

**SEPTAGE DISPOSAL AGREEMENT
BETWEEN THE TOWNS OF WAYLAND, MASSACHUSETTS AND SUDBURY, MASSACHUSETTS**

THIS AGREEMENT made this 4 day of JUNE, 1997, pursuant to the provisions of M.G.L. chapter 40, sections 4 and 4A, and every other power which they may have, by and between the TOWN OF SUDBURY, a municipal corporation in Middlesex County, Massachusetts (hereinafter referred to as SUDBURY), acting by its Board of Selectmen, and the TOWN OF WAYLAND, a municipal corporation in Middlesex County, Massachusetts (hereinafter referred to as WAYLAND), acting by its Board of Selectmen,

WITNESSES that:

WHEREAS the parties have determined that they need facilities for the treatment and disposal of sewage and offal, including septic-tank pumpings, the last of which is hereinafter called septage; and

WHEREAS the parties have jointly used the existing facility since its original construction and desire to continue such joint use and benefit; and

WHEREAS this Agreement has been duly authorized by votes of Town Meetings in SUDBURY and WAYLAND, respectively, copies of which, designated Exhibits A and B, respectively, are annexed hereto and incorporated herein by reference;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION I The Facility

SUDBURY and WAYLAND shall continue to jointly finance, construct, equip, maintain, repair and operate for the benefit of the citizens of said Towns a facility for the treatment and disposal of septage located north of Route 20 near the Wayland-Sudbury Town Line.

SECTION II The Site

SUDBURY and WAYLAND shall have the right and easement to use the Septage Treatment Facility and parcels of land on which the Facility is located in said Towns North of State Route 20 for the construction and operation of said facility in accord with the terms of the Agreement.

SECTION III SEPTAGE COMMITTEE

A. In order that SUDBURY and WAYLAND each have an equal voice in the fundamental aspects of the aforesaid facility, there shall be established a SEPTAGE COMMITTEE, hereinafter referred to as the COMMITTEE, consisting of eight (8) members to be designated as follows:

- One person appointed by the Board of Health of each Town.
- One person appointed by the Conservation Commission of each Town.
- One person appointed by the Planning Board of each Town.
- One person appointed by the Selectmen of each Town.

The term of office shall be determined by the appointing Board or Commission. In the event that any of the above appointing boards ceases to exist in either town, its functional successor board or elected official shall have the appointing authority.

B. The authority granted hereunder to the COMMITTEE or its functional successor shall at all times be exercised so that the facility shall operate in a manner that is fair and equitable to the citizens of both Towns.

SECTION IV Authority and Duties of the COMMITTEE

A. The COMMITTEE shall be responsible for all aspects of the operation and maintenance of the facility and obtaining and approving all designs and changes to equipment and structures at the facility, ~~and the committee's powers shall become effective on August 1, 1997~~

B. No substantial changes may be made in the location, design, layout, engineering, or equipment of the facility, without the approval of the COMMITTEE.

C. In the first quarter of each fiscal year and at such other times as may be appropriate, the COMMITTEE shall review the operation of the facility and establish the maximum volume of septage to be accepted and processed yearly at the facility; the volume of septage that may be accepted from persons who do not reside in SUDBURY and WAYLAND; the types of waste that may be accepted; and the schedule of fees to be charged for the use of said facility.

D. The COMMITTEE shall adopt and approve any rule or regulation governing public use of the facility.

E. The COMMITTEE shall appoint a DIRECTOR to oversee the day to day operation, maintenance and management of the Facility. Such appointment shall be reviewed no less than once per year. The COMMITTEE may hire operational staff including independent contractors to operate and maintain the Facility under the direction of the DIRECTOR.

F. The COMMITTEE shall review and have final approval authority over the annual budget prepared by the DIRECTOR pursuant to Section VI.

G. The COMMITTEE may arrange for the Septage Enterprise Accounts to be audited by an accountant selected by the COMMITTEE.

SECTION V Authority and Duties of the DIRECTOR

A. The DIRECTOR shall operate, maintain, repair, and manage the facility and shall have the care, custody, management, and control thereof and of the land more fully described above.

B. The DIRECTOR shall also be responsible for maintaining complete and accurate books and records pertaining to the operation of said facility and make them available for inspection at any reasonable time to the Town Accountant of SUDBURY and/or WAYLAND, any member of the COMMITTEE and/or any person who shall have been duly designated by them or any of them.

C. The DIRECTOR shall report to the COMMITTEE at its regularly scheduled meetings on all aspects of the operations, maintenance, construction or management as may be requested by the COMMITTEE.

D. No person or vehicle shall deposit septage at the facility unless a qualified Wastewater Treatment Plant Operator is present.

