

**DRAFT – This is a hypothetical agreement modeled after the Mansfield Norton Foxboro Agreement. The Upper Bay partners have discussed many of the provisions reflected herein, but no partner has taken an official position on the creation of a regional district. In the event partners move forward with the creation of a district, this document can be used as a starting point for discussion.**

**POTENTIAL DRAFT AGREEMENT ESTABLISHING THE Bourne Marion Wareham Plymouth and Massachusetts Maritime Academy REGIONAL WASTEWATER DISTRICT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202X (the “Agreement”) by and between the Towns of Bourne, Marion, Plymouth and Wareham, municipal corporations within the Commonwealth of Massachusetts, and herein referred to as “Member Towns” and the Massachusetts Maritime Academy, for the establishment of a public, regional wastewater district, to be known as the “Upper Bay Regional Partnership” and commonly referred to in this Agreement as the “District”.

Whereas, the annual town meeting votes of each Member Town taken in \_\_\_\_\_ and the terms of the special act of the General Court of the Commonwealth entitled “*An Act Establishing A Regional Wastewater Treatment District for the Towns of Bourne, Marion Plymouth and Wareham and the Massachusetts Maritime Academy*” approved by the Governor on \_\_\_\_\_ and known as Chapter \_\_\_\_\_ of the Acts and Resolves of \_\_\_\_\_ (herein referenced as the “Enabling Act”) authorize execution of this Agreement.

Whereas, the District shall own, manage, operate and control the wastewater treatment plant, common interceptors, effluent point source discharge pipe, the treated effluent force main and appurtenances needed to treat wastewater; it shall act as a Regional Wastewater District with all the powers and privileges granted to it by this Agreement and by the Enabling Act and shall provide for the collection, conveyance, and treatment of wastewater, and discharge for the Member Towns.

Now therefore, in consideration of the mutual benefits to each Member Town derived from the formation of this District and in fulfillment of their duties given by their respective town meetings and in further consideration of the mutual exchange of promises and obligations as set forth herein, and to complete the requirements of the Enabling Act, the Member Towns form this Agreement and agree as follows:

Effective date: This Agreement shall become effective on \_\_\_\_\_ (the “Effective Date”).

Term of Agreement: The Member Towns intend that the Agreement in its present form or as it may be amended from time to time be coterminous with the life of the District.

Agreement:

Section 1: Definitions

1.1 For the purpose of this Agreement, the following terms shall have the following meanings:

1.1.1 “Average Annual Flow” shall mean the average flow of the previous 12 individual months calculated monthly (12-month rolling average) and shall be used to define the flow capacity owned and used by a Member Town in the District’s treatment facility.

1.1.2 “Average Daily Flow” shall mean the total flow period as measured at the metering location divided by the number of days in that flow period.

- 1.1.3 “Biochemical Oxygen Demand” (BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20 degrees centigrade (68 degrees Fahrenheit) expressed in milligrams per liter by weight (or pounds per day).
- 1.1.4 “Commission” shall mean the Wastewater District Commission to govern the BMW Regional Wastewater District, as defined herein.
- 1.1.5 “Common District System” shall mean those wastewater conveyance and treatment facilities owned and operated by the District as described in Section 4 herein. Conveyance facilities include interceptor sewers and any pumping stations or forcemains within the defined District facilities that are utilized to convey Member Towns’ wastewater to the District’s treatment plant. Treatment facilities include the treatment plant, treated effluent forcemain, and outfall pipe.
- 1.1.6 “Customer” or “User” shall mean a residence, business or other approved entity that is approved for a wastewater connection to and deriving a benefit (either actual or potential) from the sewer system within a Member Town. Customer/User shall include an approved flow from adjacent towns (i.e. the Town of Plymouth via the Town of Bourne and the Massachusetts Maritime Academy via the Town of Bourne) that connect into the sewer system of a Member Town.
- 1.1.7 “DEP” means that Massachusetts Department of Environmental Protection or its successor agency.
- 1.1.8 “Enabling Act” means Chapter \_\_\_\_ of the Acts of \_\_\_\_, as may be amended from time to time.
- 1.1.9 “EPA” means the United States Environmental Protection Agency or its successor agency.
- 1.1.10 “Effective Date” shall be \_\_\_\_.
- 1.1.11 “Industrial Wastes” are the liquid, gaseous, or solid wastes or a combination thereof, other than sanitary sewage, resulting from many process of manufacturing, trade and/or industrial operations or from the development or recovery of any natural resources.
- 1.1.12 “Infiltration” shall mean 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.
- 1.1.13 “Infiltration/Inflow” (I/I) is the total quantity of water entering a sewer system from both infiltration and inflow.
- 1.1.14 “Inflow” shall mean water discharged to a sewer system (including service connections) from such sources as roof leaders, basements, yards, and area drains; foundation drains; sump pump connections; drains from springs and swampy areas; manhole covers; cross-connection from storm sewers and combined sewers; catch basins; stormwater run-off; and drainage in general.
- 1.1.15 “Local Wastewater System” shall mean that portion of the sewer/wastewater system located either in Bourne and used exclusively by Bourne or its customers, in Marion and used exclusively by Marion or its customers, or in Wareham and used exclusively by Wareham or its customers.
- 1.1.16 “Maximum Daily Flow” shall mean the maximum flow recorded at a metering station during a 24-hour period.

