewater collection facilities located within the Town of COVENTRY and/or maintenance and repairs to individual septic disposal systems.

The amount of COVENTRY'S reserved capacity and the amount paid for such capacity shall be calculated as of the date of the transfer of the capacity. This Agreement shall be amended to make the appropriate provisions for such a decrease in COVENTRY's flows.

8. CONSTRUCTION OF THE COVENTRY SYSTEM IN WEST WARWICK

8.1 Completion of the COVENTRY system requires the installation of a section of interceptor pipeline, hereinafter referred to as the Washington Interceptor, in WEST WARWICK. The Washington Interceptor will be located in Pulaski Street and/or Robinson Way, between the COVENTRY-WEST WARWICK town line and the South Branch of the Pawtuxet River, and will connect to the existing 30 inch diameter Maisie Quinn Interceptor at Pulaski Street on the eastern side of the South Branch of the Pawtuxet River.

8.2 COVENTRY will, at its expense, construct the Washington Interceptor, including portions of the pipeline in WEST WARWICK. Copies of the plans and specifications for such construction shall be provided to WEST WARWICK prior to executing a construction contract, for review and approval by WEST WARWICK. WEST WARWICK agrees to cooperate with COVENTRY and its agents and contractors for the purpose of enabling such construction to proceed without delay and will promptly provide or obtain all such licenses, permits and approvals as may be necessary for the construction.

8.3 COVENTRY will require any construction contract for work in WEST WARWICK to include provisions requiring the contractor to maintain liability insurance in which COVENTRY, WEST WARWICK and their respective agents shall be named as additional insured with limits of coverage not less than $5,000,000.

8.4 The completed Washington Interceptor located in COVENTRY shall be owned, operated and maintained by COVENTRY, at its expense. COVENTRY hereby gives to WEST WARWICK, at no cost, the portion of the Washington Interceptor located in WEST WARWICK. WEST WARWICK shall operate and maintain that portion of the interceptor.

8.5 WEST WARWICK agrees not to impose any restrictions, requirements or costs upon the construction, operation and maintenance of the Washington Interceptor, which are different than those restrictions, requirements or costs which are imposed on sewers constructed and maintained by WEST WARWICK.

8.6 Prior to the construction of interceptors within COVENTRY, WEST WARWICK must determine if the Regional Interceptors are adequate to handle the additional flow. If the Regional Interceptor(s) is(are) inadequate to handle the increased flow, COVENTRY, WEST WARWICK and the Regional

Participants must agree to a time frame for the upgrading prior to the construction of any interceptors within WEST WARWICK.

8.7 In the future, COVENTRY and WEST WARWICK may mutually agree to allow COVENTRY to construct other portions of its sewer system in WEST WARWICK. In such case the conditions shall be similar to those agreed to herein for the construction of the Washington Interceptor.

9. PROJECT MANAGEMENT COMMITTEE

9.1 There is hereby established a Project Management Committee. The purpose of this Committee is to oversee the Regional Project which shall entail the development of engineering plans, specifications and construction arrangements; the review of any change orders during construction; the development of policies and program that shall be applicable to all participating municipalities; and the review of any proposed improvements, additions or changes in the Regional Project. The Committee shall consist of a representative of each Participating Municipality.

9.2 The Committee will be chaired by the WEST WARWICK representative. Vacancies will be filled in the manner as original appointees. Each member shall have a weighted vote based upon the percentage of its reserved capacity. Meetings of the Committee shall be held as necessary during the development and construction of any upgrade, and quarterly thereafter, and at the call of the Chairperson to carry out the duties of the Committee. The Committee may appoint advisors who may attend and participate in all meetings except that they shall not be counted for a quorum, nor vote on Committee actions.

9.3 WEST WARWICK will act as the contracting and management agent (Owner) for the Regional Project and its Town Council acting as the Sewer Commission, will sign all contracts, advertise all bids, supervise construction and be liable for any violation of EPA or DEM Rules and Regulations.

