

INTERMUNICIPAL AGREEMENT
BETWEEN THE TOWNS OF WAYLAND AND SUDBURY
FOR SEPTAGE DISPOSAL FACILITY DISPOSITION

This agreement ("Agreement") dated October 5, 2015, entered into pursuant to the provisions of M.G.L. c. 40, §§4 and 4A, by and between Town of Sudbury, Massachusetts, a Massachusetts municipal corporation having an address of 278 Old Sudbury Road, Sudbury, MA 01776, acting by and through its Interim Town Manager ("Sudbury"), and the Town of Wayland, Massachusetts, a Massachusetts municipal corporation having an address of 41 Cochituate Road, Wayland, MA 01778, acting by and through its Town Administrator ("Wayland").

WHEREAS, commencing on or about 1980, Sudbury and Wayland jointly financed, constructed, owned, equipped, operated, improved, maintained and repaired a facility for the treatment and disposal of sewage and offal, including septic tank pumpings at 490 Boston Post Road, Wayland, Massachusetts (the "Facility"); and

WHEREAS, on June 4, 1997, Wayland and Sudbury entered into an intermunicipal agreement to continue to jointly finance, construct, own, equip, operate, improve, maintain and repair the Facility until August 1, 2017 (the "1997 IMA"), unless the 1997 IMA is sooner terminated; and

WHEREAS, the Facility was fully decommissioned on October 22, 2009 and permanently closed on December 1, 2009; and

WHEREAS, except for the portion leaching fields for the Facility which is located in Sudbury, Wayland owns the parcel of land upon which the Facility is situated, which parcel of land contains 7.63 acres, more or less, and is described in an order of taking dated January 11, 1971 and recorded with the Middlesex South Registry of Deeds in Book 11943, Page 420 (the "Facility Land"), subject to Sudbury's right to use the Facility Land for the construction and operation of the Facility in conjunction with Wayland; and

WHEREAS, Sudbury and Wayland wish to enter into an agreement which will provide for the termination of the 1997 IMA before its expiration date and the terms and conditions of disposition of the Facility by Wayland's acquisition of Sudbury's interest therein.

NOW THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sudbury and Wayland agree as follows:

Article I. DISPOSITION OF THE FACILITY

A. Sale of Facility Land. In the event that Wayland sells, leases as lessor or otherwise agrees to dispose of the Facility Land for more than nominal consideration before August 1, 2017, the following provisions shall take effect upon the closing or other finalization of said transaction:

- 1) Sudbury shall thereafter have no liability for any costs associated with the demolition of the Facility and removal of debris.
- 2) Sudbury's right, title and interest in and to the Facility shall transfer to Wayland.
- 3) The invitation for bids or request for proposals issued by Wayland for development of the Facility Land shall include a requirement that the developer will be responsible for all costs of the demolition of the Facility and removal of debris (the "Work").
- 4) The parties agree that the portion of the Facility Land located in Wayland may be sold, leased or otherwise disposed of and/or reused by Wayland, subject to any terms and conditions it deems to be in its best interests, and insofar as the Facility has been appraised to have no value, it may be demolished and disposed of by Wayland. Wayland agrees that Sudbury, as the owner of land abutting the Facility Land, is a party in interest within the meaning of G.L. c. 40A, §11, and further is entitled to and will be provided with notice and an opportunity to be heard in any public hearing by any Town of Wayland boards, committees or commissions acting on any and all applications for approvals and/or permits in connection with the development of the Facility Land and/or the demolition and disposal of the Facility.
- 5) Subject to such terms and conditions as the parties may agree to, Sudbury will grant to Wayland and/or any purchaser or lessor of the Facility Land a temporary license to allow access for purposes of demolition of the Facility and the removal of debris, including but not limited to the removal or capping of underground pipes which are used in conjunction with the Facility but are located on Sudbury's land. These underground pipes may include but are not limited to water, natural gas, and other utilities. Wayland and/or any purchaser or lessor of the Facility Land shall provide Sudbury with at least two weeks prior notice prior to starting work and shall not commence any work on Sudbury property without advance permission from Sudbury, and shall, to the extent permitted by law, indemnify and save harmless Sudbury and its officers, agents, and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs and expenses (including reasonable attorney's fees) that may arise out of or in connection with said license to the extent arising out of the negligent or willful acts or omissions of the licensee, or its agents, employees, contractors or assigns.
- 6) Wayland shall maintain the policies or riders on existing policies of insurance providing for public liability and property damage insurance covering liability for the Towns, their employees, agents, or contractors for injury to persons, including death, for the Facility and Facility Land, as currently in effect, until the closing or other finalization of the transaction to dispose of the Facility Land or August 1, 2017 if no agreement to sell or dispose of the Facility Land is in effect by that date. Unless this obligation is assigned by Wayland to a third party in accordance with Article V of this Agreement, Wayland may use any remaining funds in the Enterprise Fund to pay the costs of such insurance.