SECTION VI Apportionment and Payments of Costs

A. Classification of Costs

In order to apportion the costs incurred for the construction and operation of the facility between SUDBURY and WAYLAND, all such costs shall be divided into the following categories:

1. Capital Costs

Capital costs shall mean all costs, financed by bonds, notes, or other indebtedness, for constructing or adding to said facility or the equipment and furnishings thereof, and for remodeling or making extraordinary repairs thereto. Capital costs shall also include payment of all principal and all

interest on bonds, notes, or other obligations issued to finance such costs. Any such Capital costs may be incurred only after a vote of Town Meeting in the Town authorizing the borrowing.

2. Operating Costs

Operating costs shall mean all costs other than capital costs, as defined in Section VI.A.1. above, including any costs incurred for maintenance or repairs.

B. Financing

In order to pay the future original capital costs required for said facility, as the same are defined above, the Host Town (as defined herein) shall issue such notes or other obligations as it may deem best for the period of construction and replace the same with a permanent financing arrangement.

C. The Budget Process

1. On or before November 15 of each year, the DIRECTOR shall submit to the COMMITTEE a copy of the capital and operating budget proposed for the facility to cover their estimate of the costs anticipated during the next fiscal year. This budget shall also present an estimate of the volume of septage to be processed during the next fiscal year. This volume shall be the budgeted operating level and shall not exceed the maximum volume set by the COMMITTEE in accordance with Section IV.C. The budget operating level shall show the respective volumes expected from SUDBURY and WAYLAND and that expected from outside sources. The Budget shall also present the expected revenue sources.

2. The COMMITTEE shall review and shall, on or before December 15 of each year, approve or revise and approve the budget submitted by the DIRECTOR. Such approval shall require the vote of two-thirds of those members of the COMMITTEE present and voting, and shall also require an affirmative vote from at least one member from each Town. The DIRECTOR shall, upon approval of the budget by the COMMITTEE, transmit a copy of said budget to the Board of Selectmen and Finance Committee of the Host Town for inclusion in the Warrant for the Host Town's Annual Town Meeting.

3. The Budget adopted by the COMMITTEE shall be included in the Warrant for the Host Town's Town Meeting without any changes.

4. The Septage Committee shall request a financial proposal from the Treasurer of both Wayland and Sudbury to provide the municipal financial and treasury services as outlined in this Agreement. Every three years the Septage Committee shall reevaluate the financial operations and make any changes as it determines are warranted. This may include asking both Towns to re-bid their financial proposal. The Town designated by the Septage Committee to provide the services for each three year period shall be designated as the "Host Town" in this Agreement. Until such time that the Septage Committee makes a change in the Financial Operations, the current arrangements shall remain in effect.

5. The operating and capital costs of the facility shall be paid from Enterprise Funds to be carried on the books of the Host Town and are to be maintained in separate, interest-bearing bank accounts, hereinafter the Septage Operating Enterprise Account and the Septage Capital Enterprise Account, for such purpose by the Host Town.

D. Billing & Collection

1. The Host Town shall be responsible for the billing and collecting of any fees for use of the facility and all fees collected by the Host Town shall be deposited into separate, interest-bearing Enterprise Account maintained by the Treasurer of the Host Town in accordance with Section VI.C.5. The Treasurer of the Host Town shall transmit to both towns such other amounts for Capital Costs, including debt payment, as are required by each town to make such payments on any outstanding bonds issued by that town and associated with the Facility.

E. Fees

1. The Host Town shall transmit to either town, upon the request therefor, the names of property owners who are delinquent more than ninety (90) days in the payment of fees billed to them.
2. For all accounts in WAYLAND and SUDBURY that are delinquent in excess of ninety (90) days, the Treasurers of WAYLAND and SUDBURY shall transmit to the Treasurer of the Host Town payment for such overdue accounts. The Treasurer of the Host Town shall deposit such payment into the Septage Enterprise Operating Account in the Host Town. Each Town shall be responsible for collecting such overdue payments from the property owners in the town through the tax lien.
3. The Treasurer of the Host Town shall transmit each month to the COMMITTEE and to each Town a detailed expense and general ledger statement indicating all activity of the Enterprise Account during the previous month.

F. Unilateral Termination

In the event that either Town shall terminate this Agreement without the consent of the other, it shall, nevertheless, continue to pay fifty percent (50%) of all the outstanding debt at the time of the termination, until such debt is fully retired.