- 1.1.17 “Member Town” shall mean either the town of Bourne, Marion, or Wareham, or any other municipality that may join the District in accordance with the terms herein.
- 1.1.18 “MGD” million gallons per day.
- 1.1.19 “NPDES” National Pollutant Discharge Elimination System permit. The District’s surface water discharge permit is issued pursuant to Section 402 of the Act, 33 U.S.C. s 1342, and M.G.L. c. 21, s43.
- 1.1.20 “pH” shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- 1.1.21 “Sanitary Sewage” shall mean liquid and water-carried human and domestic waste from residences, commercial buildings, industrial plants and institutions, exclusive of ground, storm and surface water and exclusive of industrial wastes.
- 1.1.22 “SCADA” (Supervisory Control and Data Acquisition) shall mean the instrumentation to allow for conveying remote signals to electronic controls and computer system to assist with monitoring data.
- 1.1.23 “Septage Regulations” shall mean the latest edition of the ...
- 1.1.24 “Sewer Use Regulations”
- 1.1.25 “Shall” is mandatory, “may” is permissive.
- 1.1.26 “Slug” shall mean any discharge of water, wastewater, or industrial waste which in concentration of any constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.
- 1.1.27 “Total Flow” shall mean the total amount of wastewater flowing into the Common District System and includes the wastewater and I/I contributed to such system by the Member Towns and all of their users. Total flow for each Member Town shall be based on measured flows from each Member Town plus (or minus) a proportional adjustment using “existing” or “expanded” flows as appropriate for I/I in Common District System (currently estimated to be XXXX gpd, for metered recycle flows at the treatment facility (measured at the treatment plant), and for the leachate flow from the XX
- 1.1.28 “Total Flow Allocation” shall mean the amount of wastewater treatment facility capacity dedicated and reserved for use (owned) by each Member Town.
- 1.1.29 “Total Suspended Solids” or “TSS” shall mean solids that either float on the surface of, or are in suspension in water, or wastewater, or other liquids and which are removable by laboratory filtering, expressed in milligrams per liter by weight (or pounds per day).
- 1.1.30 “User Charges” shall mean a charge levied on Member Towns of the District for the cost of operation and maintenance, repairs and associated capital payment costs for the Common District System.
- 1.1.31 “Wastewater” shall mean the spent water of the Member Towns and may be a combination of the liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with any ground, storm, and surface waters that may be present.
- 1.1.32 “WWTF” shall mean the District’s Wastewater Treatment Facility where wastewater treatment takes place.

## Section 2: Wastewater Characteristics

## Section 3: Wastewater District Commission

### 3.1 Appointment

The powers and duties of the District shall be vested in and exercised by a Wastewater District Commission hereinafter sometimes referred to as the "Commission", whose members shall be appointed by the Member Town in the following manner:

#### MEMBERS MUST DETERMINE THE MAKEUP OF THE COMMISSION

Notwithstanding any general or special law to the contrary, a board of each member Town may appoint members from its own board as representatives to the Commission.

### 3.2 Term

MEMBERS MUST DEFINED TERMS FOR APPOINTMENT Terms shall begin on July 1<sup>st</sup> and end on June 30<sup>th</sup> of the appropriate year. Each member shall serve on the Commission until his/her successor is duly appointed and sworn into office by the Town Clerk of the Member Town.

Member Towns shall make appointments to the Commission annually by June 1<sup>st</sup>.

### 3.3 Resignation and Removal

A member of the Commission may resign by filing with the Commission a written notice of resignation with a copy thereof to his/her appointing board, the Board of Selectmen and Town Clerk of the Member Town. A member of the Commission may be removed from that office by vote of the board or boards by whom he/she was appointed, acting in its sole discretion. Such removal shall become effective upon the date of receipt by the Commission of written notice from the Town Clerk of the Member Town.

Appointment of a new Commission member to fill a vacancy shall be for the balance of the unexpired term of the former Commission member.

### 3.4 Vacancy

In the event of a vacancy on the Commission the Member Town with such vacancy shall within forty-five (45) days appoint a member in the manner of the previous appointment to that position, and the substitute member shall serve for the balance of the unexpired term.

Should the appropriate board fail to fill the vacancy within the appropriate time, that vacant member's position shall not negatively impact any Commission actions and the Commission may continue to act provided the necessary quorum is present.

### 3.5 Organization

Promptly upon the appointment and qualification of the initial members of the Commission and annually thereafter at the first regular fiscal year meeting of the Commission, to be held not later than July 31<sup>st</sup>, the Commission shall organize and elect a chairperson, vice-chair and secretary from among its membership. At least one officer shall be appointed from each of the member Towns unless a vacancy occurs prior to expiration of a term of service.

At the same meeting or at any other meeting, the Commission shall appoint the following additional officers: a treasurer, who shall not be a member of said Commission, and such other officers as it deems advisable and describe the powers and duties of any of its officers, fix the time for its regular meetings and provide for the calling of special meetings.

The District's treasurer shall receive and take charge of all funds belonging to the District and shall pay any bill of the District which shall have been approved by the Commission. The treasurer may, as authorized by vote of said Commission, be compensated for her/his services. The treasurer of the District shall be subject to Section 35, 39B, 52, and 109A of Chapter 41 of the Massachusetts General Laws, and **Chapter X** to the extent applicable.

### 3.6 Powers and Duties

The Commission shall have all the powers and duties conferred and imposed upon such commissions by law and conferred and imposed upon it by Chapter .... and this Agreement, and as may be provided in any other applicable Massachusetts general law or special act hereinafter enacted. The Commission shall have the authority to enact, and to amend from time to time, such regulations as it deems necessary to provide the services and to operate and maintain the facilities covered by this Agreement, which regulations may include management of the sewer collection, pumping, treatment, reuse and recharge facilities, and any directly related facilities in the member Towns.