10. SEPTAGE

10.1 WEST WARWICK agrees to accept residential septic tank and/or cesspool waste (septage) generated within the boundaries of COVENTRY for treatment. WEST WARWICK agrees to make every effort to accept all septage from COVENTRY as the process permits.

10.2 If at any time the amount of septage which the regional wastewater treatment facility is capable of accepting and treating is limited, WEST WARWICK will accept septage generated from the Participating Municipalities, in preference to septage generated in other communities.

10.3 The charge for accepting and treating septage shall be reasonable and based on the cost for providing such services set by the WEST WARWICK Sewer Commission.

11. MISCELLANEOUS CLAUSES

11.1 Notwithstanding any other provision of this Agreement, COVENTRY shall not be required to observe or perform any obligation under this Agreement unless WEST WARWICK shall have obtained and

made available to COVENTRY all necessary easements, licenses, permits and approvals as required by Federal, State and local entities for completion of the regional project and COVENTRY'S wastewater collection system.

11.2 No failure or delay in performance of this wastewater disposal Agreement by either party shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any act of God, strikes, lockouts, wars, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of a Court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party involved.

11.3 Agreement shall be reviewed annually by both parties hereto with the intention that any inequity which may arise or any error discovered be corrected through negotiations.

11.4 If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

11.5 A copy of the final construction plans and specifications, a copy of Federal and State Grant applications and offers, a copy of all contracts, a copy of all regulatory agency project inspection reports, a copy of all regulatory agency project inspection reports, a copy of the final construction cost audit shall be sent to and filed with the Town Clerk of COVENTRY and the Town Clerk of WEST WARWICK for record purposes, within forty-five (45) days of completion.

11.6 There is at present Agreement between WEST WARWICK and Woodland Manor Associates which is not now part of this Intermunicipal Agreement. Through this contract an average daily flow of 200,000 gallons per day is set aside for sewer users in the service area. No change or alteration in the Woodland Manor Agreement, no increase in flow nor any additional usage of said line shall be made by Woodland Manor Associates unless a new Agreement is made between WEST WARWICK, COVENTRY and said Woodland Manor Associates. It is understood that the capacity granted to Woodland Manor Associates is not part of the COVENTRY reserve capacity under this Agreement (Appendix B).

11.7 There is at present an Agreement between WEST WARWICK and the state of Rhode Island and Providence Plantations (State) which is not now part of this Agreement. Through this contract a minimum of 320,000 gallons per day of average flow and a maximum of 800,000 gallons per day of average flow is set aside for sewer users in the service area, which includes out-of-town users. COVENTRY is, through this contract, an out-of-town user; therefore, residential, business and industrial users located within COVENTRY's boundaries may use this sewer. It is agreed that a residential, business or industrial user who wishes to use this sewer shall be allowed to do so in accordance with the intermunicipal Agreement between WEST WARWICK and COVENTRY. Further, no change or alteration in the Agreement between the State and WEST WARWICK, no increase in flow or any additional usage of said line shall be made unless a. new Agreement is made between WEST WARWICK, COVENTRY and the State (Appendix C).

11.8 COVENTRY reserves the right to negotiate directly with any in-town industry or commercial establishment concerning connection to the COVENTRY wastewater collection system based on flow only. If said industry or commercial establishment is classified as an SIU, WEST WARWICK must be part of the negotiation process.

11.9 If WEST WARWICK hereafter enters into any Agreement of understanding with any Participating Municipality or any other municipality concerning the acceptance, transport, treatment and/or disposal of wastewater on terms and/or conditions, the basis for which is comparable, that are more favorable than the terms and/or conditions accorded COVENTRY hereunder, then WEST WARWICK shall promptly offer such more favorable terms and/or conditions to COVENTRY. An appropriate amendment to this Agreement with respect thereto shall be executed by WEST WARWICK and COVENTRY, and an appropriate credit shall be applied against future payments due from COVENTRY under this Agreement for payments previously made to WEST WARWICK by COVENTRY which would not have been required, or would have been less in amount, had such amendment been in effect as of the date of such payments. Promptly after entering into any future Agreement or understanding with any Participating Municipality or other municipality regarding wastewater, WEST WARWICK will furnish a true and exact copy of such Agreement to COVENTRY.