7) To the maximum extent permitted by law, Wayland shall indemnify and save harmless Sudbury, its officers, agents, and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs and expenses (including reasonable attorney's fees) that may arise out of or in connection with the Work to the extent arising from the negligent or willful acts or omissions of Wayland or its agents, employees, contractors or assigns.

8) Notwithstanding any provision of this Agreement to the contrary, Wayland may, at its sole option, assign some or all of its obligations under this Paragraph A but nevertheless be responsible for all its obligations to Sudbury under this Agreement including this Paragraph A.

B. Termination of Agreement. In the event that Wayland sells, leases as lessor or otherwise agrees to dispose of the Facility Land for more than nominal consideration before August 1, 2017, upon the closing or other finalization of such transaction, the 1997 Agreement shall be terminated and superseded by the terms of this Agreement; the Septage Committee established pursuant to Section III of the 1997 Agreement shall be abolished and shall have no further duties or authority with respect to the Facility or the Facility Land; any rule or regulation governing use of the Facility or Facility Land which was adopted by the Septage Committee shall be rescinded.

C. Sale of Surplus Equipment. Sudbury and Wayland acknowledge that they have sold any and all moveable and removable equipment, furniture, furnishings and appliances in the Facility and on the Facility Land with commercial value (the "Surplus Equipment") and have received their respective fifty percent shares of the proceeds of the sale of the Surplus Equipment, if any.

Article II. DISPOSITION OF FUNDS

A. Effectiveness. The provisions of Article II shall become effective upon termination of the Septage Disposal Agreement under Article I, and approval by the Wayland town meeting of a payment to the Town of Sudbury of the amount of \$68,614 for retiree health insurance and pension benefit costs for the period 2004 through 2015. Said payment shall be made from funds in the Septage Facility Enterprise Fund ("Enterprise Fund").

B. Enterprise Fund. Wayland shall manage all monies in the Enterprise Fund, which total \$111,772 as of June 30, 2015. The Proportionate Costs of health insurance and pension benefits for retired employees, and spouses where the latter was previously eligible, of Wayland and Sudbury who worked at the Facility shall be paid from the Enterprise Fund; after the Enterprise Fund is exhausted, Wayland and Sudbury shall share equally the Proportionate Costs of health insurance and pension benefits for retired employees, and spouses where the latter was previously eligible, of Wayland and Sudbury who worked at the Facility. Proportionate Costs shall be calculated as the actual costs adjusted for the mutually agreed percentage of each employee's time that was spent on Facility matters as more fully set forth in Appendix A.

There are no other unpaid bills to be paid from the Enterprise Fund, other than those described in this paragraph.

C. Collected Receivables. The parties agree that unpaid accounts will be written off as uncollectable. In the event that any payments are received, Wayland shall receive and retain in the Septage Facility Enterprise Fund all unallocated and unexpended funds received from septage haulers that it or Sudbury is currently holding or may be hereafter received.

D. Accounts Payable. The parties acknowledge and agree that no accounts payable exist as of the date of this Agreement. Should the existence of any accounts payable be discovered, the parties agree that any such accounts shall be paid by Wayland and Sudbury will reimburse Wayland for fifty percent of any payments made. Wayland shall notify Sudbury, in writing, of any such payments and Sudbury shall pay its share within thirty days of receipt of such notice.

Article III. FINANCIAL

Each party shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received under this Agreement. Each party shall have the right to perform an audit of such records.

Any obligations arising out of the parties' construction, operation and/or maintenance of the Facility, including but not limited to any environmental monitoring, response actions as defined in Massachusetts General Laws Chapter 21E, and/or clean-up costs required by the Massachusetts Department of Environmental Protection, United States Environmental Protection Agency, or any other authority, shall be shared equally by the parties.