As authorized in **Section X** of the Enabling Act, the Commission has all rights and powers to prosecute violations of the regulations within the political bounds of each Member Town.

### 3.7 Quorum

Non-financial Business Matters – For transaction of non-financial business matters, a quorum shall be a majority (four) of the Commission with at least one representative from each of the member Towns.

Financial Business Matters – For transaction of financial business matters, a quorum shall be at least five(5) of the Commission members authorized by the terms of this Agreement to vote thereon with at least one representative from each of the Member Towns. For purposes of this paragraph, the term “financial business matters” shall be those matters that involve or concern an expenditure, liability, claim, or other thing of value in an amount of \$25,000 or more.

If a member of the Commission from a Member Town does not attend for two consecutive regularly scheduled meetings of the Commission, then the requirement to have a voting member present from each Member Town shall be deemed waived for the next regularly scheduled meeting (i.e. the third consecutive meeting).

## **Section 4: Location of Common District System**

### 4.1 Location

Initially, all Common District System facilities shall be located within the limits of the Member Towns and are as described below:

Conveyance System –

Water Pollution Control Facility – a 2mgd wastewater treatment facility that utilizes .... Followed by flirtation and disinfection prior to discharge in an outfall to ...DESCRIBE THE SYSTEM

#### 4.2 Plans

The District shall maintain a description, plan, title information or combination thereof, identifying and describing the Common District System owned by the District, and the location of those facilities.

Each Member Town shall provide the District annually in July an updated electronic copy of the Local Wastewater System within that Member Town that is ultimately connected to the Common District System. Flow metering locations shall be shown on the sewer system map.

#### 4.3 Conveyance and Transfer

The Member Towns shall transfer and convey certain real property, personal property, equipment and other assets to the District (including property and assets to establish the Common District System) in accordance with and agreement entitled, “Agreement to Convey Real Property and Transfer Assets”, attached hereto **as Exhibit X.**

### **Section 5: Apportionment and Payment of Costs**

5.1 Classification of Costs – For the purpose of the District apportioning assessments against Member Towns, costs shall be divided into two categories: Capital Costs and Operating Costs, as defined herein. These Capital and Operating Costs only apply to the Common District System.

#### 5.2 Capital Costs

Capital Costs shall include all expenses in the nature of capital outlay, including but not limited to the cost of acquiring land, the cost of constructing, reconstructing or adding to buildings, the treatment plant, roads, pipe lines and utility lines, the cost of consulting/engineering services, related legal costs, the cost of any equipment necessary for the operation of the Common District System and any other related costs. Capital Costs shall also include payment of principal and interest on short-term borrowing, bonds and notes or other obligations issued by the District to finance Capital Costs adjusted to reflect interest earnings on reinvestment of borrowings. Capital Costs shall include a reserve fund as a percentage (“the reserve fund percentage”) of Capital Cost expenditure to be determined as part of the District budget pursuant to **Section 6, below.** The minimum cash reserve fund shall be as approved by the Commission but shall not exceed 15 percent of the annual budget.

The minimum threshold to be defined as a Capital Cost shall **be \$25,000,** unless as otherwise established by the Commission.

5.2.1 The parties anticipate that the debt service obligations related to the facilities being acquired by the District pursuant to Section 4.3, above, that are currently obligations of Wareham will be assigned to the District. Until such assignments are fully effected, Wareham will continue to pay the full amount of debt service obligations; provided, however that the District shall promptly reimburse Wareham for the full amount of all debt service payments made by Wareham together with any costs or expenses reasonably incurred in connection therewith.

### 5.3 Operating Costs

Operating Costs shall include all costs incurred by the District not included in Capital Costs as defined in Section 5.2. Operating Costs shall include a cash reserve determined by multiplying operating cost expenditures by the cash reserve percentage approved by the Commission.

5.3.1 The District shall maintain an adequate and separate cost accounting system which shall be the basis for the determination and allocation of costs for the operation, maintenance and repair of the Common District System. The accounting system shall be available for inspection by Member Towns via their appointed Commission representatives, during normal business hours. Quarterly statements (financial and flow data) shall be sent to Member Towns by the District within 30 days of the end of each quarter.

5.3.2 The District shall maintain detailed cost accounting records for the operation, maintenance, repair and/or replacement of each of the following facilities or group of facilities:

a) Conveyance Facilities: The interceptor sewers and any other sewers, pumping stations and forcemains utilized to convey Member Towns' wastewater through the Common District System to the District's wastewater treatment facility. The costs of operating and maintaining the Common District System shall be apportioned on the basis of the actual total quarterly flows through the Common District System conveyance facilities from each Member Town.

b) Wastewater Treatment Facility: The cost of operating the District's wastewater treatment facility (including the liquid sludge hauling, and sludge and grit landfill) and outfall pipe shall be apportioned as described in Section 5.3.6 and Section 5.3.7.

5.3.3. In the event that financial assistance from state and/or federal agencies not otherwise provided for herein becomes available toward the annual operating costs of the Common District System, then such assistance shall be used to reduce the appropriate operation, maintenance and repair costs of the District.

5.3.4. User Charges shall be due quarterly on July 15, October 1, January 1 and April 1, each year.

The District shall submit to each Member Town its estimated Operating Costs of the Common District System for the next fiscal year, in writing, by December 1<sup>st</sup> of each year so that the Member Towns may budget accordingly. The final assessment of each respective Member Town's User Charges, as approved by the Commission, shall be delivered to each Member Town on or about January 15<sup>th</sup>.

