



# TOWN OF YARMOUTH

1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-4492  
Telephone (508) 398-2231 Ext. 1271, Fax (508) 398-2365

BOARD OF  
SELECTMEN

TOWN  
ADMINISTRATOR  
Daniel M. Knapik

## PUBLIC MEETING

Per Massachusetts General Law: All town and school boards, committee, and authorities shall post a notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays, and legal holidays. Notice shall contain a listing of topics/agenda that the chair reasonably anticipates will be discussed at the meeting. As required by Open Meeting Law and Mass. General Law, we are informing you that this meeting will be video and audio recorded, as well as rebroadcast. Anyone intending to video or audio tape this meeting is required to inform the Chair.

### **Board of Selectmen Meeting April 28, 2020 ~ 6:00 PM Yarmouth Town Hall Hearing Room 1146 Rt. 28, South Yarmouth, MA 02664**

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### **NOTE: THIS IS A REMOTE PARTICIPATION MEETING**

Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. 30A, § 18, and the Governor's March 15, 2020, Order imposing a limitation on the number of people that may gather in one location, this meeting will be conducted via remote participation. Specific information such as instructions and guidelines for remote by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on the Town website at [www.yarmouth.ma.us](http://www.yarmouth.ma.us). For the public portion of this meeting, members of the public who wish to watch/listen and participate in the meeting may do so in the following manner:

1. Watch a live stream on Yarmouth's YouTube Channel located at the following link:  
<https://www.youtube.com/channel/UCgQ1QFZevmoqW5Mz2PnWKpA/>
2. Join the meeting hosted in Zoom by using the following link:  
<https://us02web.zoom.us/j/86576944264?pwd=S2o4Y2ozcnEzR2tOWHh6VnF0UEdRUT09>.
3. Audio, video and screen sharing functions will be disabled during the public session. Request to participate by using the "raise hand" function. (meeting ID 865 7694 4264 / Password: 371131)
4. You may also listen to the meeting by calling in on a phone to either 1-253-215-8782 or 1-301-715-8592 and enter the meeting ID 865 7694 4264 / Password: 371131). Audio, video and screen sharing functions will be disabled. Smart phone callers may be able to participate by using the "raise hand" function. Land line callers will be able to listen, but not participate verbally. All callers, or viewers may participate and provide public comment by using a designated email indicated below.
5. You may submit comments to the Town using the following email: [publiccomment@yarmouth.ma.us](mailto:publiccomment@yarmouth.ma.us) This email will be monitored by a moderator who will alert the Board Chair of relevant comments.
6. Meeting materials are attached to this agenda, available online at [yarmouth.ma.us/Agenda](http://yarmouth.ma.us/Agenda) Center, and will be displayed at the online meeting. It is recommended that phone participants access materials in advance of the meeting.
7. Please follow the following general instructions:
  - a. Keep your phone muted at all times when not talking;
  - b. Do not use speakerphone;
  - c. Do not use Bluetooth devices;
  - d. Mute all background noise;
  - e. Mute the livestream feed and use only the telephone audio;
  - f. Please do not speak until the chair or the meeting moderator asks for public comments or questions.

No in-person attendance of members of the public will be permitted. The measures stated above follow the emergency order of the Governor for remote participation. Meetings will be broadcast on Channel 18 as soon as possible after the close of the meeting.



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### Board of Selectmen Meeting

April 28, 2020 ~ 6:00 PM

Yarmouth Town Hall Hearing Room

1146 Rt. 28, South Yarmouth, MA 02664

YARMOUTH TOWN CLERK  
20APR23PM2:31 REC

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**Meeting Agenda** (all times are approximate)

**6:00 PM                      Public Comments**

*The open meeting law discourages public bodies from discussing topics not listed on the agenda. The public should therefore not expect the Board to respond to questions or statements made during the Public Comment portion of the meeting.*

**6:15 PM                      COVID-19 Updates**  
**1. FY20 Budget Impact**  
**2. FY21 Budget Impact**  
**3. Annual Town Election Update**

**7:15 PM                      DHY Update**  
**1. DHY Agreement**  
**2. DHY Articles**

**7:45 PM                      Yankee Village Conservation Restriction & Possible Vote**

**8:00 PM                      Barnstable Weights and Measures IMA's and Possible Vote**

**8:30 PM                      Board and Committee Actions**  
1. Committee Appointments  
2. Approval of Minutes for November 19, 2019  
3. Upcoming Agenda Review  
4. Individual Items

**8:45 PM                      Town Administrator Items8**  
1. Consent Agenda  
2. Town Administrator Updates  
3. Water Resources Planning  
4. Mattacheese School Project  
5. Cape Tech  
6. DPW Facility

**9:00 PM                      Adjourn**

# CONSENT AGENDA

## BOARD OF SELECTMEN

April 28, 2020

**APPROVED:** \_\_\_\_\_

### Approval:

- Memo to BOS from YPD dated April 17, 2020 re: Donation Approval Request
- Memo to BOS from Recreation Division dated March 17, 2020 re: Donations

### **Donations**

#### - Recreation Division

Kevin Litchfield	\$150.00	Colin Mandigo	\$150.00
Gaynor McMahon	\$150.00	Erin Carey	\$150.00
Jennifer Haggerty	\$150.00	Mike Alexander	\$150.00
Mike Alexander	\$150.00	Mike Alexander	\$150.00
Eileen McCarthy	\$150.00	Jennifer Pavlovic	\$150.00
Jennifer Haggerty	\$150.00	Jennifer Haggerty	\$150.00
Jennifer Haggerty	\$150.00	Mike Alexander	\$150.00
Mike Alexander	\$150.00	Maryalice Smith	\$150.00
Joshua Drohan	\$150.00	Ruth Coyle	\$150.00
William Winans	\$150.00	Orla Coughlan	\$150.00
Kathleen Sanders	\$150.00	Ruth Coyle	\$150.00

#### - YPD

Richard A. Ozimek Living Trust	<u>\$100.00</u>
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**TOTAL:** **\$ 3,400.00**

**AGENDA PACKET**  
**Board of Selectmen**  
**April 28, 2020**

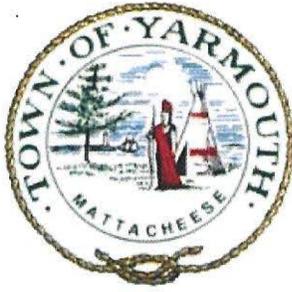
- Memos to Town Administrator from Town Clerk dated April 21, 2020 re: Special Town Election for Selectman Norm Holcomb's Vacancy
- DHY Agreements
- Draft 2020 ATM Warrant with DHY Articles
- Yankee Village Conservation Restriction Document
- Barnstable County Weights & Measures IMA's
- Letter to Conservation Administrator from Philip B. Johnston dated April 14, 2020 re: Resignation
- Memo to BOS from Appointments Chairman dated April 22, 2020 re: Appointment to Conservation Commission
- Memo to BOS from Appointments Chairman dated April 22, 2020 re: Reappointment to Cape Cod Commission
- Draft BOS Meeting Minutes for November 19, 2019
- 2020 BOS Upcoming Agenda Items Schedule

**INFORMATION PACKET**  
**Board of Selectmen**  
**April 28, 2020**

- U.S. Department of Housing and Urban Development letter dated April 2, 2020 re:  
CDBG Funds

**AGENDA**

**ITEMS**



# TOWN OF YARMOUTH

OFFICE OF THE TOWN CLERK

1146 ROUTE 28, SOUTH YARMOUTH, MA 02664

TELEPHONE 508-398-2231 FAX 508-760-4842

TO: DAN KNAPIK, TOWN ADMINISTRATOR

Cc: RICH BIENVENUE, ASSISTANT TOWN ADMINISTRATOR  
ED SENTEIO, FINANCE DIRECTOR

FROM: PHIL GAUDET, TOWN CLERK

DATE: APRIL 22, 2020

SUBJECT: POSTPONING THE ANNUAL TOWN ELECTION TO JUNE 30, 2020

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Due to the fluidity of the Covid-19 pandemic the Annual Town Election scheduled for May 19, 2020 needs to be postponed. The Clerk's office has made its preparations and recommends June 30, 2020 to hold the Annual Town Election.

Cape and Islands Association of Realtors, our polling location for Precincts 5&6 located on Mid-Tech Drive, is not available because it is undergoing renovations in June. We have reserved Mattacheese Middle School Gymnasium for June 30, 2020 election. This requires a vote by the Board of Selectmen to temporarily change the polling location to Mattacheese Middle School. After the vote, the Clerk's office will send a mailing to all heads of households in Precincts 5&6 and release a robo-call before the election.



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TO: DAN KNAPIK, TOWN ADMINISTRATOR

Cc: RICH BIENVENUE, ASSISTANT TOWN ADMINISTRATOR  
ED SENTEIO, FINANCE DIRECTOR

FROM: PHIL GAUDET, TOWN CLERK

DATE: APRIL 21, 2020

SUBJECT: BOARD OF SELECTMEN VACANCY

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As you know, Selectmen Norman Holcomb announced his resignation on Tuesday, April 14, 2020, creating a future vacancy on the Board of Selectmen.

There are two formalities that must occur to make the vacancy official as stated in MGL c. 41, sec. 10 & c. 41 sec. 109:

1. Selectmen Holcomb must submit a written letter of resignation to the Town Clerk's office. He should specify a date in which the resignation is effective.
2. Once the letter of resignation is received, the Town Clerk must inform the Board of Selectmen that the Town Clerk is in receipt of the letter of resignation.

Once these two formalities have been completed, per Yarmouth's Charter, the Board of Selectmen must call for a special town election within ninety days.

## **Knapik, Daniel**

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**From:** Holcomb, Norm  
**Sent:** Wednesday, April 22, 2020 4:45 PM  
**To:** Gaudet, Phil; Knapik, Daniel  
**Cc:** Stone, Mike  
**Subject:** Retirement

As you know, I informed the Board that I would be retiring from the Selectboard.

I've asked to submit my notice of retirement to you in writing, and have also learned that it would be helpful to the Town if I made my retirement effective July 1, 2020 so that appropriate arrangements could be made, in accordance with the Charter, to have a special election in September, along with other elections.

Please accept this notice of my retirement, effective July 1, 2020. If you need anything further to formalize this notice, let me know. You are hereby authorized to use my signature on file if that is needed.

Norman Holcomb, Selectman

## **AGREEMENT ESTABLISHING THE DHY CLEAN WATERS COMMUNITY PARTNERSHIP**

**Draft 032/3018/2020**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Agreement") by and between the Towns of Dennis, Harwich, and Yarmouth, municipal corporations within the Commonwealth of Massachusetts, and herein referred to as "Member Towns" for the establishment of a public, regional wastewater district, to be known as the "DHY Clean Waters Community Partnership" and commonly referred to in this Agreement as the "Partnership."

Whereas, the annual town meeting votes of each Member Town taken in 2020 and the terms of the special act of the General Court of the Commonwealth entitled "*An Act Establishing The DHY Clean Waters Community Partnership for the Towns of Dennis, Harwich and Yarmouth*" approved by the Governor on October 11, 2019 and known as Chapter 88 of the Acts and Resolves of 2019 (herein referenced as the "Enabling Act") authorize execution of this Agreement.

Whereas, the Partnership shall own, manage, operate and control the wastewater treatment plant, common interceptors, pumping stations and force mains, effluent recharge and reuse system, and appurtenances needed to treat wastewater; it shall act as a Community Partnership with all the powers and privileges granted to it by this Agreement and by the Enabling Act and shall provide for the common collection, conveyance, and treatment of wastewater, and recharge and reuse of treated effluent for the Member Towns.

Now therefore, in consideration of the mutual benefits to each Member Town derived from the formation of this Partnership 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 **July 1, 2020** (the "Effective Date") and supersedes and rescinds any prior wastewater agreements entered between the member towns.

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 Partnership.

Agreement:

Basic Terms and Conditions

Section 1 Definitions

Section 2 Wastewater Characteristics

With KP Law Recommended Changes 3/25/2020

- Section 3 Location of ~~Partnership~~District Facilities
- Section 4 Wastewater Services to Member Towns
- Section 5 Measurement of Flow
- Section 6 Sampling of Wastewater Flow
- Section 7 Notice of Flow Changes
- Section 8 Pretreatment

#### Governance Terms and Conditions

- Section 9 Wastewater ~~Partnership~~District Commission
- Section 10 Amendments to Agreement
- Section 11 Admission of New Member Town(s) or Transfer of Capacities
- Section 12 Withdrawal from ~~Partnership~~District
- Section 13 Contract Administration
- Section 14 ~~District~~Procurement of Professional Services ~~Transition Items~~

#### Cost Terms and Conditions

- Section 15 Apportionment and Payment of Costs
- Section 16 ~~Partnership~~District Budget
- Section 17 Incurring of Debt
- Section 18 Treatment Plant Decommissioning – Cost Impacts

#### Appendices

- Appendix A Exhibits
- Appendix B Transition Items
- Appendix C Enabling Act; Chapter 88 of the Acts of 2019
- ~~Appendix C Sewer Use Regulations~~

~~Appendix D Septage Regulations~~

Appendix ~~DE~~ Description of ~~Common~~ Partnership ~~Facilities~~System

Appendix ~~EF~~ Agreement to ~~Convey~~Lease Real Property and Transfer Assets (Example)

Appendix ~~FG~~ -Management and Operations Agreement between Partnership and Dennis (Example)

## Basic Terms and Conditions

### Section 1: Definitions

1.1 For the purpose of this Agreement, the following terms are defined:

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 Partnership's treatment facility.