Article IV. NOTICES

All notices required by this agreement shall be deemed given when in writing and delivered personally or by United States mail, postage prepaid, return receipt requested, addressed to the other party at the addresses set forth below:

To the Town of Sudbury:	Town Manager 278 Old Sudbury Road Sudbury, MA 01776
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To the Town of Wayland:	Town Administrator 41 Cochituate Road Wayland, MA 01778
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Article V. MISCELLANEOUS

1. Binding Effect: This Agreement shall be binding upon and shall inure to the benefit of each party and its successors and permitted assigns.
2. Assignment: Except as set forth in Article I, Par. A above, no assignment of this Agreement or of the rights and obligations hereunder shall be valid without the specific written consent of both parties.
3. Governing Law: This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.
4. Relationship of Parties: None of the provisions of this Agreement is intended to create any relationship between the parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The parties are not, and shall not be construed to be in a relationship of joint venture partnership or employer-employee.
5. Amendments: Only a written instrument signed by the parties may amend or modify this Agreement.
6. Waiver: No delay or failure to require performance of any provisions of this Agreement shall constitute a waiver of the provision as to that or any other instance. Any waiver granted by a party must be in writing.
7. Survival of Provisions: Upon the expiration or termination of this Agreement and the 1997 IMA, the obligations of the parties to each other thereunder shall come to an end, except that those provisions, which, by their terms, require performance or impose obligations to be met after such expiration or termination shall survive.
8. Appropriation: To the extent the financial obligations of the parties hereto are subject to appropriation, each party agrees to request that its Town Meeting appropriate sufficient funds to meet said obligations.
9. Effect of Partial Invalidity: If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
10. Entire Agreement: This Agreement, together with the 1997 Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described herein. This Agreement, together with the 1997 Agreement, supersedes all prior agreements, negotiations and representations, either written or oral.

IN WITNESS WHEREOF, this agreement is signed as of the date first written above by the duly authorized representatives of the parties.

Town of Wayland
its Board of Selectmen

Clement

Mary M. Ames

James F. Mc

Dea T. Anderson

Approved as to legal form:

Gregg J. Corbo

Gregg J. Corbo, Special Town Counsel

Town of Sudbury
its Interim Town Manager,

Maryanne Bilodeau

Maryanne Bilodeau
its Interim Town Manager,
Duly Authorized

Approved as to legal form:

Barbara J. Saint Andre

Barbara J. Saint Andre, Town Counsel

APPENDIX A

Town Cont	2015 Town Cost/Mo	2016 Town Cost/Yr	2017 Town Cost/Yr	2018 Town Cost/Yr	2019 Town Cost/Yr	2020 Town Cost/Yr	2021 Town Cost/Yr	2022 Town Cost/Yr	2023 Town Cost/Yr	2024 Town Cost/Yr	2025 Town Cost/Yr	2026 Town Cost/Yr	2027 Town Cost/Yr	2028 Town Cost/Yr	Total
Years															
Retiree A - Life Expectancy: 6yrs/5 mo															
Retired - 12/31/02															
Health Ins - Not Enrolled	N/A														
Life Ins (+5.0%/yr)	1.28	16.13	16.94	17.78	18.67	19.61	20.59								
Pension (+3.0%/yr - first 14K)	2,810.22	34,142.64	34,562.64	34,982.64	35,402.64	35,822.64	36,242.64								
Factored @ 77.52% **		26,467.37	26,792.96	27,118.54	27,444.13	27,769.71	28,095.29								
Total Retiree A Legacy Cost (a+b+c)		26,483.50	26,809.90	27,136.33	27,462.80	27,789.32	28,115.88								163,797.72
Service - 16 yrs - 100% Septage ##															
Retiree B - Life Expectancy: 10 yrs/0 mo															
Retired - 10/1/03															
Health Ins (+5.0%/yr)	50%	147.82	1,862.53	1,955.66	2,053.44	2,156.11	2,263.92	2,377.11	2,495.97	2,620.77	2,751.81				
Life Ins (+5.0%/yr)	50%	1.28	16.13	16.94	17.78	18.67	19.61	20.59	21.62	22.70	23.83				
Pension (+3.0%/yr - first 14K)	--	2,233.67	27,224.04	28,064.04	28,484.04	28,904.04	29,324.04	29,744.04	30,164.04	30,584.04	30,984.04				
Factored @ 77.52% **		21,104.08	21,429.66	21,755.24	22,080.83	22,406.41	22,732.00	23,057.58	23,383.16	23,708.75					
Total Retiree B Legacy Cost (d+e+f)		22,982.74	23,402.25	23,826.47	24,255.61	24,689.93	25,129.69	25,575.16	26,026.63	26,484.38					159,196.74
Service - 28 yrs - 71.59% Septage ^^		16,453.34	16,753.67	17,057.37	17,364.59	17,675.52	17,990.35	18,309.26	18,632.46	18,960.17					
Retiree B Spouse - Life Expectancy: 14 yrs/2 mo															
Health Ins (+5.0%/yr)	50%	147.82	1,862.53	1,955.66	2,053.44	2,156.11	2,263.92	2,377.11	2,495.97	2,620.77	2,751.81	2,889.40	3,033.87	3,185.56	3,344.84
Life Ins (+5.0%/yr)	N/A														
Pension - 2/3 Spousal Benefit	--											26,245.44	26,665.44	27,085.44	27,505.44
Factored @ 77.52% **												17,321.99	17,599.19	17,876.39	18,153.59
Total Spousal Legacy Cost (g+h+i)		1,862.53	1,955.66	2,053.44	2,156.11	2,263.92	2,377.11	2,495.97	2,620.77	2,751.81	2,889.40	3,033.87	3,185.56	3,344.84	
Service - 28 yrs - 71.59% Septage ^^		1,333.39	1,400.05	1,470.06	1,543.56	1,620.74	1,701.77	1,786.86	1,876.21	1,970.02	20,211.39	20,633.06	21,061.95	21,498.43	74,412.17
Retiree C - Life Expectancy: 7 Yrs															
Retired 2002															
Health Ins (+5.0%/yr)	50%	195.86	2,467.84	2,591.23	2,720.79	2,856.83	2,999.67	3,149.66	3,307.14						
Life Ins (+5.0%/yr)	50%	0.25	3.15	3.31	3.47	3.65	3.83	4.02	4.22						
Pension (+3.0%/yr - first 14K)	--	2,551.06	31,032.72	31,452.72	31,872.72	32,292.72	32,712.72	33,132.72	33,552.72						
Factored @ 77.52% **		24,056.56	24,382.15	24,707.73	25,033.32	25,358.90	25,684.48	26,010.07							
Total Retiree C Legacy Cost (j+k+l)		26,527.55	26,976.69	27,432.00	27,893.80	28,362.40	28,838.16	29,321.43							56,084.81
Service/Hours - 28.71% Septage ++		7,615.30	7,745.01	7,875.73	8,008.31	8,142.85	8,279.44	8,418.18							