Each Member Town's User Charge for any quarter shall be estimated from the District's flow records of the previous quarter and from the District's budget for that quarter.

In July of each year, the District shall determine the actual Operating Costs of the Common District System for the previous fiscal year (based on a 12-month rolling average wastewater flow calculated on a monthly basis). In the event that the total amount of the quarterly payments exceeds the annual Operating Costs due from a Member Town, any excess shall be credited to the subsequent quarterly bill.

In the event that the total amount of quarterly payments for User Charges from a Member Town is less than the actual annual Operating Cost, the difference shall be payable within sixty (60) days of the due

date. If payment is not received within that period, then the amount due shall be the carrying costs based on an interest rate of up to 12 percent annually on the past due amount or the actual cost, if greater.

Refer to Appendix A, Exhibit B for a User Charge Payment Schedule.

5.3.5. Operating Costs for the Common District System shall also include the cost of operating and maintaining the flow measuring equipment, the wastewater sampling equipment, the analysis of wastewater samples and the collecting of flow meter readings from the main monitoring station at the treatment facility site. These shall be considered semi-fixed costs.

5.3.6. Operating Costs for the use of the Common District System shall be divided between semi-fixed costs and flow variable costs. Each Member Town's User Charge shall include its share of semi-fixed costs based on total flow allocation available and online at that time and its share of flow variable costs based on actual use by the Member Town.

5.3.7. For the purpose of this Agreement, the various elements or components of the Operating Costs shall be defined and categorized as "semi-fixed" or "flow variable" as follows:

a) Semi-fixed costs

1) The overall administrative expenses to operate the Common District System and include office supplies, rental of office equipment, postage, employee computer expenses, insurance, consultant/engineering/legal expenses and retirement insurance.

2) The overall administrative and operation salaries, including overtime to operate the Common District System.

3) Common District System conveyance facilities salaries and expenses.

4) Treatment facility overhead expenses such as telephone, building heat and water, laboratory supplies and uniforms.

5) Treatment facility overhead expenses for equipment maintenance costs, including gas and oil for vehicles.

6) Staff training and development salaries and expenses for District personnel.

7) Common District System conveyance facilities I/I maintenance salaries and expenses.

b) Flow variable costs

1) Liquid sludge hauling and disposal expenses.

2) Electricity and chemical expenses of the Common District System.

c) A sample table depicting semi-fixed and flow variable costs is included in Appendix A, Exhibit C.

5.3.8 Any Operating Costs that have not been considered under this Article that may arise in the future will be designated as semi-fixed or flow variable by the Commission. Each Member Town shall be



notified in writing ninety (90) days prior to being charged for such costs not previously considered under this Article.

5.3.9. In the event that a Member Town's total wastewater annual flow entering the Common District System within any quarter exceeds ninety percent (90%) of the Member Town's total wastewater annual flow allocation (defined as a 12-month rolling average calculated on a monthly basis and as stated in Section 5.4.3.) assigned to it under this Agreement, then that Member Town's wastewater authority and the Commission shall enter into negotiations to either (i) allocate more capacity from another Member Town per Section 10 of this Agreement; (ii) define measures to reduce the quarterly flow increase to keep the existing flow total of the Member Town within its allocation; (iii) plan for expansion of appropriate facilities to be paid for by that Member Town; or (iv) take any other appropriate action as required to enforce flow capacity allocations.

5.3.10 In the event a member Town's total wastewater annual flow allocation is exceeded in any month within a three month billing quarter, then that Member Town shall meet with the Commission to review progress relative to a plan developed in accordance with Section 5.3.9, above. If the Member Town's total wastewater annual flow capacity exceeds the 12-month rolling average annual flow allocation (not the average monthly flow) for any month within a quarter, then the Member Town shall pay its semi-fixed cost at the actual percentage flow of that member Town's allocation plus an additional five (5) percent of that cost as a penalty, with the other Member Town(s) receiving proportional payment credits based on their respective capacity owned. This penalty payment shall occur each quarter until the 12-month rolling average annual flow of the violating Member Town is below its flow capacity for all three months in a quarter. In addition, if there is a resultant permit violation and fine, attributed to the increased flow, then the responsible Member Town shall pay the entire fine and any other related costs (legal, engineering, etc.).

Refer to Appendix A, Exhibit D for an example calculation of the Flow Payment Penalty Scenario.

#### 5.4 Apportionment of Capital Costs

In the event the District must undertake an expansion, major repairs, replacement, or add to the Common District System, or is directed or ordered to provide a higher degree of treatment in the future, or any other related expense, then the net capital cost related thereto shall be apportioned between the Member Towns on the basis of expanded Total Flow Allocation, unless said further or additional treatment is caused by wastewater of a special character, in which case the added cost shall be borne by the Member Town in which the wastewater originates. A reasonable payment schedule shall be established by the District prior to the completion of said replacement, repairs or additional facilities.

Each Member Town is allocated and hereby owns a specific wastewater capacity in the District's existing treatment facilities. Average daily flow in million gallons per day (mgd) is utilized as the unit measure for capacity owned.