1.1.2 "Average Daily Flow" shall mean the total flow period as measured at the metering location(s) 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 "Combined Sewer" shall mean a drain or sewer specifically designed to receive stormwater run-off, groundwater, and wastewater and/or industrial wastes.

~~1.1.5 "District" or "Partnership" shall mean the Clean Waters Partnership Commission to govern the DHY Clean Waters Community Partnership, as defined herein.~~

~~1.1.6 "DHY Clean Waters Community Partnership" shall refer to the Acts of 2019...~~

1.1.576 "Common Partnership System" shall mean those wastewater conveyance and treatment facilities owned and operated by the Partnership as described in Section 3 herein. Conveyance facilities include interceptor sewers and any pumping stations or force mains within the defined Partnership facilities that are utilized to convey Member Towns' wastewater to the Partnership's treatment plant. Treatment facilities include the treatment plant, effluent recharge sites, and any related facilities.

With KP Law Recommended Changes 3/25/2020

- 1.1.687 “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 that connect into the sewer system of a Member Town.
- 1.1.798 ~~\_\_\_\_\_~~ “Dennis” is the Town of Dennis, a municipal corporation of the Commonwealth of Massachusetts. The “Dennis Board” shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Dennis, or its successors.
- 1.1.8 “DHY Clean Waters Community Partnership” shall refer to Chapter 88 of the Acts and Resolves of 2019. ~~“MassDEP” means the Massachusetts Department of Environmental Protection or its successor agency.~~
- 1.1.9 “District” or “Partnership” as used herein, shall mean the Clean Waters Partnership Commission to govern the DHY Clean Waters Community Partnership, as defined herein.
- 1.1.910 “Effective Date” shall be July 1, 2020. \_\_\_\_\_
- 1.1.11 “Enabling Act” means Chapter 88 of the Acts of 2019, as may be amended from time to time.
- 1.1.1210 ~~\_\_\_\_\_~~ “EPA” means the United States Environmental Protection Agency or its successor agency.
- ~~1.1.121 “Effective Date” shall be July 1, 2020.~~
- 1.1.132 “Harwich” is the Town of Harwich, a municipal corporation of the Commonwealth of Massachusetts. The “Harwich Board” shall be the Board of Selectmen, of the Town of Harwich, acting as Sewer Commissioners or its successors.
- ~~\_\_\_\_\_ “Dennis” is the Town of Dennis, a municipal corporation of the Commonwealth of Massachusetts. The “Dennis Board” shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Dennis, or its successors.~~
- 1.1.1314 ~~\_\_\_\_\_~~ “Industrial Wastes” are the liquid, gaseous, or solid wastes or a combination thereof, other than wastewater, resulting from any process of manufacturing, trade and/or industrial operations or from the development or recovery of any natural resources.
- 1.1.154 “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.

With KP Law Recommended Changes 3/25/2020

1.1.165 “Infiltration/ Inflow” (I/I) is the total quantity of water entering a sewer system from both infiltration and inflow.

1.1.176 “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.

1.1.187 "Local Wastewater System" shall mean that portion of the sewer/ wastewater system located either in Dennis and used exclusively by Dennis or its customers, in Harwich and used exclusively by Harwich or its customers, or in Yarmouth and used exclusively by Yarmouth or its customers, or located in any other municipality and used exclusively by such municipality's residents/rate payers and not owned by the Partnership. A Local Wastewater System is not part of the Common Partnership System.

~~1.1.198 "Harwich" is the Town of Harwich, a municipal corporation of the Commonwealth of Massachusetts. The "Harwich Board" shall be the Board of Selectmen, of the Town of Harwich, acting as Sewer Commissioners or its successors.~~

1.1.20 "MassDEP" means the Massachusetts Department of Environmental Protection or its successor agency.

1.1.2109\_ — "Maximum Daily Flow" shall mean the maximum flow recorded at a metering station during a 24-hour period.

1.1.2210 "Member Town" shall mean either the town of Dennis, Harwich or Yarmouth, or any other municipality that may join the Partnership in accordance with the terms herein.

1.1.2321 "MGD" is the abbreviation of million gallons per day.

~~1.1.232 "Yarmouth" is the Town of Yarmouth, a municipal corporation of the Commonwealth of Massachusetts. The "Yarmouth Board" shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, or its successors.~~

1.1.243 "pH" shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

~~1.1.254 "Wastewater" shall mean liquid and water-carried human and domestic wastes from residences, commercial buildings, industrial plants and institutions, exclusive of ground, storm and surface water and exclusive of industrial wastes.~~

- 1.1.2565 — “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.
- 1.1.2676 — “Sewer Use Regulations” shall mean the latest edition of the Partnership regulations which shall be developed and adopted prior to the treatment plant being operational. Each Member Town must adopt within 120 days of, by or upon the Effective Date of the Partnership regulations, as a minimum, the Sewer Use Regulations in use by the Partnership. Definitions of terms within that document shall be interpreted in accordance with EPA and/or MassDEP Regulations.
- 1.1.2787 — “Shall” is mandatory, “may” is permissive.
- 1.1.2898 — “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.
- 1.1.293029 — “Total Flow” shall mean the total amount of wastewater flowing into the Common Partnership 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 flow proportional adjustment for Infiltration/Inflow (I/I) in Common Partnership System components. Estimated I/I flows should be periodically checked at a frequency to be determined by the Commission.
- Total flow shall be the recorded flow received each day. The Average Annual Flow shall be reported as the monthly average flow for the previous 12 months.
- 1.1.3040 — “Total Flow Allocation” shall mean the amount of wastewater treatment facility capacity dedicated and reserved for use (owned) by each Member Town.
- 1.1.3121 — “Total Suspended Solids” (abbreviated 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).
- 1.1.3232 — “User Charges” shall mean a charge levied on Member Towns of the Partnership for the cost of operation and maintenance, repairs and associated capital payment costs for the Common Partnership System.
- 1.1.3343 — “Wastewater” shall mean 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.

1.1.34 "Yarmouth" is the Town of Yarmouth, a municipal corporation of the Commonwealth of Massachusetts. The "Yarmouth Board" shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, or its successors.

**Section 2: Wastewater Characteristics**

- 2.1 The Partnership shall receive, treat and dispose of Member Towns' wastewater in accordance with this Agreement and all applicable local, state and federal laws, regulations, water quality standards, orders and decrees of any state and/or federal governmental authority having jurisdiction over the treatment, and disposal/ recharge of wastewater. The Partnership shall comply at all times with the Partnership's Groundwater Discharge Permit(s).
- 2.2 Member Towns shall adopt as a minimum the rules, regulations and requirements of the Partnership proscribing and limiting the content of wastewater discharged into the sewers that convey flow to the Common Partnership System. The rules, regulations and requirements include but are not limited to:

- 2.2.1 Sewer Use Regulations (Partnership to develop and adopt ~~new~~ regulations prior to treatment plant being operational)

The Partnership shall send written notice of any proposed revisions to the Partnership's Sewer Use Regulations to the Member Towns 30 days prior to such revision(s) being enacted or adopted.

- 2.3 It is recognized that under extreme wet weather events or high groundwater periods that increased Infiltration and/or Inflow (I/I) may occur. In recognition of this, each Member Town shall work cooperatively with the Partnership to investigate and reduce its flows so that I/I flow by Member Towns is maintained to be within industry (Water Pollution Control Federation or other) and regulatory (MassDEP or other) guidelines. It is the responsibility of each Member Town to pay for its own I/I evaluations, studies, construction, and related work to reduce I/I within each Member Town's respective Local Wastewater System.
- 2.4 Any Member Town accepting wastewater from an adjacent customer community shall be responsible for requiring the customer community to adopt and adhere to any and all Partnership requirements regarding wastewater regulations, permits or Partnership operations as defined herein. The Partnership shall have the authority to require that a Member Town pursues appropriate actions in this regard and may charge any costs the Partnership incurs for this enforcement to said Member Town.

**Section 3: Location of ~~Common~~ Partnership FacilitiesSystem**

3.1 Location

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

~~Conveyance System – initially there is no common Partnership conveyance system. In the future there may be common pumping stations, forcemains or other related items. Conveyance System – a wastewater pumping station located near the intersection of Routes 134 and 28 in Dennis may receive flow from all three Member Towns and foremain(s) will convey that flow to the Partnership treatment plant located adjacent to the Dennis DPW facility.~~

Treatment Plant – a wastewater treatment facility located adjacent to the Dennis DPW facility will treat wastewater to standards established by the MassDEP in order to meet a Groundwater Discharge Permit.

Effluent Recharge Sites – treated effluent will be pumped in force mains to effluent recharge sites located in Dennis, Harwich and Yarmouth as shown ~~on Figure 1~~ in Appendix A, Exhibit A, Appendix E or to any other approved reuse alternatives.

Refer to Figure 1 of Appendix DE for an overview of the ~~Common~~ Partnership System.

3.2 Plans

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

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

3.3 Conveyance and Transfer

Each of the Member Towns shall enter into a ground lease with the Partnership for a term of no more than ninety-nine (99) years for nominal consideration of One Dollar (\$1.00) to lease certain real property, personal property, equipment and other assets to the Partnership (including property and assets to establish the Common Partnership System) for the wastewater treatment plant site and effluent recharge sites, and to grant non-exclusive perpetual easements for sewer purposes to the Partnership by or on the Effective Date and in accordance with an agreement entitled, “Agreement to Convey Real Property and Transfer Assets”, or any other arrangements, both attached hereto as Appendix E on their respective properties as follows:

Town of Dennis

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- a. 120 Theophilus F. Smith Road, shown on Assessor’s Map 165 as Lot 1-for wastewater treatment plant site and effluent recharge;
- b. 30 Bob Crowell Road, shown on Assessor’s Map 173 as Lot 36, for effluent recharge site;
- c. 825 Old Bass River Road, shown on Assessor’s Map 284 as Lot 4, for effluent recharge site;
- d. 350 Paddocks Path, shown on Assessor’s Map 310 as Lot 13, for effluent recharge site;
- e. 50 Golf Course Road, shown on Assessor’s Map 315 as Lot 1, for effluent recharge site.

Town of Yarmouth

- a. 62 Highbank Road, shown on Assessor’s Map 80-17, for effluent recharge site.

Town of Harwich

- a. 205 Queen Anne Road, shown on Assessor’s Map 58-M-1, for effluent recharge site.

Land Use Agreements – Construction by the Partnership on a parcel identified in this section for use by the Commission shall require the development of a Memorandum of Understanding (MOU), Inter-Municipal Agreement (IMA) or similar instrument between the Commission and that town’s Board of Selectmen that as a minimum defines the operating requirements for use of the site, the apportionment of construction costs including any project lost revenues during construction, the schedule for construction to help minimize costs and neighborhood impacts, the routing of construction vehicles and time of operation, and any other specific land use issues. ~~The town shall agree to use of the parcel by the Commission but shall remain in ultimate control of the site.~~

**Commented [JG1]:** This sentence needs further clarification. In order to be able to construct and operate the facilities on each designated site, the Partnership will have all of the rights afforded it under the terms of the ground lease described above. In turn, the ground lease will set forth the what rights the Town has with respect to the land being leased. My recommendation would be to delete this sentence and to address any concerns in the ground lease itself.

~~The Member Towns shall provide a 99-year lease for \$1 to convey certain real property, personal property, equipment and other assets to the Partnership (including property and assets to establish the Common Partnership System) by or on the Effective Date and in accordance with an agreement entitled, “Agreement to Convey Real Property and Transfer Assets”, or any other arrangements, both attached hereto as **Exhibit H**.~~

3.4 Taxes

The DHY Clean Waters Community Partnership shall ~~be a tax-exempt entity, and not be subject to local real estate property taxes, and personal property taxes, host community fees, excise taxation tax-exempt entity and there shall also be no Payments in Lieu of Taxes (PILOT) or any other similar type fees~~ for any of the facilities located in the three member towns. ~~There shall also be no Payments in Lieu of Taxes (PILOT) or fees.~~

**Section 4: Wastewater Services to Member Towns**

#### 4.1 Additional Services

The Partnership shall provide wastewater treatment and disposal services to the Member Towns. The Partnership 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 Partnership shall be the responsibility of the individual Member Town(s) receiving said equipment and services. The Partnership 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 Partnership equipment to assist in cleaning or rehabilitating a Member Town's Local Wastewater System.

#### 4.2 Equipment

The Partnership 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. Similarly, the Partnership may utilize equipment owned by a Member Town and reimburse that town at an approved rate.

### **Section 5: Measurement of Flow**

#### 5.1 The Partnership measurement of wastewater flow shall be as follows:

5.1.1 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 Partnership, installed by each Member Town, and located at each point of discharge into the Common Partnership 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 Partnership's treatment plant. 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 Partnership 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 Partnership System. Once a quarter, as a minimum, the Partnership 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 Partnership's normal business hours.