SECTION VII Use of Facility

- A. Except as may otherwise be provided herein, the facility shall be operated and maintained for the benefit of the citizens of SUDBURY and WAYLAND.
- B. Septage may be accepted at the facility for an appropriate fee from persons who do not reside in SUDBURY or WAYLAND, to the extent permitted by the COMMITTEE.
- C. In the event that demand shall exceed the maximum volume permitted at the facility during the periods that the facility is operated for both Towns, each Town shall be entitled to use for septage originating within that Town one-half of such volume as well as any portion not used by the other Town.

SECTION VIII Protection Against Liability

- A. For the duration of this Agreement, the Town of WAYLAND shall purchase and maintain policies or riders on existing policies of insurance providing for:
 1. The payment of compensation and the furnishing of other benefits to all persons employed pursuant to this Agreement in accord with the provisions of M.G.L. chapter 152, and
 2. Public liability and property damage insurance covering liability for the Towns, their employees, agents, or contractors for injury to persons, including death, resulting from the actions or failures to act of the DIRECTOR or the COMMITTEE, their successors, their employees, agents, or contractors in the construction and operation of said facility which provides indemnity protection to the amount or limit of at least \$1,000,000 on account of injury or death of any one person, and subject to such limits as respects injury or death of one person, of at least \$3,000,000 on account of any one accident resulting in injury or death of more than one person, as well as coverage for property damage to the amount or limit of at least \$20,000 on account of any one accident resulting in such property damage.
 3. The cost of such insurance shall be included in the operating budget each year and the Treasurer of the Host Town shall make payment of same to the Treasurer of WAYLAND upon receiving notice from WAYLAND that payment is due.

B. The parties further agree that all damages, costs, charges, judgments, expenses, as well as the cost of investigating and defending claims against either or both Towns, including attorneys' fees and expenses, that SUDBURY or WAYLAND may incur by reason of any alleged act, neglect, omission, or default on its part or that of its employees, agents, or contractors in any way arising out of the construction and/or operation of the aforesaid facility shall be shared equally by said Towns, regardless of fault, to the extent that such expense shall not be covered by insurance.

SECTION IX Casualty and Eminent Domain

In the event that any property within or upon the site shall be damaged or taken by eminent domain, the COMMITTEE shall determine and direct what use shall be made of all proceeds that may be recovered on account of such damage or taking; but if it shall be unable or unwilling to make such determination within forty-five days after such funds have been received, the net proceeds shall be divided and distributed to the Towns in equal shares.

SECTION X Taxation

All property used in connection with the operation of the aforesaid facility shall be exempt from taxation by either Town, and neither Town may demand any fees or charges on account of said facility which are not paid at the same rate by other facilities situated in said Town.

SECTION XI Fiscal Year

The fiscal year for the operation of said facility shall commence on July 1st of each year.

SECTION XII Annual Reports

The COMMITTEE shall submit a written report each year to the Selectmen of each Town, for inclusion in the Annual Reports of SUDBURY and WAYLAND, containing detailed financial statements concerning the operation of the facility as well as a statement showing the methods that were used to compute the annual charges apportioned to each Town.

SECTION XIII Effective Date

This Agreement shall become effective upon the execution of this instrument as duly authorized by each party hereto in accord with the provisions of M.G.L. chapter 40, section 4A, and *Comm. Hous Powers shall become effective on August 1, 1997.*

SECTION XIV Term

Unless sooner terminated, as provided in M.G.L. chapter 40, section 4A, this Agreement shall expire at the end of twenty (20) years from the effective date hereof.

SECTION XV Termination

A. During the term of this Agreement

As provided by the provisions of Chapter 40 Section 4A of the Massachusetts General Laws, either town may terminate this Agreement at the end of any fiscal year provided that notice of such termination is given to the other town at least one year prior to the date of termination. If the Agreement is terminated by either Town:

1. The Terminating Town shall pay the other Town all monies that may have been due at the time of such event on account of the current operating costs of said facility within thirty (30) days after such amount shall have been determined by the COMMITTEE and certified to its Town Treasurer. Such amount may subsequently be adjusted and become payable as provided in Section VI.D.4. above. Any funds held in one or more enterprise fund of the Terminating Town for the Septage Facility shall be

turned over to the non-terminating Town for its use in operating, maintaining and upgrading of the facility, subject to appropriation.

2. The other Town shall thereupon have the right, at its own expense, to operate the facility and to control for this purpose the land included in the site until the expiration of twenty (20) years from the effective date of this Agreement without interference of any kind by the Terminating Town, including the imposition of taxes, usage fees (except as provided in Section X above), or otherwise.

3. Each Town shall continue to pay its share of any capital cost that may have been outstanding at the time of such event in accord with the provisions of Sections VI and VIII above until such capital cost shall have been paid in full.

4. The authority of the COMMITTEE shall continue in all respects.

5. In the Case of Termination by one Town, membership on the COMMITTEE shall be limited to appointees of the continuing Town.