Capital Costs shall be apportioned among the Member Towns and charged annually in the following manner:

5.4.1 HYPOTHETICAL Existing Flow Capacity Allocation EXISTING, EXPANDED, AND TOTAL WILL HAVE TO BE DECIDED.

<b>Member Town</b>	<b>Total Flow Allocation</b>	<b>Percent Owned</b>
Bourne	200,000	12%
Marion	721000	24%
MMA	100,000	3%
Plymouth	63,000	2%
Wareham	1,737,000	59%

5.4.2 HYPOTHETICAL 20-year Expansion Flow Capacity Allocation

<b>Member Town</b>	<b>Total Flow Allocation</b>	<b>Percent Owned</b>
Bourne	348,169	12%
Marion	721000	24%
MMA	100,000	3%
Plymouth	63,000	2%
Wareham	1,737,000	59%

5.4.3 Total Flow Capacity Allocation

5.5 Apportionment of Operating Costs

Operating Costs after the Effective Date and for every fiscal year thereafter shall be apportioned by the District to each Member Town in the following manner:

5.5.1 Semi-fixed operating costs: Semi-fixed Operating Costs will be apportioned annually to the Member Town in the same ration based on capacity owned, as provided for Capital Costs.

5.5.2 Flow-variable operating costs: Upon the commencement of operations of any District facility, flow based Operating Costs for the Common District System will be assessed to the Member Towns based upon the average daily flow as measured at the District flow meters and adjusted by the same ration for Capital Costs for I/I in Common District System, for metered recycle flows at the treatment facility, and for leachate flow from the girt and sludge landfill area.

5.6 Times of Payment of Apportioned Costs

Each Member Town shall pay to the District in each fiscal year its proportionate share of the Capital Costs and Operating Costs. The annual share of each Member Town shall be paid in such amounts and at such times that at least the following percentages of such annual share shall be paid on or before the dates indicated, respectively (also see Appendix A, Exhibit B):

July 15<sup>th</sup> 25%

October 1<sup>st</sup> 50%

January 1<sup>st</sup> 75%

April 1<sup>st</sup> 100%

Bills to Member Towns shall be issued by the District no less than 30 days prior to the due date.

## Section 6: District Budget

### 6.1 Fiscal Year

The fiscal year of the District shall commence July 1 and end on June 30.

### 6.2 Draft Operating and Maintenance District Budget

The Commission shall annually prepare a draft budget for the ensuing fiscal year, attaching thereto provisions for any installment of principal or interest to become due in such fiscal year on any bonds or other evidence of indebtedness of the District and any other Capital Costs to be apportioned to the Member Towns. The Commission shall mail a copy thereof to the Chairman of the Water and Sewer Commission or Board having such authority and to the Board of Selectmen of each Member Town, on or before December 1<sup>st</sup>, and in such detail as the Commission may deem advisable.

### 6.3 Final Operating and Maintenance District Budget

The Commission shall adopt an annual operating and maintenance budget, including debt and interest charges and any other current Capital Costs and case reserve as separate items, on or before January 15<sup>th</sup> for the ensuing fiscal year. The Commission shall assess the amounts necessary to be raised in order to meet the said budget in accordance with the provisions of Section 5 of this Agreement. The amount so assessed to each Member Town shall, prior to February 1<sup>st</sup> of each year preceding the fiscal year to which said budget relates, be certified by the District treasurer to the treasurer of each Member Town. The Member Towns shall, at the next annual town meeting (if required), seek an appropriation of the amounts so certified.

### 6.4 Projected Five Year Budget

The Commission shall adopt a five year budget projection by member Town once the final operation and maintenance budget has been adopted. This budget shall include each of the line items shown in the final budget as well as any other known items projected to be incurred during that planning period. The Commission shall mail a copy thereof to the Chairman of the Water and Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town, on or before December 15<sup>th</sup>, so that each Member Town may utilize this information for budgeting and rate setting purposes.

## **Section 7: Incurring of Debt**

Within seven (7) days after the date on which the Commission authorizes the incurring of debt, other than temporary debt in anticipation of revenue to be received from Member Towns, the Commission shall cause written notice of the date of said authorization, the sum authorized and the general purpose or purposes for authorizing such debt, to be given to the Chairman of the Water and Sewer Commission and to the Board of Selectmen of each Member Town. The notice shall be deemed to have been duly given to a Board of Selectmen of a Member Town if delivered to said Board or, if mailed, by registered or certified mail within the time specified, postage prepaid and addressed to the Board at the Selectmen's office.

## **Section 8: Wastewater Services to Member Towns**

### 8.1 Additional Services

The District shall provide wastewater treatment and disposal services to the Member Towns. The District may provide additional wastewater related equipment and services to its Member Towns. Costs for all wastewater related equipment and services not provided to all Member Towns by the District shall be the responsibility of the individual Member Town(s) receiving said equipment and services. The District shall maintain a separate accounting of costs for that equipment and services and the individual Member Town(s) shall be fully responsible for payment for use of that equipment or services which shall be additionally billed on the quarterly invoice in which the equipment and services were incurred.

An example of these types of additional services might include work at a Member Town's pumping station or use of a piece of District equipment to assist in cleaning or rehabilitating a Member Town's Local Wastewater System.

## 8.2 Equipment

The District may purchase equipment or procure use of equipment that would be utilized by the Member Towns and charged to each Member Town in proportion to the use by that Member Town. The Commission must approve each equipment purchase or procurement and rate to be charged for equipment use.

## Section 9: Amendments to Agreement

### 9.1 Limitation

This Agreement may be amended from time to time in the manner hereinafter provided, but no such amendment shall be made which shall substantially impair the rights of the holders of any bonds or other notes or other evidence of indebtedness of the District then outstanding, or the rights of the District to procure the means for payment thereof, provided that nothing in this section shall prevent the admission of a new town or towns to the District subject, however, to the provisions of Section 10 of this Agreement and the reapportionment of Capital Costs of the District represented by the bonds or notes of the District then outstanding and of the interest thereon.