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- 5.1.2 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 Partnership System. The general arrangement, equipment and physical location of these flow measuring stations shall be subject to Partnership's review and approval. The cost of maintaining those flow measuring stations shall be borne by each respective Member Town.

The Partnership 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 Partnership 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 Partnership shall be advised of the results of any tests on the equipment and the methods employed.

The Partnership 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 Partnership. 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 Partnership check, then the Member Town shall recheck their meter within 60 days of the detection at their costs and within 30 days of the recheck take any appropriate action to rectify or correct discrepancy so that accuracies are again within the industry standard. The Partnership shall maintain a listing of the agreed upon industry accuracy standards by meter type.

- 5.1.3 The Partnership 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 Partnership and be included as a part of the Operating Costs of the Common Partnership System.
- 5.1.4 Determination of the volume of each Member Town's wastewater flows shall be determined directly from the metering conducted at the flow monitoring stations.
- 5.1.5 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 Partnership on the basis of recent correct readings and past experience using a mutually agreed upon formula or flow period.

- 5.1.6 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 6: Sampling of Wastewater Flow**

- 6.1 The Partnership 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 Partnership'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 Partnership use.

In the event that wastes of unusually high strength (per industry standards) are detected by the Partnership, 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 Partnership's Industrial Pretreatment Program contained within the Partnership's Sewer Use Regulations.

#### **Section 7: Notice of Flow Changes**

- 7.1 Each Member Town agrees to notify the Partnership 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 Partnership System by that Member Town.
- 7.2 Each Member Town agrees to provide to the Partnership, 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.~~
- 7.3 Each Member Town hereby agrees to take all appropriate actions necessary to enforce conformance with all Partnership 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 Partnership as a result of that Member Town's failure to act in accordance with this provision.

#### **Section 8: Pretreatment**

- 8.1 Each Member Town shall adopt and enforce the Partnership's Pretreatment Regulations (within 120 days of the Effective Date of those regulations) 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.

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

## **Governance Terms and Conditions**

### **Section 9: Wastewater Partnership Commission**

#### **9.1 Appointment**

The powers and duties of the Partnership shall be vested in and exercised by a Wastewater Partnership Commission hereinafter sometimes referred to as the "Commission," whose seven (7) members shall be appointed by the Member Towns in the following manner:

Yarmouth shall have three (3) Commission members appointed by the Board of Selectmen or their designated local authority; Dennis shall have two (2) Commissioner members one appointed by the Board of Selectmen and one appointed by the Finance Committee and Harwich shall have two (2) Commission members appointed by the Board of Selectmen or their designated local authority.

The Commission members shall be appointed from the following categories of appointees for each Member Town: Town Administrator, DPW Director, Wastewater Superintendent (or equivalent), Board of Selectmen, Water and Sewer Commissioner, Finance Committee, and/or qualified Town Resident. Only one member shall be appointed from any one category by the appointing authority of a Member Town.

#### **9.2 Term**

The initial appointments of a member of the Commission shall be for Yarmouth terms of three years, two and (in case of Yarmouth) one year; for Dennis terms of three and two years; and for Harwich terms of three and one years. Upon completion, each of those terms shall be followed by a successive three-year term. Terms shall begin on July 1<sup>st</sup> and end on June 30<sup>th</sup> of the appropriate year. The initial appointments to the one year terms shall be until June 30<sup>th</sup> of the Fiscal Year in which the appointment is initially made. The initial two year appointments shall be for the first full Fiscal Year after the Fiscal Year in which the initial appointment is made. The three year appointment shall be for the full two Fiscal Years after the initial appointment is made. 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>. Initial appointments to the Commission shall be made not later than 60 days after the effective date of this agreement.

### 9.3 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, with or without cause, by vote at a posted open meeting or executive session as may be required, of the appointing authority, 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 of the removal of such person from the Commission.

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

### 9.4 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.

### 9.5 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 no later than July 31<sup>st</sup>, the Commission shall organize and elect a chairman, vice-chairman 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 may appoint such other officers, including Executive Director, 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. Prior to the appointment of a Treasurer or an Executive Director or other administrative staff, the Commission may, pursuant to Appendix B Section 14 if this Agreement, contract with a Member Town for the provision of administrative services, including the services of a Treasurer and an Executive Director.

The Partnership's treasurer shall receive and take charge of all funds belonging to the Partnership and shall pay any bill of the Partnership which shall have been approved by the Commission. The treasurer may, as authorized by vote of said Commission, be compensated for his/her services. The treasurer of the Partnership shall be subject to Sections 35, 39B, 52, and 109A of Chapter 41 of the Massachusetts General Laws, and Chapter 88 of the Acts of 2019 to the extent applicable.

#### 9.6 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 88 of the Acts of 2019 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 4 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.

#### 9.7 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 present 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 present 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 \$30,000 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) and for each consecutive meeting that member misses thereafter.

Once a vote to approve a “Financial Business Matter” has been passed, then future votes on that specific item shall only require a majority quorum be present.

### **Section 10: Amendments to Agreement**

### 10.1 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 Partnership then outstanding, or the rights of the Partnership 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 Partnership subject, however, to the provisions of Section 11 of this Agreement and the reapportionment of Capital Costs of the Partnership represented by the bonds or notes of the Partnership then outstanding and of the interest thereon.

### 10.2 Procedure

Any proposal for Amendment, except a proposal for Amendment providing for the withdrawal of a Member Town (which shall be governed by Section 12) 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 Chairman of the Sewer Commissioners or Board having such authority, and to the Board of Selectmen of each of the Member Towns 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 all of the Member Towns acting by majority vote at their next 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.

### 10.3 Programmed Reviews

The Commission shall undertake a formal review of this Agreement within five (5) years of the substantial completion date of the initial treatment plant construction and, thereafter, at least once every ten (10) years. A formal review document shall be developed explaining the review process, findings and any recommendations and distributed to each Member Town. Any Amendments to the Agreement in the interim shall reset the review period and specifically state the review date in that amendment.

**Section 11: Admission of New Member Town(s) or Transfer of Capacities**

**11.1 Admission Requirements**

By an Amendment to this Agreement in accordance with Section 10 above, any other town or towns may be admitted to the Partnership.

Any town requesting to be admitted to the Partnership 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 10.2 above and upon ratification of the Agreement as amended by majority vote of the town meeting of the new Member Town.

**11.2 Admission Costs**

All costs associated with the addition of a new town to the Partnership shall be negotiated between the Commission and the proposed new town. Any costs borne by the Partnership 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 Partnership System up to that date and any additional expansion costs required to accommodate the flow request.

**Section 12: Withdrawal from Partnership**

**12.1 Limitations**

A Member Town may withdraw from the Partnership by an Amendment to this 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 an Amendment to this Agreement setting forth the terms by which such Member Town may withdraw from the Partnership, provided that the said Member Town shall be liable to the Partnership as defined in the following paragraphs for its share of the indebtedness of the Partnership outstanding at the time of such withdrawal, for interest thereon, to the same extent and in the same manner as though the Member Town had not withdrawn from the Partnership

**12.2 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 and withdrawing Member Town shall prepare a proposed Amendment to the Agreement setting forth such terms of withdrawal including timeframe, subject to the limitation contained in subsection 12.1. 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 and operating costs as described in Section 12.4. 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 by the Member Town, the Amendment shall take effect as stipulated.

12.3 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.

12.4 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 Partnership 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 15.

The withdrawing Member Town's maximum annual share of operating costs shall be paid based on the most recent fiscal year's share of operating costs over the subsequent three year period with payments declining by one-third each year unless another town or customer purchases the capacity of the withdrawing Member Town. Due dates of payment shall be as specified in Section 15.

12.5 In no event shall withdrawal by any Member Town take place prior to the expiration of fifteen (15) years next following the effective date of this Agreement.

**Section 13: Contract Administration**

- 13.1 The responsibility for enforcement and administration of this Agreement shall be assigned to the Partnership's Executive Director, subject to oversight by the Commission. All reports, requests, permit issues, questions, etc. shall be addressed to the Executive Director in the first instance.
- 13.2 In the event that a dispute arises regarding the Executive Director's enforcement or interpretation of the terms of this Agreement, the aggrieved party may petition the Commission. The petition shall be submitted through the appropriate Member Town's Board of Sewer Commissioners or board having such authority and shall be addressed to the attention of the Partnership's Executive Director, who shall present it to the Commission at its next regularly scheduled meeting. The Member Town's Board of Sewer Commissioners or equivalent authority and the Commission will attempt to resolve the dispute; however, the final decision rests with the Commission, subject to the provisions in 13.3, below.
- 13.3 If the matter is not resolved to Member Town's satisfaction, the Member Town may then seek to utilize the dispute resolution provisions hereinafter provided:

If any dispute and/or claim ("dispute" or "claim") arises out of the scope, interpretation, operation or alleged or actual breach of this Agreement, the Partnership, 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 same amicably and directly with each other, by conducting a meeting(s) between or among the designated representatives of the involved Parties. A Party claiming to be aggrieved by a dispute shall first send written notice thereof to the other relevant Party or Parties, detailing the nature or basis of the claim and citing 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 claim (if the dispute involves multiple Parties, the effective date shall be the date of delivery of notice to the last Party to receive it).
- (b) If, after twenty (20) days from the date of the first meeting held in accordance with subparagraph (a), above, the Parties are unable to resolve the dispute between them, the aggrieved Party shall make written demand upon the other Party or Parties to submit the matter 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 agreed upon by all Parties in writing. If

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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, or 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 decision of the arbiter shall be the final and binding, and the sole remedy of the Parties 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.

(e) 13.4 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 14: Procurement of Professional Services

14.13.4 When the Commission engages legal counsel, financial advisors, engineers, accountants, consultants and other advisors, they shall follow appropriate Massachusetts procurement laws as they relate to goods and professional services.

14.2 Commissioners shall be required to establish a dollar threshold that determines when competitive procurements are required for professional services.

~~13.5 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 14: Transition Items~~

~~14.1 (Need to revise this section for new facility transition items. Such as hire executive director with XX days of Partnership becoming effective; start design by XX date; start construction by YY date and start Partnership facilities by ZZ date; contract with operator to run Partnership facilities by XX date; develop estimated first year budget by XX days or a date; lease services from Dennis(?) for processing payments etc.~~

~~Initial Budget~~

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~~14.1.1 The Commission shall adopt an initial fiscal year budget for the treatment plant during its initial year of operation, or portion thereof, and shall work to create a five year budget plan according to the timelines stated herein.~~

~~14.2 Initial Management and Operation of Partnership Facilities~~

~~The Enabling Act authorizes the Partnership to enter into contracts for the operation and management of Partnership facilities. Initially, the Partnership will enter into a Management and Operations Agreement with the Town of Dennis (?) in substantially the form attached here to as Appendix I.~~

~~14.3 Pretreatment and Sewer Use Bylaws~~

~~The Partnership shall develop and adopt its own pretreatment and sewer use regulations prior to the treatment plant being placed into operation.~~

~~14.4 Schedule for Construction and Start-up of Partnership Facilities~~

~~14.4.1 Design. Design of the Partnership treatment plant expansion and effluent recharge facilities would occur in 2020 through 2022.~~

~~14.4.2 Construction. Construction of the Partnership treatment plant and effluent recharge facilities would occur in 2022 through 2024 with full operation beginning in the end of year 2024.~~

~~14.5~~

~~All services related to design, engineering, construction and related services of the original plant shall be competitively procured.~~

~~When the Commission engages legal counsel, financial advisors, engineers, accountants, consultants and other advisors, they shall follow appropriate Massachusetts procurement laws as they relate to goods and professional services. Commissioners shall be required to establish a dollar threshold that determines when competitive procurements are required for professional services.~~

Commented [JG2]: Move section 14 to an Appendix.

**Cost Terms and Conditions**

**Section 15: Apportionment and Payment of Costs**

**15.1 Classification of Costs**

For the purpose of the Partnership apportioning assessments against Member Towns, costs shall be divided into two categories: Capital Costs and Operating Costs, as defined herein.

## 15.2 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, effluent recharge or reuse facilities, 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 Partnership 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 Partnership 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 Partnership budget pursuant to Section 16, below. The minimum cash reserve fund shall be as approved by the Commission but shall not exceed 20 percent of the annual budget.

The minimum threshold to be defined as a Capital Cost shall be \$3025,000, unless as otherwise established by the Commission.

## 15.3 Operating Costs

Operating Costs shall include all costs incurred by the Partnership not included in Capital Costs as defined in Section 15.2. Operating Costs shall include a cash reserve determined by multiplying operating cost expenditures by the cash reserve percentage approved by the Commission.

15.3.1 The Partnership 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 Partnership 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 Partnership within 30 days of the end of each quarter.

15.3.2 The Partnership 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 System Facilities: The term "Common Partnership System" (also known as conveyance facilities) shall mean the interceptor sewers and any other sewers and pumping stations and force mains utilized to convey Member Towns' wastewater through the Common Partnership System to the Partnership's wastewater treatment facility. The costs of operating and maintaining the Common Partnership System shall be apportioned on the basis of the actual total quarterly flows through the Common Partnership System conveyance facilities from each Member Town. There is currently no

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common conveyance system proposed by the Partnership but that could change in the future.