APPENDIX A

Years	Town Cont	2015 Town Cost/Mo	2016 Town Cost/Yr	2017 Town Cost/Yr	2018 Town Cost/Yr	2019 Town Cost/Yr	2020 Town Cost/Yr	2021 Town Cost/Yr	2022 Town Cost/Yr	2023 Town Cost/Yr	2024 Town Cost/Yr	2025 Town Cost/Yr	2026 Town Cost/Yr	2027 Town Cost/Yr	2028 Town Cost/Yr	Total
			1	2	3	4	5	6	7	8	9	10	11	12	13	
FY 15 Starting Balance																
			111,772.00													
Retiree A - 100% Septage Career			26,483.50	26,809.90	27,136.33	27,462.80	27,789.32	28,115.88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	163,797.72
Retiree B - 71.59 % Septage Career			16,453.34	16,753.67	17,057.37	17,364.59	17,675.52	18,309.26	18,632.46	18,960.17						159,196.74
Retiree B Spouse - 71.59 % Septage Career			1,333.39	1,400.05	1,470.06	1,543.56	1,620.74	1,701.77	1,786.86	1,876.21	1,970.02	14,469.33	14,771.20	15,078.25	15,390.72	74,412.17
Retiree C - 28.71 % Septage Career			7,615.30	7,745.01	7,875.73	8,008.31	8,142.85	8,279.44	8,418.18							56,084.81
Total Net Expense			51,885.53	52,708.63	53,539.48	54,379.26	55,228.43	56,087.44	28,514.31	20,508.67	20,930.19	14,469.33	14,771.20	15,078.25	15,390.72	453,491.44
Year End Balance			59,886.47	7,177.84	-46,361.64	-100,740.90	-155,969.32	-212,056.76	-240,571.07	-261,079.74	-282,009.93	-296,479.26	-311,250.46	-326,328.71	-341,719.44	-341,719.44

** Retirement Contribution	2011 Total Middlesex Retiree Payments:	4,050,944	2011 Total Wayland Assessment:	3,140,204	2011 Wayland % Contribution	77.57%
# Retiree A	Total Wayland Service	16 yrs, 4 mos	Total Septage Service	16yrs, 4 mos	% Retirement to Septage	100.00%
^^ Retiree B	Total Wayland Service	28 yrs, 2 mos	Total Septage Service	20 yrs, 2 mos	% Retirement to Septage	71.59%
++ Retiree C	Total Sudbury Service	30 yrs	Total Septage Service	25 yrs, 10 mos	% Retirement to Septage	28.71%
				86.13% of career at Septage		
				1/3 or 33.33% of time at Septage	86.13% * 33.33%	