### 9.2 Procedure

Any proposal for Amendment, except a proposal for Amendment providing for the withdrawal of a Member Town (which shall be governed by Section 11) may be initiated by a favorable vote of two-thirds of the members of the Commission, with at least one affirmative vote coming from each Member Town. The Commission shall mail or deliver a notice in writing to the Chairperson of the Sewer Commissioners or Board having such authority, and to the Board of Selectmen of each Member Town that a proposal to amend this Agreement has been received by the Commission and shall enclose a copy of such proposal. This notice shall be sent 60 days prior to any vote by the Commission on the proposed amendment after which the Commission may proceed to vote on the proposed Amendment.

The amendment shall be adopted upon the occurrence of all the following approvals in the order stated:

1. An affirmative vote on the amendment by two-thirds of the Commission members;
2. The subsequent ratification of the Commission vote by each of the Member Towns acting by majority vote at an Annual or Special Town Meeting,

The amendment shall be effective 30 days following the date of the last required vote of a Member Town's Town Meeting, to ratify the Commission's action.

### 9.3 Programmed Reviews

The Commission shall undertake a formal review of this Agreement within five (5) years of the Effective Date and, thereafter, at least once every ten (10) years. Any Amendments to the Agreement in the interim shall reset the review period and specifically state the review date in that amendment.

## **Section 10: Admission of New Member Town(s)**

### 10.1 Admission Requirements

By an Amendment to this Agreement in accordance with Section 9 above, any other town or towns may be admitted to the District.

Any town requesting to be admitted to the District must first obtain approval from the appropriate board within the Member Town through which the new town would be connecting. The proposed new town may then negotiate with the Commission for the necessary flow allocation adjustments or expansion.

Each new Member Town acting through its Board of Selectmen and Sewer commission or board having the authority of sewer commissioners will become a signatory to this Agreement as amended following the amendment process as set out in Section 9.2 above and upon ratification of the Agreement as amended by majority vote of the town meeting of the new Member Town.

### 10.2 Admission Costs

All costs associated with the addition of a new town to the District shall be negotiated between the Commission and the proposed new town. Any costs borne by the District to evaluate or implement the proposal shall be paid for by the proposing town.

For all new treatment capacity requests or transfer of capacities among Member Towns, the buy-in cost shall include a negotiated payment representing recovery of the cost of the Common District System up to that date and any additional expansion costs required to accommodate the flow request.

## **Section 11: Withdrawal from District**

### 11.1 Limitations

A Member Town may withdraw from the District by an Amendment to the Agreement in the manner provided by this Section. Any Member Town seeking to withdraw shall by vote at an Annual or Special Town Meeting, request the Commission to prepare and Amendment to this Agreement setting forth the terms by which such Member Town may withdraw from the District, provided that the said Member Town shall be liable to the District as defined in the following paragraphs for its share of the indebtedness of the District outstanding at the time of such withdrawal, and for interest thereon, to the same extent and in the same manner as though the Member Town had not withdrawn from the District. The Member Town seeking to withdraw shall only be allowed to do so if another customer or member Town has agreed to purchase the capacity of the withdrawing Member Town.

### 11.2 Procedure

A Commissioner of the Member Town seeking to withdraw shall notify the Commission in writing that such Member Town has voted (by the appropriate governing body) to request the Commission to prepare an Amendment to the Agreement (enclosing a certified copy of such vote). Thereupon, the Commission shall prepare a proposed Amendment to the Agreement setting forth such terms of withdrawal as it deems advisable, subject to the limitation contained in subsection 11.1. The terms of withdrawal shall insure that the withdrawing Member Town will pay its share of borrowing in anticipation of revenue which may be outstanding at the time of withdrawal. The Commission shall mail or deliver a notice in writing to the Chairman of the Sewer Commissioners and to the Board of Selectmen of the member Town seeking to withdraw that the Commission has prepared a proposed Amendment to the Agreement providing, for the town's withdrawal (enclosing a copy of such Amendment). The Board of Selectmen of the Member Town seeking to withdraw shall include in the Warrant for the next Annual or Special Town Meeting, an Article stating the Amendment or the substance thereof. If approved, the Amendment shall take effect as stipulated.

### 11.3 Cessation of Terms of Office of Withdrawing Town's Members

Upon the effective date of withdrawal, the terms of office of the members serving on the Commission from the withdrawing member Town shall terminate and the total membership of the Commission shall be decreased accordingly. If a non-municipal customer purchases the capacity of the Member Town leaving then the Commission membership will remain at the reduced level. If a new member Town purchases the capacity of the former member Town, then the new member Town will be allowed to appoint an appropriate number of member(s) to the Commission based on flow capacity purchased from the departing or former Member Town.

### 11.4 Apportionment of Costs After Withdrawal

Any future installment or portion thereof, of any principal and interest on debt obligations outstanding on the effective date of withdrawal of a Member Town, which obligations were incurred by the District as a local service cost attributable to such withdrawing Member Town, shall continue to be assessed to such withdrawing Member Town until the outstanding debt obligations are satisfied or appropriately transferred to an authorized successor. Due dates of payment shall be as specified in Section 5.

The withdrawing Member Town's annual share of any future installment of principal and interest on obligations outstanding on the effective date of its withdrawal shall be computed in the same manner as in Section 5 until the outstanding obligations are satisfied or appropriately transferred to an authorized successor. Due dates of payment shall be as specified in Section 5.