- b) Wastewater Treatment Facility and Effluent Recharge /Reuse Sites: The cost of operating the Partnership's wastewater treatment facility ~~(including the liquid sludge hauling, and sludge and grit landfill)~~ and land/ groundwater recharge facilities shall be apportioned as described in Section 15.3.6 and Section 15.3.7.

15.3.3 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 Partnership System, then such assistance shall be used to reduce the appropriate operation, maintenance and repair costs of the Partnership.

15.3.4 User Charges shall be due quarterly on July 31, October 15, January 15 and April 15, each year.

The Partnership shall submit to each Member Town its estimated Operating Costs of the Common Partnership System for the next fiscal year, in writing, by December 1st 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 ~~February 1st~~ January 30<sup>th</sup>.

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

In July of each year, the Partnership shall determine the actual Operating Costs of the Common Partnership 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.

15.3.5 Operating Costs for the Common Partnership 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.

- 15.3.6 Operating Costs for the use of the Common Partnership 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.
- 15.3.7 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 Partnership System and include office supplies, rental of office equipment, postage, any statutory assessments, employee computer expenses, insurance, consultant/ engineering/ legal expenses and retirement insurance.
    - 2) The overall administrative and operational salaries, including overtime to operate the Common Partnership System.
    - 3) Common Partnership 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 Partnership personnel.
    - 7) Common Partnership System conveyance facilities Infiltration and Inflow (I/I) maintenance salaries and expenses.
    - 8) Capital Costs
  - b) Flow variable costs
    - 1) Liquid sludge hauling and disposal expenses
    - 2) Electricity and chemical expenses of the Common Partnership System.
  - c) A sample table depicting semi-fixed and flow variable costs is included in **Appendix A, Exhibit B.**
- 15.3.8 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

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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.

15.3.9 In the event that a Member Town's total wastewater annual flow entering the Common Partnership 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) 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 11 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.

15.3.10 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 15.3.9, 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 C<sup>2</sup>** for an example calculation of the Flow Payment Penalty Scenario.

#### 15.4 Apportionment of Capital Costs

In the event the Partnership must undertake an expansion, major repairs, replacement, or add to the Common Partnership 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 (capacity owned), 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, or, if expansion is required, the percentage of the expanded facilities available to each Member Town. A reasonable

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payment schedule shall be established by the Partnership 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 Partnership’s 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 as depicted in the following examplesmanner:

15.4.1 Projected Initial Phase Flow Capacity Allocation (3 phases)

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Percent Owned</i>
Dennis	1.152 mgd	340 %
Harwich	0.4560 mgd	145 %
Yarmouth	1.752.20 mgd	525 %
<b>Total</b>	<b>3.354.00 mgd</b>	<b>100 %</b>

15.4.2 Projected Buildout Flow Capacity Allocation (after all 8 phases)

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Percent Owned</i>
Dennis	1.96 mgd	30 %
Harwich	0.98 mgd	15 %
Yarmouth	3.54 mgd	55 %
<b>Total</b>	<b>6.48 mgd</b>	<b>100 %</b>

15.4.3 Example Interim Expansion Flow Capacity Allocation

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Interim Expansion</i>	<i>Total New Capacity</i>
Dennis (mgd/%)	1.152 /340	0.25 / 17	1.405 / 29.06.5
Harwich (mgd/%)	0.456 /145	0.25 / 17	0.7085 / 145.5
Yarmouth (mgd/%)	1.752.2 /525	1.00 / 66	2.753.2 / 56.58

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Total	<u>3.354.00</u> /100	1.50 / 100	<u>4.855.50</u> / 100
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The Initial phase flow shown in Section 15.4.1 is for description purposes only and reflects an approximation of the first ~~three~~**four** phases of flow from the Member Towns. The actual flow capacity that each Member Town requests will ultimately decide the size of the initial treatment facility to be constructed and the percentage each community would pay based on capacity owned.

In the above example shown in Section 15.4.3, once the Commission approved moving forward with facilities expansion to accommodate increased wastewater flow the Member Towns would pay for capital costs of the expansion based on the ownership of the expansion (shown in the Interim Expansion column). Member Towns would continue to pay their percentage share of the initial facility costs until paid off and would pay their share of the expanded capital costs of the expansion until paid off.

Once construction of the expansion facilities reached substantial completion then the percent capacity ownership~~capital costs~~ would be recalculated to reflect overall ownership in the facilities and semi-fixed operating capital costs (described in Section 15.5) for future charges would be based on the new aggregate percent ownership for each Member Town (shown in the Total New Capacity column).

15.5 Apportionment of Operating Costs

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

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

5.5.2 Flow-variable operating costs: Upon the commencement of operations of any Partnership facility, flow based Operating Costs for the Common Partnership System will be assessed to the Member Towns based upon the average daily flow as measured at the Partnership flow meters and adjusted by the same ratio for Capital Costs for Infiltration/Inflow (I/I) in Common Partnership System, and for any metered recycle flows at the treatment facility.

15.6 Times of Payment of Apportioned Costs

Each Member Town shall pay to the Partnership 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:

July 30 <sup>th</sup>	25%
October 15 <sup>st</sup>	50%
January 15 <sup>st</sup>	75%
April 15 <sup>st</sup>	100%

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

**Section 16: Partnership Budget**

16.1 Fiscal Year

The fiscal year of the Partnership shall commence July 1 and end on June 30. The annual budget shall be based on this fiscal year,

16.2 Draft Operating and Maintenance Partnership Budget

The Commission shall annually prepare a draft budget for the ensuing fiscal year, including 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 Partnership and any other Capital Costs to be apportioned to the Member Towns. The Commission shall mail (or email if requested) a copy thereof to the Chairman of the Sewer Commission or Board having such authority and to the Board of Selectmen of each Member Town, on or before November 1<sup>st</sup>, and in such detail as the Commission may deem advisable.

16.3 Final Operating and Maintenance Partnership Budget

The Commission shall adopt an annual operating and maintenance budget, including debt and interest charges and any other current Capital Costs and cash 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 15 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 Partnership 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.

Refer to **Appendix A, Exhibit D** for an example Fiscal Year Partnership Budget

#### 16.4 Projected Five Year Budget

The Commission shall prepare a five year budget projection by Member Town once the draft operation and maintenance budget has been prepared. This budget shall include each of the line items shown in the budget as well as any other known items projected to be incurred during that planning period. The Commission shall mail (or email if requested) a copy thereof to the Chairman of the Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town, on or before November 1st, so that each Member Town may utilize this information for budgeting and rate setting purposes. A final five year budget projection shall be adopted once the final operation and maintenance budget is approved and then a copy mailed (or emailed if requested) to the Chairman of the Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town.

#### 16.5 Budget Process

1. The Commission budget process shall be initiated on or about November 1<sup>st</sup> and shall provide an opportunity for the Sewer Commission or Board having such authority, the Board of Selectmen and the Finance Committee of each Member Town to have input into its preparation at a formally noticed public hearing. The draft budget available at that time shall be approved by majority vote of the Commissioners.
2. Upon request by the Sewer Commission or Board having such authority, the Board of Selectmen or the Finance Committee of a Member Town, the Commission shall arrange to meet with said Boards/Committees to present and discuss the proposed draft budget at a joint meeting in that community. Meetings shall be noticed locally and on the Commission website.
3. In December or early January, the Commission shall conduct a joint three-town Board of Selectmen meeting to present the proposed annual draft budget and capital plan. This shall be a publicly noticed meeting pursuant to the requirements of section 20 of chapter 30A of Massachusetts General Law. A quorum for this meeting shall be at least two Selectmen from each town and at least a total of eight Selectmen from the three towns. The annual budget shall be deemed approved if a majority of the Selectmen present and voting so vote. If the Selectmen vote to reject the proposed budget, they shall state their specific reasons for doing so and the Commission shall be required to respond to those reasons and put forth a revised budget or respond accordingly to the reasons. A revised vote can take place at this meeting or another meeting can be conducted by the member towns in the same manner as provided herein.

If no joint three-town Board of Selectmen meeting is held between November 1<sup>st</sup> and January 15<sup>th</sup>, then the proposed budget by the Commission shall be considered approved.

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4. The Commission by January 15<sup>th</sup> shall adopt by a minimum of five positive votes a final operation and maintenance budget for the upcoming fiscal year which is reflective of key issues raised at the joint three-town Board of Selectmen meeting.

5. In the event the three town Board of Selectmen meeting does not affirmatively vote to adopt the Commission’s proposed budget by January 15<sup>th</sup> or if the Commission cannot obtain the required positive votes, the parties are required to follow the dispute resolution provisions of section 13.3 of this Agreement in an attempt to resolved the issues and to obtain the required approvals. In the event that the required approvals are not obtained by March 1<sup>st</sup>, the budget of the prior fiscal year shall remain in effect until such time as an agreement is reached.

16.6 Budget Schedule

Schedule	Submittal
November 1	Commission sends draft budget for ensuing fiscal year to member towns
November 1	Commission sends draft five-year budget plan to each member town
November/ December	Commission has budget discussions with member towns
December	Commission and member towns conduct a joint three-town Board of Selectmen meeting to approve Partnership annual budget.
January 15	Commission adopts final fiscal year budget and five-year budget plan
February 1	Commission treasurer certifies budget to treasurer of each member town
Annual Town Meetings	Member towns (if required) raise and appropriate certified budget for each member town share.

**Section 17: Incurring of Debt**

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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 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 18: Treatment Plant Decommissioning – Cost Impacts**

Should the DHY Clean Waters Community Partnership decide to disband in the future the following decommissioning process shall occur:

1. Conduct an appraisal of all of the Commission facilities;
2. Identify regulatory processes and transitional costs; and
3. Identify costs to restore sites to as close to original condition as feasible.

If the facilities have a market value, the assets (excluding leased property) shall be sold by the Commission and the net proceeds shall be distributed to the member towns based on percent ownership.

If the facilities are deemed to have no market value, then the net cost to restore the sites to as close to original condition as feasible shall be borne by each member community based on percent ownership.

Each member town shall be required to pay any of their remaining capital or operation and maintenance costs until paid in full.

[Signature pages follow]

With KP Law Recommended Changes 3/25/2020

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners for the Town of Dennis, Massachusetts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF SELECTMEN  
for the Town of Dennis

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With KP Law Recommended Changes 3//25/2020

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners of the Town of Harwich, Massachusetts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF SELECTMEN

for the Town of Harwich

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With KP Law Recommended Changes 3/25/2020

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, Massachusetts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF SELECTMEN  
for the Town of Yarmouth

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Appendix A – Exhibits**

**Exhibit A – Effluent Recharge Sites**

**Exhibit B – Example of Fixed versus Semi-Fixed Costs**

**Exhibit C – Example Flow Penalty Calculation**

**Exhibit D – Example Wastewater Treatment Plant Budget**

**Appendix B– Transition Items**

**B.1 Initial Plan of Action**

B.1.1 Once the Commissioners are appointed from each Member Town, an official Commission meeting shall be held within 30 days at which time the Commission shall be organized per Section 9.5.

B.1.1 Once the Commission is officially organized, it shall develop a list of actions required to get the Partnership operational on a daily basis and to accomplish the other subtasks listed below including when to hire an executive director to oversee the day-to-day operations and when to hire an Owners Project Manager (OPM) to help guide it through the permitting, design and construction process for the initial treatment plant and effluent recharge facilities.

**B.2 Initial Budget**

B.2.1 Once the Commission is official organized, it shall begin the process of developing a budget for the initial year of operation and working with Member Towns as to how to best fund those operations. Local Member Town funds, short term borrowing and access to the Environmental Bond Bill authorization are potential sources of funding.

B.2.2 For planning purposes, the Commission shall adopt an initial fiscal year budget for the treatment plant and effluent recharge sites during its initial year of operation, or portion thereof, and shall work to create a five year budget plan according to the timelines stated herein.

**B.3 Schedule for Construction and Start-up of Partnership Facilities**

B.3.1 Flow Commitment. Each Member Town shall commit in writing to the Partnership within 120 days of the effective date of this agreement the amount of wastewater flow capacity it wants to own in the initial treatment plant construction phase.

B.3.2 Design. Design of the Partnership treatment plant expansion and effluent recharge facilities will occur in 2020 through 2022.

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B.3.3 Construction. Construction of the Partnership treatment plant and effluent recharge facilities will occur in 2022 through 2025 with full operation beginning by the end of year 2025.

B.4 Initial Permitting, Design, Engineering, Construction and Related Services

All services related to permitting, design, engineering, construction and related services of the original plant shall be competitively procured.

**Commented [JG3]:** Move section 14 to an Appendix.

B.5 Initial Management and Operation of Partnership Facilities

The Enabling Act authorizes the Partnership to enter into contracts for the operation and management including administrative services of Partnership facilities. Initially, the Partnership will enter into a Management and Operations Agreement with the **Town of Dennis**, Massachusetts in substantially the form attached here to as Appendix F.