11.10 All connections to the regional system in COVENTRY shall be inspected at the time of construction to assure compliance with WEST WARWICK or COVENTRY Sewer Ordinances, whichever is more stringent. WEST WARWICK will perform these inspections. WEST WARWICK will invoice the applicant directly for any inspection fees. At the time COVENTRY institutes a wastewater division, COVENTRY may perform these inspections.

12. <u>EFFECTIVE DATE OF CONTRACT</u>

12.1 This Agreement shall become effective upon approval by the Town Councils of WEST WARWICK and COVENTRY, and upon execution by the respective duly authorized representatives.

12.2 This Agreement shall commence upon its execution. This document contains the understandings and agreements of the parties as they relate to the present and continued use by COVENTRY and its residents of the WEST WARWICK Treatment Facility and the present and continued services to be provided by WEST WARWICK for this use. Accordingly, this agreement shall remain in full force and effect for a period of ninety-nine (99) years unless and until it is amended by the mutual consent of all parties.

12.3 If COVENTRY terminates this Agreement, COVENTRY will forfeit its rights for the unused capacity and WEST WARWICK will take over that capacity. COVENTRY will be responsible for all overdue payments up the date of termination.

13. <u>ARBITRATION</u>

13.1 If any controversy hereafter arises out of this Agreement or out of refusal of any part to perform the whole part thereof, or if the parties of this Agreement cannot agree upon any of the costs herein

enumerated or any matter requiring negotiation or Agreement herein then the following procedures shall be followed:

A. The Chief Administrative Officers of WEST WARWICK and COVENTRY shall discuss the issue or issues informally with the hope that the issue or issues will be resolved through the informal discussions. Said informal discussions will be conducted as soon as practicable but in no event later than fifteen (15) days after receipt of a written request for the scheduling of such an informal discussion.

B. If the Chief Administrative Officers of WEST WARWICK and COVENTRY are unable to resolve the issue or issues informally, then notice shall be given immediately forwarded to the legislative bodies of WEST WARWICK and COVENTRY who shall conduct informal joint discussions with the hope that the issue or issues will be resolved. These informal discussions between the legislative bodies of the respective towns shall take place as soon as practicable but in no event later than fifteen (15) days after receipt of said notice.

C. If the issue(s) are not resolved by informal discussion, either WEST WARWICK or COVENTRY may request, at any time subsequent to the expiration of sixty (60)days from the date of the commencement of the first informal discussions as set forth in subparagraph (A) above, a joint public meeting of the legislative bodies of WEST WARWICK and COVENTRY. Within fourteen (14) days of receipt of such request, a joint meeting of the legislative bodies of WEST WARWICK and COVENTRY shall be held to discuss the issue(s).

D. If the issue or issues are not resolved within ten (10) days after the joint public meeting of the legislative bodies of WEST WARWICK and COVENTRY, then, in that event, either WEST WARWICK or COVENTRY may request that the unresolved issue or issues be submitted to arbitration. Within seven (7) days after arbitration has been requested, WEST WARWICK and COVENTRY shall each select and name one arbitrator and shall immediately thereof notify each other in writing of the name and address of the person so selected. The two (2) arbitrators so selected and named shall, within ten (10) days from and after the selection, agree upon and select and name a third arbitrator. If within said ten (10) days the arbitrators are unable to agree upon the selection of a third arbitrator, such third arbitrator shall be selected in accordance with the rules and procedures of the American Arbitration Association. Whether the third arbitrator is selected by Agreement or under the rules and procedures of the American Arbitration Association, the said third arbitrator shall not be a resident of the State of Rhode Island. The arbitration procedures shall be conducted in accordance with the rules and procedures of the American Arbitration Association. The decision of the arbitration panel shall be final and binding upon WEST WARWICK and COVENTRY.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective fully authorized officers and their corporate seals affixed hereto the day and year first above written.

TOWN OF WEST WARWICK

Robert B. Moorehead

Town Council

TOWN OF COVENTRY

Town Council