## **Section 12: Measurement of Flow**

12.1 The District measurement of wastewater flow shall be as follows:

12.1.1 The volume of flow used in computing the flow variable portion of operation and maintenance costs shall be based upon readings obtained by metering equipment approved by the District, installed by each Member Town, and located at each point of discharge into the Common District System or each Member Towns' shared wastewater conveyance system. Such metering equipment shall be installed by the respective member Towns and shall include a SCADA system (not to be used for control unless contracted for by a Member Town) for sending metering data to the District's treatment facility. The collection of flow meter readings for the purpose of computing and distributing charges shall be done

locally at each meter and shall be the responsibility of the District and/or its authorized agent, and all costs related to the collection of the data and the calculation of the charges shall be a part of the Operating Costs of the Common District System. Once a quarter, the District will provide each Member Town with the monthly wastewater volume for the preceding quarter, based upon the meter readings. Each Member Town will have access to said meter readings during the District's normal business hours.

12.1.2 Each Member Town shall provide a flow measuring system at its own expense to measure all wastewater flows from the member Town which enter the Common District System. The general arrangement, equipment and physical location of these flow measuring stations shall be subject to District's review and approval. The cost of maintaining these flow measuring stations shall be borne by each respective Member Town.

The District shall provide and maintain a SCADA system (not to be used for control unless contracted for by a Member Town) at its expense to assist with monitoring the measured flows from each flow measuring station that discharges into a shared wastewater system within a Member Town or that discharges directly into the Common District System.

Each Member Town shall be responsible for checking the accuracy and reliability of the flow metering equipment on at least a semi-annual (twice per year) basis and agrees to keep such equipment functional, operational and accurate. The District shall be advised of the results of any tests on the equipment and the methods employed.

The District shall have the right to check the operation and accuracy of all system meters and the cost of these checks shall be borne by the District. System meters are defined as those meters utilized to calculate the flow received from each Member Town. Should a flow discrepancy of more than the accepted industry accuracy standard for that given meter type be detected pursuant to this District check, then the Member Town shall recheck their meter at their costs and take any appropriate action to rectify or correct discrepancy so that accuracies are again within the industry standard. The District shall maintain a listing of the agreed upon industry accuracy standards by meter type.

12.1.3 The District operates and maintains a metering and automatic sampling station at the wastewater treatment facility inlet area. The general arrangement, equipment, maintenance and operation of this metering station shall be subject to periodic inspection by the Member Town. Any costs incidental to the operation and maintenance of the metering station, including the wastewater sampling and analysis, shall be borne by the District and be included as a part of the operating Costs of the Common District System.

12.1.4 Determination of the volume of each Member Town's wastewater flows shall be determined directly from the metering conducted at the flow monitoring stations.

12.1.5 in the event the metering equipment is temporarily out of order or service for any reason, the volume of wastewater will be estimated by the District on the basis of recent correct readings and past experience using a mutually agreed upon formula or flow period.

12.1.6 All flows in this Agreement are and shall be based on actual flows and not 310 CMR 15.00 State Environmental Code Title 5 flows.

Section 13: Sampling of Wastewater Flow

13.1 The District shall have the right to sample wastewater flow at any location within a Member Town's Local Wastewater System and shall do so at its (the District's) own costs. A copy of sampling results shall be provided to the appropriate Member Town. Member Towns shall provide full and free access to their collection system sampling locations for District use.

In the event that wastes of unusually high strength (per industry standards) are detected by the District, then the appropriate Member Town shall be responsible for determining the source and/or cause of the high strength waste and shall take appropriate actions to make sure it is in accordance with the District's Industrial Pretreatment Program contained within the District's Sewer Use Regulations.

#### Section 14: Notice of Flow Changes

14.1 Each Member Town agrees to notify the District as far in advance as possible of any anticipated or planned significant (greater than 25,000 gpd) increases or decreases in wastewater flow discharged into the Common District System by that Member Town.

14.2 Each Member Town agrees to provide to the District, on a semi-annual (twice per year) basis, a summary of connection permit data for new sewer connection permits issued by the Member Town. Said information shall include an estimate of capacity to that particular new user and these individual estimates shall be compared to actual use from time to time.

14.3 Each Member Town hereby agrees to take all appropriate actions necessary to enforce conformance with all District wastewater regulations by all customers within the Member Town's sewer service area. Each Member Town shall be responsible for any fines or penalties issued to the District as a result of that Member Town's failure to act in accordance with the provision.

#### Section 15: Pretreatment

15.1 Each Member Town shall adopt and enforce the District's Pretreatment Regulations (as of the Effective Date) as a minimum standard. Each Industrial User in each Member Town shall provide necessary treatment as required to comply with said Regulations, including the Local Discharge Limitations set forth therein and all applicable National Categorical Pretreatment Standards and General Pretreatment Standards.

15.2 Each Member Town reserves the right at any time to pretreat or improve the quality of the wastewater or to otherwise give preliminary treatment to its wastewater prior to discharge to the Common District System.

15.3 In accordance with the District's Sewer Use Regulations, the District may require pretreatment of high strength wastes by individual sewer users. Each member Town recognizes and agrees to the District's authority to require such pretreatment and agrees to work with the District and apply its full authority, as well to enforce such requirements.

#### Section 16: Trucked Wastes

16.1 Each Member Town shall adopt and enforce the District's Septage Regulations (as of the Effective Date) as a minimum standard.

16.2 The District shall accept and treat at its treatment facility wastes from the Member Towns' (and their customers) septic tanks, and cesspools, provided that all persons operating vacuum or "cesspool"



pumping trucks desiring to discharge these wastes at the District's facility shall first acquire a trucker's discharge permit from the District, make payment for treatment costs at the rates fixed from time to time by the District, and be subject to the conditions of the District's sewer use policy regulating truckers' discharges.