B.6 Pretreatment and Sewer Use Regulations

The Partnership shall develop and adopt by simple majority vote of the Commission its own pretreatment and sewer use regulations prior to the treatment plant being placed into operation.

Appendix C – Enabling Act: Chapter 88 of the Acts of 2019

(Add final act)

Appendix D – Description of Partnership Facilities

(Add table of facilities and sites)

(Add Figure 1 of showing partnership system)

Appendix E – Agreement to Convey Real Property and Transfer Assets (Example)

(To be developed)

Appendix F – Management and Operations Agreement between Partnership and Dennis (Example)

(To be developed)

# AGREEMENT ESTABLISHING THE DHY CLEAN WATERS COMMUNITY PARTNERSHIP

**Draft 03/30/2020**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Agreement”) by and between the Towns of Dennis, Harwich, and Yarmouth, municipal corporations within the Commonwealth of Massachusetts, and herein referred to as “Member Towns” for the establishment of a public, regional wastewater district, to be known as the “DHY Clean Waters Community Partnership” and commonly referred to in this Agreement as the “Partnership.”

Whereas, the annual town meeting votes of each Member Town taken in 2020 and the terms of the special act of the General Court of the Commonwealth entitled “*An Act Establishing The DHY Clean Waters Community Partnership for the Towns of Dennis, Harwich and Yarmouth*” approved by the Governor on October 11, 2019 and known as Chapter 88 of the Acts and Resolves of 2019 (herein referenced as the “Enabling Act”) authorize execution of this Agreement.

Whereas, the Partnership shall own, manage, operate and control the wastewater treatment plant, common interceptors, pumping stations and force mains, effluent recharge and reuse system, and appurtenances needed to treat wastewater; it shall act as a Community Partnership with all the powers and privileges granted to it by this Agreement and by the Enabling Act and shall provide for the common collection, conveyance, and treatment of wastewater, and recharge and reuse of treated effluent for the Member Towns.

Now therefore, in consideration of the mutual benefits to each Member Town derived from the formation of this Partnership 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 **July 1, 2020** (the “Effective Date”) and supersedes and rescinds any prior wastewater agreements entered between the member towns.

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 Partnership.

Agreement:

Basic Terms and Conditions

- Section 1 Definitions
- Section 2 Wastewater Characteristics
- Section 3 Location of Partnership Facilities

- Section 4 Wastewater Services to Member Towns
- Section 5 Measurement of Flow
- Section 6 Sampling of Wastewater Flow
- Section 7 Notice of Flow Changes
- Section 8 Pretreatment

#### Governance Terms and Conditions

- Section 9 Wastewater Partnership Commission
- Section 10 Amendments to Agreement
- Section 11 Admission of New Member Town(s) or Transfer of Capacities
- Section 12 Withdrawal from Partnership
- Section 13 Contract Administration
- Section 14 Procurement of Professional Services

#### Cost Terms and Conditions

- Section 15 Apportionment and Payment of Costs
- Section 16 Partnership Budget
- Section 17 Incurring of Debt
- Section 18 Treatment Plant Decommissioning – Cost Impacts

#### Appendices

- Appendix A Exhibits
- Appendix B Transition Items
- Appendix C Enabling Act; Chapter 88 of the Acts of 2019
- Appendix D Description of Partnership Facilities
- Appendix E Agreement to Convey Real Property and Transfer Assets (Example)
- Appendix F Management and Operations Agreement between Partnership and Dennis (Example)

## Basic Terms and Conditions

### Section 1: Definitions

1.1 For the purpose of this Agreement, the following terms are defined:

- 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 Partnership's treatment facility.
- 1.1.2 "Average Daily Flow" shall mean the total flow period as measured at the metering location(s) 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 "Combined Sewer" shall mean a drain or sewer specifically designed to receive stormwater run-off, groundwater, and wastewater and/or industrial wastes
- 1.1.5 "Common Partnership System" shall mean those wastewater conveyance and treatment facilities owned and operated by the Partnership as described in Section 3 herein. Conveyance facilities include interceptor sewers and any pumping stations or force mains within the defined Partnership facilities that are utilized to convey Member Towns' wastewater to the Partnership's treatment plant. Treatment facilities include the treatment plant, effluent recharge sites, and any related facilities.
- 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 that connect into the sewer system of a Member Town.
- 1.1.7 "Dennis" is the Town of Dennis, a municipal corporation of the Commonwealth of Massachusetts. The "Dennis Board" shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Dennis, or its successors.
- 1.1.8 "DHY Clean Waters Community Partnership" shall refer to Chapter 88 of the Acts and Resolves of 2019.
- 1.1.9 "District" or "Partnership" as used herein, shall mean the Clean Waters Partnership Commission to govern the DHY Clean Waters Community Partnership, as defined herein.
- 1.1.10 "Effective Date" shall be July 1, 2020.

- 1.1.11 "Enabling Act" means Chapter 88 of the Acts of 2019, as may be amended from time to time.
- 1.1.12 "EPA" means the United States Environmental Protection Agency or its successor agency.
- 1.1.13 "Harwich" is the Town of Harwich, a municipal corporation of the Commonwealth of Massachusetts. The "Harwich Board" shall be the Board of Selectmen, of the Town of Harwich, acting as Sewer Commissioners or its successors.
- 1.1.14 "Industrial Wastes" are the liquid, gaseous, or solid wastes or a combination thereof, other than wastewater, resulting from any process of manufacturing, trade and/or industrial operations or from the development or recovery of any natural resources.
- 1.1.15 "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.
- 1.1.16 "Infiltration/ Inflow" (I/I) is the total quantity of water entering a sewer system from both infiltration and inflow.
- 1.1.17 "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.
- 1.1.18 "Local Wastewater System" shall mean that portion of the sewer/ wastewater system located either in Dennis and used exclusively by Dennis or its customers, in Harwich and used exclusively by Harwich or its customers, or in Yarmouth and used exclusively by Yarmouth or its customers, or located in any other municipality and used exclusively by such municipality's residents/rate payers and not owned by the Partnership. A Local Wastewater System is not part of the Common Partnership System.
- 1.1.19 "MassDEP" means the Massachusetts Department of Environmental Protection or its successor agency.
- 1.1.20 "Maximum Daily Flow" shall mean the maximum flow recorded at a metering station during a 24-hour period.
- 1.1.21 "Member Town" shall mean either the town of Dennis, Harwich or Yarmouth, or any other municipality that may join the Partnership in accordance with the terms herein.
- 1.1.22 "MGD" is the abbreviation of million gallons per day.

- 1.1.23 "pH" shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- 1.1.24 "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.
- 1.1.25 "Sewer Use Regulations" shall mean the latest edition of the Partnership regulations which shall be developed and adopted prior to the treatment plant being operational. Each Member Town must adopt within 120 days of the Effective Date of the Partnership regulations, as a minimum, the Sewer Use Regulations in use by the Partnership. Definitions of terms within that document shall be interpreted in accordance with EPA and/or MassDEP Regulations.
- 1.1.26 "Shall" is mandatory, "may" is permissive.
- 1.1.27 "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.
- 1.1.28 "Total Flow" shall mean the total amount of wastewater flowing into the Common Partnership 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 flow proportional adjustment for Infiltration/Inflow (I/I) in Common Partnership System components. Estimated I/I flows should be periodically checked at a frequency to be determined by the Commission.
- Total flow shall be the recorded flow received each day. The Average Annual Flow shall be reported as the monthly average flow for the previous 12 months.
- 1.1.29 "Total Flow Allocation" shall mean the amount of wastewater treatment facility capacity dedicated and reserved for use (owned) by each Member Town.
- 1.1.30 "Total Suspended Solids" (abbreviated 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).
- 1.1.31 "User Charges" shall mean a charge levied on Member Towns of the Partnership for the cost of operation and maintenance, repairs and associated capital payment costs for the Common Partnership System.
- 1.1.32 "Wastewater" shall mean 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.

- 1.1.33 "Yarmouth" is the Town of Yarmouth, a municipal corporation of the Commonwealth of Massachusetts. The "Yarmouth Board" shall be the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, or its successors.

## **Section 2: Wastewater Characteristics**

- 2.1 The Partnership shall receive, treat and dispose of Member Towns' wastewater in accordance with this Agreement and all applicable local, state and federal laws, regulations, water quality standards, orders and decrees of any state and/or federal governmental authority having jurisdiction over the treatment, and disposal/ recharge of wastewater. The Partnership shall comply at all times with the Partnership's Groundwater Discharge Permit(s).
- 2.2 Member Towns shall adopt as a minimum the rules, regulations and requirements of the Partnership proscribing and limiting the content of wastewater discharged into the sewers that convey flow to the Common Partnership System. The rules, regulations and requirements include but are not limited to:
- 2.2.1 Sewer Use Regulations (Partnership to develop and adopt regulations prior to treatment plant being operational)

The Partnership shall send written notice of any proposed revisions to the Partnership's Sewer Use Regulations to the Member Towns 30 days prior to such revision(s) being enacted or adopted.

- 2.3 It is recognized that under extreme wet weather events or high groundwater periods that increased Infiltration and/or Inflow (I/I) may occur. In recognition of this, each Member Town shall work cooperatively with the Partnership to investigate and reduce its flows so that I/I flow by Member Towns is maintained to be within industry (Water Pollution Control Federation or other) and regulatory (MassDEP or other) guidelines. It is the responsibility of each Member Town to pay for its own I/I evaluations, studies, construction, and related work to reduce I/I within each Member Town's respective Local Wastewater System.
- 2.4 Any Member Town accepting wastewater from an adjacent customer community shall be responsible for requiring the customer community to adopt and adhere to any and all Partnership requirements regarding wastewater regulations, permits or Partnership operations as defined herein. The Partnership shall have the authority to require that a Member Town pursues appropriate actions in this regard and may charge any costs the Partnership incurs for this enforcement to said Member Town.

### Section 3: Location of Partnership Facilities

#### 3.1 Location

Initially, all Partnership facilities shall be located within the limits of the Member Towns and are as described below: Conveyance System – initially there is no common Partnership conveyance system. In the future there may be common pumping stations, forcemains or other related items.

Treatment Plant – a wastewater treatment facility located adjacent to the Dennis DPW facility will treat wastewater to standards established by the MassDEP in order to meet a Groundwater Discharge Permit.

Effluent Recharge Sites – treated effluent will be pumped in force mains to effluent recharge sites located in Dennis, Harwich and Yarmouth as shown in **Appendix A, Exhibit A** or to any other approved reuse alternatives.

Refer to **Figure 1** of **Appendix D** for an overview of the Partnership System.

#### 3.2 Plans

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

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

#### 3.3 Conveyance and Transfer

Each of the Member Towns shall enter into a ground lease with the Partnership for a term of no more than ninety-nine (99) years for nominal consideration of One Dollar (\$1.00) to lease certain real property, personal property, equipment and other assets to the Partnership (including property and assets to establish the Common Partnership System) for the wastewater treatment plant site and effluent recharge sites, and to grant non-exclusive perpetual easements for sewer purposes to the Partnership by or on the Effective Date and in accordance with an agreement entitled, “Agreement to Convey Real Property and Transfer Assets”, or any other arrangements, both attached hereto as **Appendix E** on their respective properties as follows:

Town of Dennis

- a. 120 Theophilus F. Smith Road, shown on Assessor’s Map 165 as Lot 1-for wastewater treatment plant site and effluent recharge;

- b. 30 Bob Crowell Road, shown on Assessor's Map 173 as Lot 36, for effluent recharge site;
- c. 825 Old Bass River Road, shown on Assessor's Map 284 as Lot 4, for effluent recharge site;
- d. 350 Paddocks Path, shown on Assessor's Map 310 as Lot 13, for effluent recharge site;
- e. 50 Golf Course Road, shown on Assessor's Map 315 as Lot 1, for effluent recharge site.

Town of Yarmouth

- a. 62 Highbank Road, shown on Assessor's Map 80-17, for effluent recharge site.

Town of Harwich

- a. 205 Queen Anne Road, shown on Assessor's Map 58-M-1, for effluent recharge site.

Land Use Agreements – Construction by the Partnership on a parcel identified in this section for use by the Commission shall require the development of a Memorandum of Understanding (MOU), Inter-Municipal Agreement (IMA) or similar instrument between the Commission and that town's Board of Selectmen that as a minimum defines the operating requirements for use of the site, the apportionment of construction costs including any project lost revenues during construction, the schedule for construction to help minimize costs and neighborhood impacts, the routing of construction vehicles and time of operation, and any other specific land use issues.

### 3.4 Taxes

The DHY Clean Waters Community Partnership shall be a tax-exempt entity, and not be subject to local real estate property taxes, personal property taxes, host community fees, excise taxes or any other similar type fees for any of the facilities located in the three member towns. There shall also be no Payments in Lieu of Taxes (PILOT) or fees.

## **Section 4: Wastewater Services to Member Towns**

### 4.1 Additional Services

The Partnership shall provide wastewater treatment and disposal services to the Member Towns. The Partnership 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 Partnership shall be the responsibility of the individual Member Town(s) receiving said equipment and services. The Partnership 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 Partnership equipment to assist in cleaning or rehabilitating a Member Town's Local Wastewater System.