6. The maximum volume of the facility and the types of waste to be accepted at the facility shall not exceed those of the last actual safe and reasonable level of operation recorded by the COMMITTEE for a fiscal year prior to such termination; the Town that shall continue to operate the facility may accept septage from other communities for a fee up to such level of operation and retain such fees without reporting such fees to or sharing them with the Terminating Town.

B. Upon Expiration of this Agreement

In the event that the parties hereto shall not extend the term of this Agreement, the COMMITTEE shall, at the end of twenty years after the effective date of this Agreement, or at such earlier date as the parties shall determine by agreement, obtain an appraisal of the facility, excluding the land but including all structures, equipment, supplies, and materials associated therewith, and such facility shall thereupon be disposed of as follows:

1. In the event that WAYLAND shall vote to continue to operate said facility, it shall be permitted to do so upon payment to SUDBURY of one-half of said appraised value, either if SUDBURY shall permit such continued operation on the site, or if WAYLAND can operate the facility without using that portion of the site located in SUDBURY.

2. Otherwise the said facility shall be disposed of with the approval of the COMMITTEE as follows:

a. If the facility shall have a market value, the assets (excluding the land) shall be sold by WAYLAND and the net proceeds shall be divided equally between the Towns, together with all monies remaining due from one Town to the other arising out of the construction and operation of said facility;

b. If the facility shall be deemed to have no market value, or if the Town of WAYLAND shall determine that it constitutes a nuisance or liability, the Town of WAYLAND may demolish the same, and SUDBURY shall reimburse WAYLAND one-half the cost of such demolition, after any credit for salvage value, if it shall occur within five years of the expiration of this Agreement;

c. In any other manner, including a lease thereof, which may be authorized by vote of the two Towns.

C. Upon Termination of this Agreement

The obligations of one Town to the other under this Agreement shall cease upon its termination, except for any reimbursement or adjustments that may be due for any operating costs up to

and including the date of termination and any outstanding indebtedness or obligations due from one Town to the other on account of the facility, including the payments provided by Sections VI and XV.

SECTION XVI Amendment

This Agreement may be amended from time to time provided that no such amendment shall become effective until approved by a Town Meeting in both member Towns.

SECTION XVII Filing

A copy of this Agreement and all amendments thereto shall be filed with the Town Clerk of each member Town as a public document.

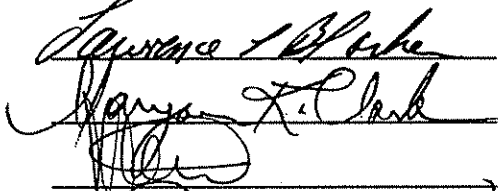
SECTION XVIII Notice

Any notice, demand, or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties hereto if mailed, postage prepaid, to WAYLAND at 195 Main Street, Wayland, Massachusetts 01778, and to SUDBURY at Town Hall, Sudbury, Massachusetts 01776, or to such other address as shall be designated by either party in writing for that purpose.

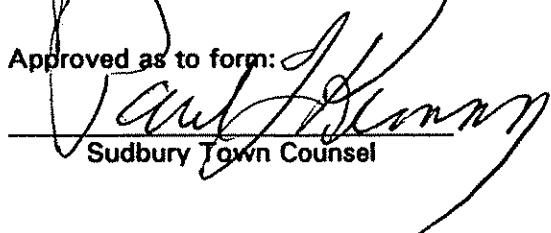
IN WITNESS WHEREOF, the parties have hereto set their hands and seals, SUDBURY by its Selectmen, and WAYLAND by its Selectmen, both thereunto duly authorized, who, however, incur no personal liability by reason of the execution hereof or anything herein contained, in duplicate, the date and year first above written.

TOWN OF SUDBURY

By its Selectmen

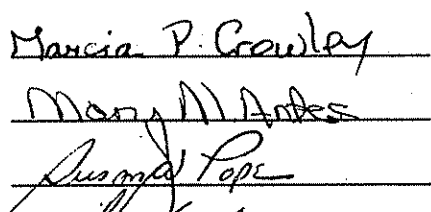


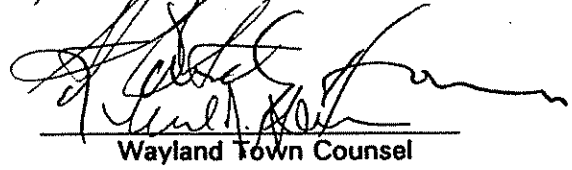
Approved as to form:


Sudbury Town Counsel

TOWN OF WAYLAND

By its Selectmen




Wayland Town Counsel