16.2.1 Each Member Town agrees that all wastes to be discharged into the Common District System must be in accordance with the District's regulations.

16.2.2 Each Member Town hereby agrees that at no time will it intentionally allow the discharge of any wastewater in to the Common district System which are economically and/or technically more burdensome to treat than those described in the District's regulations.

16.3 The District will maintain records for such received wastes and make such records available to each Member Town.

16.4 Nothing in this Section or this Agreement shall restrict the District's right to limit the total flow through the District's wastewater treatment facility, allocate capacity for septage handling, or modify or change the allocation as operating conditions require.

16.5 Revenue from all trucked wastes shall be deemed District revenue and reflected accordingly in the annual budget.

16.6 Provided sufficient capacity remains available for Member Towns, nothing in this Agreement shall restrict the District's right to accept trucked wastes from sources outside of the Member Towns.

#### Section 17: Contract Administration

17.1 The responsibility for enforcement and administration of this Agreement shall be assigned to the District's Executive Director, subject to oversight by the Commission. All reports, requests, permit issues, questions, etc. shall be addressed to the Executive Director.

17.2 In the event that a dispute arises regarding the Executive Director's enforcement or interpretation of the term of this Agreement, the aggrieved party may petition the Commission. The petition shall be submitted through the appropriate Member Town's Board of Water and Sewer Commissioners or board having such authority and shall be addressed to the attention of the District's Executive Director, who shall present it to the Commission at its next regularly scheduled meeting. The Member Town's Board and the Commission will attempt to resolve the dispute; however, the final decision rests with the Commission, subject to the provisions in 17.3, below.

17.3 If the matter is not resolved to Member Town's satisfaction, the Member Town may then seek to utilize the dispute resolution provisions:

If any dispute or claim ("dispute") arises out of the scope, interpretation, operation or alleged or actual breach of this Agreement, the District, acting by and through the Commission, and the Member Town(s) (collectively the "Parties" and separately, a "Party") agree that the dispute will be subject to the following dispute resolution process.

- (a) The Parties to the dispute shall endeavor to resolve the dispute amicably and directly with each other, by conducting a meeting(s) of the designated representatives of the involved Parties. A Party believing to be aggrieved by a dispute shall first send written notice of the dispute to the

other, relevant Party or Parties, detailing the nature or basis of the dispute and citing the provisions of this Dispute Resolution Provision. Upon receipt of such written notice, the Parties shall work cooperatively to schedule a meeting to attempt to amicably resolve the dispute. In any event, the meeting shall be held within twenty (20) business days of the date of delivery of said written notice of the dispute (if the dispute involves multiple Parties, the effective date shall be the date of delivery of notice to the last Party).

- (b) If, after twenty (20) days from the date of the first meeting held in accordance with paragraph (a), above, the Parties are unable to resolve any dispute between them, the aggrieved Party shall make written demand upon the other Party (Parties) to submit the dispute to mediation. The Parties shall begin promptly, but not later than fourteen (14) days after receipt of a written demand to mediate, to engage in selection of a mediator and scheduling of a mediation session. The mediation shall be governed by the mediation rules of the American Arbitration Association then in effect, unless an alternative method of mediation is mutually elected by all Parties in writing. If the Parties cannot agree on the selection of a mediator, either Party may seek appointment of a mediator by the local office of the American Arbitration Association, who shall promptly schedule the matter for mediation.
- (c) If the dispute cannot be resolved through mediation and the dispute involves fines, penalties, permit and connection fees, contractual terms, damages of \$100,000.00 or less or any question involving the sum of \$100,000.00 or less or if a Party fails to engage in mediation as required herein, the Commission and the aggrieved party shall enter into binding arbitration governed by the rules of the American Arbitration Association and the award in arbitration shall be the aggrieved party's sole remedy at law or in equity.
- (d) As to all other disputes, the aggrieved party may submit the dispute to a court of competent jurisdiction in the Commonwealth of Massachusetts for resolution or court order.

17.4 This Agreement and all acts performed or required to be performed hereunder shall be interpreted under the laws of the Commonwealth of Massachusetts and jurisdiction shall vest in said Massachusetts' courts.

## Section 18: Transition Items

### 18.1 Initial Budget

18.1.1 The District shall adopt the fiscal year budget created by Wareham for the treatment plant during its initial year of operation, or portion thereof, and shall work to create the next fiscal year budget according to the timelines stated herein.

18.1.2 After the initial Commission is organized, it shall review the status of the existing operating and maintenance budget and make any necessary revisions as a result of the creation of the District at that point in time for the balance of the then-fiscal year. Copies of such revised budget shall be submitted to the Chairman of the Water and Sewer Commission or board having such authority and to the Board of Selectmen, if different, for each Member Town. The Commission shall adopt a budget not earlier than sixty (60) days, but within ninety (90) days after the proposed budget has been so submitted. The amount of said budget shall be apportioned among the Member Towns according to the provisions of Section 5 hereof. The District Treasurer shall certify to the Treasurer of each Member Town its respective shares of said budget. The sums thus certified shall be payable by each Member Town to the District.

## 18.2 Initial management and Operation of District Facilities

The Enabling Act authorizes the District to enter into contracts for the operation and management of District facilities.

## 18.3 Pretreatment and Sewer Use Bylaws

The District shall develop and adopt its own pretreatment and sewer use regulations.

## 18.4 National Pollution Discharge Elimination System (NPDES) Permit

## 18.5 Schedule for Expansion of WPCF.

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