#### 4.2 Equipment

The Partnership 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. Similarly, the Partnership may utilize equipment owned by a Member Town and reimburse that town at an approved rate.

### **Section 5: Measurement of Flow**

#### 5.1 The Partnership measurement of wastewater flow shall be as follows:

5.1.1 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 Partnership, installed by each Member Town, and located at each point of discharge into the Common Partnership 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 Partnership's treatment plant. 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 Partnership 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 Partnership System. Once a quarter, as a minimum, the Partnership 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 Partnership's normal business hours.

5.1.2 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 Partnership System. The general arrangement, equipment and physical location of these flow measuring stations shall be subject to Partnership's review and approval. The cost of maintaining those flow measuring stations shall be borne by each respective Member Town.

The Partnership 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 Partnership 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 Partnership shall be advised of the results of any tests on the equipment and the methods employed.

The Partnership 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 Partnership. 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 Partnership check, then the Member Town shall recheck their meter within 60 days of the detection at their costs and within 30 days of the recheck take any appropriate action to rectify or correct discrepancy so that accuracies are again within the industry standard. The Partnership shall maintain a listing of the agreed upon industry accuracy standards by meter type.

- 5.1.3 The Partnership 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 Partnership and be included as a part of the Operating Costs of the Common Partnership System.
- 5.1.4 Determination of the volume of each Member Town's wastewater flows shall be determined directly from the metering conducted at the flow monitoring stations.
- 5.1.5 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 Partnership on the basis of recent correct readings and past experience using a mutually agreed upon formula or flow period.
- 5.1.6 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 6: Sampling of Wastewater Flow**

- 6.1 The Partnership 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 Partnership'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 Partnership use.

In the event that wastes of unusually high strength (per industry standards) are detected by the Partnership, 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 Partnership's Industrial Pretreatment Program contained within the Partnership's Sewer Use Regulations.

**Section 7: Notice of Flow Changes**

- 7.1 Each Member Town agrees to notify the Partnership 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 Partnership System by that Member Town.
- 7.2 Each Member Town agrees to provide to the Partnership, 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.
- 7.3 Each Member Town hereby agrees to take all appropriate actions necessary to enforce conformance with all Partnership 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 Partnership as a result of that Member Town's failure to act in accordance with this provision.

**Section 8: Pretreatment**

- 8.1 Each Member Town shall adopt and enforce the Partnership's Pretreatment Regulations (within 120 days of the Effective Date of those regulations) 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.
- 8.2 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 Partnership System.
- 8.3 In accordance with the Partnership's Sewer Use Regulations, the Partnership may require pretreatment of high strength wastes by individual sewer users. Each Member Town recognizes and agrees to the Partnership's authority to require such pretreatment and agrees to work with the Partnership and apply its full authority, as well to enforce such requirements.

## **Governance Terms and Conditions**

### **Section 9: Wastewater Partnership Commission**

#### **9.1 Appointment**

The powers and duties of the Partnership shall be vested in and exercised by a Wastewater Partnership Commission hereinafter sometimes referred to as the "Commission," whose seven (7) members shall be appointed by the Member Towns in the following manner:

Yarmouth shall have three (3) Commission members appointed by the Board of Selectmen or their designated local authority; Dennis shall have two (2) Commissioner members one appointed by the Board of Selectmen and one appointed by the Finance Committee and Harwich shall have two (2) Commission members appointed by the Board of Selectmen or their designated local authority.

The Commission members shall be appointed from the following categories of appointees for each Member Town: Town Administrator, DPW Director, Wastewater Superintendent (or equivalent), Board of Selectmen, Water and Sewer Commissioner, Finance Committee, and/or qualified Town Resident. Only one member shall be appointed from any one category by the appointing authority of a Member Town.

#### **9.2 Term**

The initial appointments of a member of the Commission shall be for Yarmouth terms of three years, two and (in case of Yarmouth) one year; for Dennis terms of three and two years; and for Harwich terms of three and one years. Upon completion, each of those terms shall be followed by a successive three-year term. Terms shall begin on July 1<sup>st</sup> and end on June 30<sup>th</sup> of the appropriate year. The initial appointments to the one year terms shall be until June 30<sup>th</sup> of the Fiscal Year in which the appointment is initially made. The initial two year appointments shall be for the first full Fiscal Year after the Fiscal Year in which the initial appointment is made. The three year appointment shall be for the full two Fiscal Years after the initial appointment is made. 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>. Initial appointments to the Commission shall be made not later than 60 days after the effective date of this agreement.

#### **9.3 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, with or without cause, by vote at a posted open meeting or executive session as may be required, of the appointing authority, 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 of the removal of such person from the Commission.

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

#### 9.4 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.

#### 9.5 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 no later than July 31st, the Commission shall organize and elect a chairman, vice-chairman 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 may appoint such other officers, including Executive Director, 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. Prior to the appointment of a Treasurer or an Executive Director or other administrative staff, the Commission may, pursuant to **Appendix B** if this Agreement, contract with a Member Town for the provision of administrative services, including the services of a Treasurer and an Executive Director.

The Partnership's treasurer shall receive and take charge of all funds belonging to the Partnership and shall pay any bill of the Partnership which shall have been approved by the Commission. The treasurer may, as authorized by vote of said Commission, be compensated for his/her services. The treasurer of the Partnership shall be subject to Sections 35, 39B, 52, and 109A of Chapter 41 of the Massachusetts General Laws, and Chapter 88 of the Acts of 2019 to the extent applicable.

#### 9.6 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 88 of the Acts of 2019 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 4 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.

#### 9.7 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 present 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 present 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 \$30,000 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) and for each consecutive meeting that member misses thereafter.

Once a vote to approve a “Financial Business Matter” has been passed, then future votes on that specific item shall only require a majority quorum be present.

### **Section 10: Amendments to Agreement**

#### 10.1 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 Partnership then outstanding, or the rights of the Partnership 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 Partnership subject, however, to the provisions of Section 11 of this Agreement and the reapportionment of Capital Costs of the Partnership represented by the bonds or notes of the Partnership then outstanding and of the interest thereon.

#### 10.2 Procedure

Any proposal for Amendment, except a proposal for Amendment providing for the withdrawal of a Member Town (which shall be governed by Section 12) 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 Chairman of the Sewer Commissioners or Board having such authority, and to the Board of Selectmen of each of the Member Towns 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 all of the Member Towns acting by majority vote at their next 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.

### 10.3 Programmed Reviews

The Commission shall undertake a formal review of this Agreement within five (5) years of the substantial completion date of the initial treatment plant construction and, thereafter, at least once every ten (10) years. A formal review document shall be developed explaining the review process, findings and any recommendations and distributed to each Member Town. Any Amendments to the Agreement in the interim shall reset the review period and specifically state the review date in that amendment.

## **Section 11: Admission of New Member Town(s) or Transfer of Capacities**

### 11.1 Admission Requirements

By an Amendment to this Agreement in accordance with Section 10 above, any other town or towns may be admitted to the Partnership.

Any town requesting to be admitted to the Partnership 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 10.2 above and upon ratification of the Agreement as amended by majority vote of the town meeting of the new Member Town.

## 11.2 Admission Costs

All costs associated with the addition of a new town to the Partnership shall be negotiated between the Commission and the proposed new town. Any costs borne by the Partnership 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 Partnership System up to that date and any additional expansion costs required to accommodate the flow request.

## **Section 12: Withdrawal from Partnership**

### 12.1 Limitations

A Member Town may withdraw from the Partnership by an Amendment to this 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 an Amendment to this Agreement setting forth the terms by which such Member Town may withdraw from the Partnership, provided that the said Member Town shall be liable to the Partnership as defined in the following paragraphs for its share of the indebtedness of the Partnership outstanding at the time of such withdrawal, for interest thereon, to the same extent and in the same manner as though the Member Town had not withdrawn from the Partnership

### 12.2 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 and withdrawing Member Town shall prepare a proposed Amendment to the Agreement setting forth such terms of withdrawal including timeframe, subject to the limitation contained in subsection 12.1. 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 and operating costs as described in Section 12.4. 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 by the Member Town, the Amendment shall take effect as stipulated.

12.3 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.

12.4 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 Partnership 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 15.

The withdrawing Member Town's maximum annual share of operating costs shall be paid based on the most recent fiscal year's share of operating costs over the subsequent three year period with payments declining by one-third each year unless another town or customer purchases the capacity of the withdrawing Member Town. Due dates of payment shall be as specified in Section 15.

12.5 In no event shall withdrawal by any Member Town take place prior to the expiration of fifteen (15) years next following the effective date of this Agreement.

**Section 13: Contract Administration**

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

13.2 In the event that a dispute arises regarding the Executive Director's enforcement or interpretation of the terms of this Agreement, the aggrieved party may petition the Commission. The petition shall be submitted through the appropriate Member Town's Board of Sewer Commissioners or board having such authority and shall be addressed to the attention of the Partnership's Executive Director, who shall present it to the Commission at its next regularly scheduled meeting. The Member Town's Board of Sewer Commissioners or equivalent authority and the Commission will attempt to resolve the dispute; however, the final decision rests with the Commission, subject to the provisions in 13.3, below.

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

If any dispute and/or claim ("dispute" or "claim") arises out of the scope, interpretation, operation or alleged or actual breach of this Agreement, the Partnership, 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 same amicably and directly with each other, by conducting a meeting(s) between or among the designated representatives of the involved Parties. A Party claiming to be aggrieved by a dispute shall first send written notice thereof to the other relevant Party or Parties, detailing the nature or basis of the claim and citing 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 claim (if the dispute involves multiple Parties, the effective date shall be the date of delivery of notice to the last Party to receive it).
- (b) If, after twenty (20) days from the date of the first meeting held in accordance with subparagraph (a), above, the Parties are unable to resolve the dispute between them, the aggrieved Party shall make written demand upon the other Party or Parties to submit the matter 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 agreed upon 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, or 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 decision of the arbiter shall be the final and binding, and the sole remedy of the Parties 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.

- 13.4 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 14: Procurement of Professional Services**

- 14.1 When the Commission engages legal counsel, financial advisors, engineers, accountants, consultants and other advisors, they shall follow appropriate Massachusetts procurement laws as they relate to goods and professional services.
- 14.2 Commissioners shall be required to establish a dollar threshold that determines when competitive procurements are required for professional services.

### **Cost Terms and Conditions**

#### **Section 15: Apportionment and Payment of Costs**

##### 15.1 Classification of Costs

For the purpose of the Partnership apportioning assessments against Member Towns, costs shall be divided into two categories: Capital Costs and Operating Costs, as defined herein.

##### 15.2 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, effluent recharge or reuse facilities, roads, pipelines and utility lines, the cost of consulting/ engineering services, related legal costs, the cost of any equipment necessary for the operation of the Common Partnership 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 Partnership 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 Partnership budget pursuant to Section 16, below. The minimum cash reserve fund shall be as approved by the Commission but shall not exceed 20 percent of the annual budget.

The minimum threshold to be defined as a Capital Cost shall be \$30,000, unless as otherwise established by the Commission.

##### 15.3 Operating Costs

Operating Costs shall include all costs incurred by the Partnership not included in Capital Costs as defined in Section 15.2. Operating Costs shall include a cash reserve determined by multiplying operating cost expenditures by the cash reserve percentage approved by the Commission.

- 15.3.1 The Partnership 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 Partnership 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 Partnership within 30 days of the end of each quarter.
- 15.3.2 The Partnership 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 System: The term "Common Partnership System" (also known as conveyance facilities) shall mean the interceptor sewers and any other sewers and pumping stations and force mains utilized to convey Member Towns' wastewater through the Common Partnership System to the Partnership's wastewater treatment facility. The costs of operating and maintaining the Common Partnership System shall be apportioned on the basis of the actual total quarterly flows through the Common Partnership System conveyance facilities from each Member Town. There is currently no common conveyance system proposed by the Partnership but that could change in the future.
  - b) Wastewater Treatment Facility and Effluent Recharge /Reuse Sites: The cost of operating the Partnership's wastewater treatment facility and land/ groundwater recharge facilities shall be apportioned as described in Section 15.3.6 and Section 15.3.7.
- 15.3.3 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 Partnership System, then such assistance shall be used to reduce the appropriate operation, maintenance and repair costs of the Partnership.
- 15.3.4 User Charges shall be due quarterly on July 31, October 15, January 15 and April 15, each year.

The Partnership shall submit to each Member Town its estimated Operating Costs of the Common Partnership System for the next fiscal year, in writing, by December 1st 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 February 1st.

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

In July of each year, the Partnership shall determine the actual Operating Costs of the Common Partnership 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.

- 15.3.5 Operating Costs for the Common Partnership 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.
- 15.3.6 Operating Costs for the use of the Common Partnership 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.
- 15.3.7 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 Partnership System and include office supplies, rental of office equipment, postage, any statutory assessments, employee computer expenses, insurance, consultant/engineering/ legal expenses and retirement insurance.
    - 2) The overall administrative and operational salaries, including overtime to operate the Common Partnership System.
    - 3) Common Partnership 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 Partnership personnel.

- 7) Common Partnership System conveyance facilities Infiltration and Inflow (I/I) maintenance salaries and expenses.
  - 8) Capital Costs
- b) Flow variable costs
    - 1) Liquid sludge hauling and disposal expenses
    - 2) Electricity and chemical expenses of the Common Partnership System.
  - c) A sample table depicting semi-fixed and flow variable costs is included in **Appendix A, Exhibit B.**
- 15.3.8 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.
- 15.3.9 In the event that a Member Town's total wastewater annual flow entering the Common Partnership 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) 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 11 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.
- 15.3.10 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 15.3.9, 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 C** for an example calculation of the Flow Payment Penalty Scenario.

15.4 Apportionment of Capital Costs

In the event the Partnership must undertake an expansion, major repairs, replacement, or add to the Common Partnership 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 Total Flow Allocation (capacity owned), 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, or, if expansion is required, the percentage of the expanded facilities available to each Member Town. A reasonable payment schedule shall be established by the Partnership 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 Partnership’s 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 as depicted in the following examples:

15.4.1 Projected Initial Phase Flow Capacity Allocation (3 phases)

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Percent Owned</i>
Dennis	1.15 mgd	34 %
Harwich	0.45 mgd	14 %
Yarmouth	1.75 mgd	52 %
<b>Total</b>	<b>3.35 mgd</b>	<b>100 %</b>

15.4.2 Projected Buildout Flow Capacity Allocation ( after all 8 phases)

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Percent Owned</i>
Dennis	1.96 mgd	30 %
Harwich	0.98 mgd	15 %
Yarmouth	3.54 mgd	55 %
<b>Total</b>	<b>6.48 mgd</b>	<b>100 %</b>

15.4.3 Example Interim Expansion Flow Capacity Allocation

<i>Member Town</i>	<i>Total Flow Allocation</i>	<i>Interim Expansion</i>	<i>Total New Capacity</i>
Dennis (mgd/%)	1.15 /34	0.25 / 17	1.40 / 29.0
Harwich (mgd/%)	0.45 /14	0.25 / 17	0.70 / 14.5
Yarmouth (mgd/%)	1.75 /52	1.00 / 66	2.75 / 56.5
<b>Total</b>	<b>3.35 /100</b>	<b>1.50 / 100</b>	<b>4.85 / 100</b>

**The Initial phase flow shown in Section 15.4.1 is for description purposes only and reflects an approximation of the first three phases of flow from the Member Towns. The actual flow capacity that each Member Town requests will ultimately decide the size of the initial treatment facility to be constructed and the percentage each community would pay based on capacity owned.**

In the above example shown in Section 15.4.3, once the Commission approved moving forward with facilities expansion to accommodate increased wastewater flow the Member Towns would pay for capital costs of the expansion based on the ownership of the expansion (shown in the Interim Expansion column). Member Towns would continue to pay their percentage share of the initial facility costs until paid off and would pay their share of the expanded capital costs of the expansion until paid off.

Once construction of the expansion facilities reached substantial completion then the percent capacity ownership would be recalculated to reflect overall ownership in the facilities and semi-fixed operating costs (described in Section 15.5) for future charges would be based on the new aggregate percent ownership for each Member Town (shown in the Total New Capacity column).

15.5 Apportionment of Operating Costs

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

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

5.5.2 Flow-variable operating costs: Upon the commencement of operations of any Partnership facility, flow based Operating Costs for the Common Partnership System will be assessed to the Member Towns based upon the average daily flow as measured at the Partnership flow meters and adjusted by the same ratio for Capital

Costs for Infiltration/Inflow (I/I) in Common Partnership System, and for any metered recycle flows at the treatment facility.

#### 15.6 Times of Payment of Apportioned Costs

Each Member Town shall pay to the Partnership 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:

July 30 <sup>th</sup>	25%
October 15 <sup>st</sup>	50%
January 15 <sup>st</sup>	75%
April 15 <sup>st</sup>	100%

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

### **Section 16: Partnership Budget**

#### 16.1 Fiscal Year

The fiscal year of the Partnership shall commence July 1 and end on June 30. The annual budget shall be based on this fiscal year,

#### 16.2 Draft Operating and Maintenance Partnership Budget

The Commission shall annually prepare a draft budget for the ensuing fiscal year, including 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 Partnership and any other Capital Costs to be apportioned to the Member Towns. The Commission shall mail (or email if requested) a copy thereof to the Chairman of the Sewer Commission or Board having such authority and to the Board of Selectmen of each Member Town, on or before November 1<sup>st</sup>, and in such detail as the Commission may deem advisable.

#### 16.3 Final Operating and Maintenance Partnership Budget

The Commission shall adopt an annual operating and maintenance budget, including debt and interest charges and any other current Capital Costs and cash 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 15 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 Partnership 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.

Refer to **Appendix A, Exhibit D** for an example Fiscal Year Partnership Budget

#### 16.4 Projected Five Year Budget

The Commission shall prepare a five year budget projection by Member Town once the draft operation and maintenance budget has been prepared. This budget shall include each of the line items shown in the budget as well as any other known items projected to be incurred during that planning period. The Commission shall mail (or email if requested) a copy thereof to the Chairman of the Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town, on or before November 1st , so that each Member Town may utilize this information for budgeting and rate setting purposes. A final five year budget projection shall be adopted once the final operation and maintenance budget is approved and then a copy mailed (or emailed if requested) to the Chairman of the Sewer Commission or Board having such authority, and to the Board of Selectmen of each Member Town.

#### 16.5 Budget Process

1. The Commission budget process shall be initiated on or about November 1<sup>st</sup> and shall provide an opportunity for the Sewer Commission or Board having such authority, the Board of Selectmen and the Finance Committee of each Member Town to have input into its preparation at a formally noticed public hearing. The draft budget available at that time shall be approved by majority vote of the Commissioners.
2. Upon request by the Sewer Commission or Board having such authority, the Board of Selectmen or the Finance Committee of a Member Town, the Commission shall arrange to meet with said Boards/Committees to present and discuss the proposed draft budget at a joint meeting in that community. Meetings shall be noticed locally and on the Commission website.
3. In December or early January, the Commission shall conduct a joint three-town Board of Selectmen meeting to present the proposed annual draft budget and capital plan. This shall be a publicly noticed meeting pursuant to the requirements of section 20 of chapter 30A of Massachusetts General Law. A quorum for this meeting shall be at least two Selectmen from each town and at least a total of eight Selectmen from the three towns. The annual budget shall be deemed approved if a majority of the Selectmen present and voting so vote. If the Selectmen vote to reject the proposed budget, they shall state their specific reasons for doing so and the Commission shall be required to respond to those reasons and put forth a revised budget or respond accordingly to the reasons. A revised vote can take place at this meeting or another meeting can be conducted by the member towns in the same manner as provided herein.

If no joint three-town Board of Selectmen meeting is held between November 1<sup>st</sup> and January 15<sup>th</sup>, then the proposed budget by the Commission shall be considered approved.

4. The Commission by January 15<sup>th</sup> shall adopt by a minimum of five positive votes a final operation and maintenance budget for the upcoming fiscal year which is reflective of key issues raised at the joint three-town Board of Selectmen meeting.
5. 5. In the event the three town Board of Selectmen meeting does not affirmatively vote to adopt the Commission's proposed budget by January 15<sup>th</sup> or if the Commission cannot obtain the required positive votes, the parties are required to follow the dispute resolution provisions of section 13.3 of this Agreement in an attempt to resolved the issues and to obtain the required approvals. In the event that the required approvals are not obtained by March 1<sup>st</sup>, the budget of the prior fiscal year shall remain in effect until such time as an agreement is reached.

16.6 Budget Schedule

Schedule	Submittal
November 1	Commission sends draft budget for ensuing fiscal year to member towns
November 1	Commission sends draft five-year budget plan to each member town
November/ December	Commission has budget discussions with member towns
December	Commission and member towns conduct a joint three-town Board of Selectmen meeting to approve Partnership annual budget.
January 15	Commission adopts final fiscal year budget and five-year budget plan
February 1	Commission treasurer certifies budget to treasurer of each member town
Annual Town Meetings	Member towns (if required) raise and appropriate certified budget for each member town share.

**Section 17: 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 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 18: Treatment Plant Decommissioning – Cost Impacts**

Should the DHY Clean Waters Community Partnership decide to disband in the future the following decommissioning process shall occur:

1. Conduct an appraisal of all of the Commission facilities;
2. Identify regulatory processes and transitional costs; and
3. Identify costs to restore sites to as close to original condition as feasible.

If the facilities have a market value, the assets (excluding leased property) shall be sold by the Commission and the net proceeds shall be distributed to the member towns based on percent ownership.

If the facilities are deemed to have no market value, then the net cost to restore the sites to as close to original condition as feasible shall be borne by each member community based on percent ownership.

Each member town shall be required to pay any of their remaining capital or operation and maintenance costs until paid in full.

[Signature pages follow]

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners for the Town of Dennis, Massachusetts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF SELECTMEN

for the Town of Dennis

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners of the Town of Harwich, Massachusetts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF SELECTMEN

for the Town of Harwich

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, THIS Agreement has been executed by the Board of Selectmen acting as Sewer Commissioners of the Town of Yarmouth, Massachusetts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF SELECTMEN

for the Town of Yarmouth

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Appendix A – Exhibits**

**Exhibit A – Effluent Recharge Sites**

**Exhibit B – Example of Fixed versus Semi-Fixed Costs**

**Exhibit C – Example Flow Penalty Calculation**

**Exhibit D – Example Wastewater Treatment Plant Budget**

## **Appendix B – Transition Items**

### **B.1 Initial Plan of Action**

B.1.1 Once the Commissioners are appointed from each Member Town, an official Commission meeting shall be held within 30 days at which time the Commission shall be organized per Section 9.5.

B.1.2 Once the Commission is officially organized, it shall develop a list of actions required to get the Partnership operational on a daily basis and to accomplish the other subtasks listed below including when to hire an executive director to oversee the day-to-day operations and when to hire an Owners Project Manager (OPM) to help guide it through the permitting, design and construction process for the initial treatment plant and effluent recharge facilities.

### **B.2 Initial Budget**

B.2.1 Once the Commission is official organized, it shall begin the process of developing a budget for the initial year of operation and working with Member Towns as to how to best fund those operations. Local Member Town funds, short term borrowing and access to the Environmental Bond Bill authorization are potential sources of funding.

B.2.2 For planning purposes, the Commission shall adopt an initial fiscal year budget for the treatment plant and effluent recharge sites during its initial year of operation, or portion thereof, and shall work to create a five year budget plan according to the timelines stated herein.

### **B.3 Schedule for Construction and Start-up of Partnership Facilities**

B.3.1 Flow Commitment. Each Member Town shall commit in writing to the Partnership within 120 days of the effective date of this agreement the amount of wastewater flow capacity it wants to own in the initial treatment plant construction phase.

B.3.2 Design. Design of the Partnership treatment plant expansion and effluent recharge facilities will occur in 2020 through 2022.

B.3.3 Construction. Construction of the Partnership treatment plant and effluent recharge facilities will occur in 2022 through 2025 with full operation beginning by the end of year 2025.

B.4 Initial Permitting, Design, Engineering, Construction and Related Services  
All services related to permitting, design, engineering, construction and related services of the original plant shall be competitively procured.

B.5 Initial Management and Operation of Partnership Facilities

The Enabling Act authorizes the Partnership to enter into contracts for the operation and management including administrative services of Partnership facilities. Initially, the Partnership will enter into a Management and Operations Agreement with the **Town of Dennis**, Massachusetts in substantially the form attached here to as Appendix F.

B.6 Pretreatment and Sewer Use Regulations

The Partnership shall develop and adopt by simple majority vote of the Commission its own pretreatment and sewer use regulations prior to the treatment plant being placed into operation.

**Appendix C – Enabling Act: Chapter 88 of the Acts of 2019**

(Add final act)

**Appendix D – Description of Partnership Facilities**

(Add table of facilities and sites)

(Add Figure 1 of showing partnership system)

**Appendix E – Agreement to Convey Real Property and Transfer Assets (Example)**

(To be developed)

**Appendix F – Management and Operations Agreement between Partnership and Dennis (Example)**

(To be developed)

**EXHIBIT A**

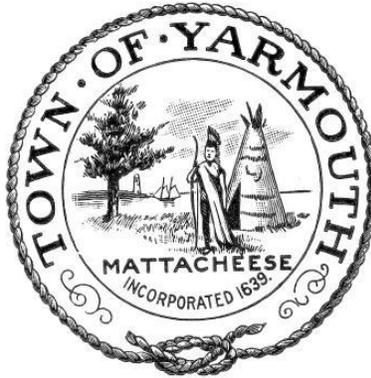
**PROPOSED DHY FACILITY AND EFFLUENT RECHARGE SITES**

<i>Priority for Implementation<sup>1</sup></i>	<i>Town</i>	<i>Description</i>	<i>Potential Effluent Recharge Capacity Range (GPD)</i>		<i>Cumulative Capacity (GPD) (Conservative)</i>	<i>PRB Included<sup>2</sup></i>	<i>Address</i>	<i>Map-Lot</i>
1	Dennis	DHY WWTF and Effluent Recharge (Site 1)	336,000	–	340,000	Yes	120 Theophilus F Smith Road, Dennis	165-1
1	Yarmouth	Bass River Golf Course Recharge	2,000,000	3,000,000	2,340,000	No	62 Highbank Road, Yarmouth	80-117
2	Harwich	East Portion of Harwich DPW Off Queen Anne Road Recharge	1,200,000	–	3,540,000	No	205 Queen Anne Road, Harwich	58-M1-1
3	Dennis	Site 2 at Corner of Bob Crowell Road and Old Bass River Road Recharge	410,000	–	3,950,000	Yes	30 Bob Crowell Road, Dennis	173-36
4	Dennis	Northern Section of Highland Golf Course Recharge	250,000	4,000,000	4,200,000	No	825 Old Bass River Road, Dennis	284-4
4	Dennis	Parcels North and South of Hokum Rock Road Recharge	300,000	2,100,000	4,500,000	No	350 Paddocks Path, Dennis	310-13
5	Dennis	Northern Section of Dennis Pines Golf Course Recharge	1,400,000	4,000,000	6,500,000	No	50 Golf Course Road, Dennis	315-1

(1) This is the proposed prioritized order for implementation of effluent recharge sites that is subject to revision by the DHY Commissioners.

(2) The inclusion of Permeable Reactive Barriers (PRBs) is to be confirmed by the DHY Commissioners.

**TOWN OF YARMOUTH  
WARRANT  
and  
RECOMMENDATIONS  
of the  
FINANCE COMMITTEE  
For the Annual Town Meeting**



**June 22, 2020  
7:00 P.M.**

**MATTACHEESE MIDDLE SCHOOL  
WEST YARMOUTH**

**PLEASE BRING THIS REPORT TO TOWN  
MEETING**

# **FINANCE COMMITTEE REPORT**

The Town of Yarmouth Finance Committee represents the citizens of Yarmouth as an advisory board in conjunction with Town Administration and the Board of Selectmen.

The Committee is composed of seven members including a Chair and Vice Chair. This Committee meets at least 20 times per year and reviews all Town department budgets including the Dennis-Yarmouth School District, as well as all Town Warrant articles and Zoning articles.

Participation on the Committee is voluntary subject to appointment by the Town Moderator, Finance Committee Chair, and Board. Committee members present a wide variety of qualifications, experience, and backgrounds.

Current members are graduates of Boston College, Holy Cross, Queens College, Sacred Heart University, Delaware Technical College, Babson, and Buffalo State. Professions include accounting/law (Jessica Norwood), commercial real estate management (Robert Ciavarra), financial services VP (Brian Gardiner), property-casualty insurance company VP (Ken Mudie), retail executive (Joe Goldstein), engineering (Nathan Ladley), and law (Jack Moylan). Two members are graduates of D-Y Regional High School (B. Gardiner and J. Norwood). Several hold masters degrees, professional designations, and law degrees. One member holds two U.S. patents (N. Ladley), another has served on committees in three other Massachusetts towns (R. Ciavarra), one is the former mayor of Chicopee, MA (J. Moylan), and another is a member of the Board of an Affordable Housing CDC in Worcester (K. Mudie). All members have served and continue to serve on other Boards and Committees in Yarmouth including Capital Budget, Vocational School Building, DPW Building, and the Middle School Building Committee.

Finance Committee

**HOW DO I MAKE A MOTION?**

**TABLE OF BASIC POINTS OF MOTIONS**

Rank	Type of Motion	2nd Req'd	May Debate	May Amend	Vote Req'd	May Recon.	May Interrupt
	Main Motions						
None	Main Motion	Yes	Yes	Yes	Varies	Yes	No
Same	Reconsider or Rescind	Yes	Same	No	Majority	No	No
None	Take from the Table	Yes	No	No	Majority	No	No
None	Advance an Article	Yes	Yes	Yes	Majority	Yes	No
	Privileged Motions						
1	Dissolve or adjourn sine die	Yes	No	No	Majority	No	No
2	Adjourn to a fixed time or recess	Yes	Yes	Yes	Majority	No	No
3	Point of no quorum	No	No	No	None	No	No
4	Fix the time to (or at) which to adjourn	Yes	Yes	Yes	Majority	Yes	No
5	Question of privilege	No	No	No	None	No	Yes
	Subsidiary Motions						
6	Lay on the table	Yes	No	No	2/3	Yes	No
7	The previous question	Yes	No	No	2/3	No	No
8	Limit or extend debate	Yes	No	No	2/3	No	No
9	Postpone to a time certain	Yes	Yes	Yes	Majority	Yes	No
10	Commit or refer	Yes	Yes	Yes	Majority	Yes	No
11	Amend (or substitute)	Yes	Yes	Yes	Majority	Yes	No
12	Postpone indefinitely	Yes	Yes	No	Majority	Yes	No
	Incidental Motions						
Same	Point of Order	No	No	No	None	No	Yes
Same	Appeal	Yes	Yes	No	Majority	Yes	No
Same	Division of a question	Yes	Yes	Yes	Majority	No	No
Same	Separate consideration	Yes	Yes	Yes	Majority	No	No
Same	Fix the method of voting	Yes	Yes	Yes	Majority	Yes	No
Same	Nominations to committees	No	No	No	Plurality	No	No
Same	Withdraw or modify a motion	No	No	No	Majority	No	No
Same	Suspension of rules	Yes	No	No	2/3*	No	No

\* UNANIMOUS IF RULE PROTECTS MINORITIES; OUT OF ORDER IF RULE PROTECTS ABSENTEES

SOURCE: TOWN MEETING TIME, 3RD EDITION

**COMMON TOWN FINANCE TERMS**

<b>APPROPRIATION</b>	An authorization granted by Town Meeting to expend money and incur obligations for specific public purposes.
<b>AVAILABLE FUNDS</b>	Balances remaining in various funds that are available for expenditure. Examples include Water Department special revenue account reserves, Fire Department ambulance account, and Free Cash.
<b>ENTERPRISE FUND</b>	A separate account for municipal services for which a fee is charged in exchange for goods or services. It allows a community to demonstrate the portion of total costs of a service that is recovered through user fees. This is a multi-year fund for which any end-of-year surplus is retained in the Enterprise Fund.
<b>OFFSET ACCOUNT</b>	An account set up to restrict fees collected by a particular department for expenditure by that department. Any surplus funds remaining at the end of the fiscal year are returned to the General Fund.
<b>FISCAL YEAR</b>	The Town's fiscal year begins July 1st and ends on June 30th.
<b>FREE CASH</b>	Remaining, unrestricted funds from operations of the previous fiscal year including actual receipts in excess of estimates and unspent amounts in budget line-items.
<b>OVERLAY RESERVE</b>	An account set up to pay for real estate exemptions and abatements.
<b>RAISE &amp; APPROPRIATE</b>	A phrase used to identify a funding source for an expenditure which refers to money generated by the tax levy or other anticipated local receipts.
<b>RESERVE FUND</b>	An account appropriated within the operating budget to provide for unforeseen expenditures <i>during the fiscal year</i> . Expenditures of funds deposited to this account require approval of the Finance Committee. Funds remaining at the end of the fiscal year are returned to the General Fund.
<b>STABILIZATION FUND</b>	A multi-year fund established as a "rainy day" account to address extraordinary or unforeseen future expenditures during the current <i>or future fiscal years</i> . This account can also be used to accumulate funds for capital expenditures in a future year.

**ANNUAL TOWN MEETING WARRANT  
COMMONWEALTH OF MASSACHUSETTS  
JUNE 22<sup>ND</sup>, 2020**

Barnstable, ss.

To the Constable of the Town of Yarmouth in the County of Barnstable, Greetings, In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of said Town qualified to vote in Town affairs to meet in the Mattacheese Middle School Building in said Town, Monday, the 22<sup>nd</sup> day of June 2020 at seven o'clock (7:00 p.m.) in the evening, then and there to act on the following articles.

**ARTICLE #1:** To see if the Town will vote to transfer and appropriate a sum of money to provide additional funds for the FY 2020 operating budget.

<u>Department</u>	<u>Request</u>	<u>Amount</u>	<u>Source</u>
DPW	Construction & Demolition	\$350,000	Free Cash
DPW – Septage Enterprise Fund	Septage Reserve - Waste Disposal	\$500,000	Septage Retained Earnings

**EXPLANATION:** *The purpose of this article is to fund any budget shortages for the current year. The supplemental funding for Waste Disposal is needed to cover a significant increase in sludge disposal costs due to the inability to access disposal sites in New England. This funding will go to offset these costs, or be reserved for the implementation of a long-term solution. The septage plant Retained Earnings is sufficient to absorb these costs until a permanent solution can be found. The supplemental funding for Construction & Demolition materials (C&D) is needed to cover a higher than expected volume of waste material received at the Town Disposal Area. The C&D expense is covered by the revenues paid to dispose of these materials.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #2:** To see what sums of money the Town will vote to raise or transfer from available funds and appropriate such funds to defray the charges, expenses, salary, and payroll obligations of the Town, including debt and interest for the ensuing year, to provide for a reserve fund, and to fix the salaries and compensation for all elected officials of the Town or act on anything relative thereto.

**EXPLANATION:** *This article funds the Town's operating budget, which covers employee salaries, benefits, and other Town operating expenses. At the direction of the Board of Selectmen, this budget is balanced, affordable, within the parameters of proposition 2 1/2, and provides the best possible services and facilities to the Town. The Finance Committee, who has recommended the budget as presented, has reviewed this budget in detail.*

<b>Code</b>		<b>Actual FY19</b>	<b>Budget FY20</b>	<b>Request FY21</b>	<b>Fincom FY21</b>
<b>ELECTED/GENERAL GOVERNMENT</b>					
E-1	<b>MODERATOR</b>	500	500	500	500
<b>SELECTMEN</b>					
E-2	Wages (5 PT)	15,000	15,000	15,000	15,000
E-3	Expense	8,448	8,524	8,524	8,524
<b>TOWN ADMINISTRATOR</b>					
GG-1	Wages (5.75 FTE)	533,277	563,357	607,051	607,051
GG-2	Expense	18,157	52,675	53,300	53,300
GG-3	Employee increment	40,000	40,000	40,000	40,000
GG-4	Emergency management expense	0	5,000	5,000	5,000
GG-5	Unemployment compensation	8,589	25,000	27,500	27,500
GG-6	Energy	374,554	442,453	442,453	442,453
GG-7	Legal	179,049	140,000	140,000	140,000
GG-8	Bargaining legal	19,088	20,000	20,000	20,000
GG-9	Training	19,751	30,000	30,000	30,000
GG-10	Medicare	295,694	310,980	320,309	320,309
GG-11	Health insurance	2,713,636	2,648,174	2,648,174	2,648,174
GG-12	Pension	3,869,087	4,254,828	4,296,440	4,296,440
GG-13	General insurance	722,703	934,643	1,028,108	1,028,108
<b>FINANCE COMMITTEE</b>					
GG-14	Wages	810	1,500	1,500	1,500
GG-15	Reserve	100,000	100,000	100,000	100,000

**CENTRAL PURCHASING**

GG-16	Purchasing	92,399	105,845	95,845	95,845
TOTAL WAGES		549,587	580,357	624,051	624,051
TOTAL EXPENSES		8,461,155	9,118,122	9,255,653	9,255,653
TOTAL ELECTED / GEN. GOVT.		9,010,742	9,698,479	9,879,704	9,879,704

Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
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**MUNICIPAL FINANCE**

**TOWN ACCOUNTANT**

MF-1	Wages (4 FTE)	311,995	348,600	371,377	371,377
MF-2	Expense	36,794	36,794	40,794	40,794

**ASSESSORS**

MF-3	Wages (4.5 FTE + Seasonal)	274,122	288,135	292,389	292,389
MF-4	Expense	101,705	108,590	108,590	108,590

**COLLECTOR/TREASURER**

MF-5	Wages (6 FTE)	329,795	359,026	361,261	361,261
MF-6	Expense	68,640	84,910	84,910	84,910

**TOWN CLERK**

MF-7	Wages (4.5 FTE)	240,338	273,287	278,589	278,589
MF-8	Expense	6,871	10,514	16,040	16,040

**ELECTION & REGISTRATION**

MF-9	Wages (Seasonal)	3,826	5,100	5,100	5,100
MF-10	Expense	64,577	77,500	77,500	77,500
TOTAL WAGES		1,160,076	1,274,148	1,308,716	1,308,716
TOTAL EXPENSES		278,587	318,308	327,834	327,834
TOTAL MUNICIPAL FINANCE		1,438,663	1,592,456	1,636,550	1,636,550

Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
<b>COMMUNITY DEVELOPMENT</b>					
CD-1	Wages (8 FTE)	408,349	394,918	453,454	453,454
CD-2	Expense	17,239	25,486	25,486	25,486
TOTAL WAGES		408,349	394,918	453,454	453,454
TOTAL EXPENSES		17,239	25,486	25,486	25,486
TOTAL COMM. DEVELOPMENT		425,588	420,404	478,940	478,940

Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
<b>COMMUNITY SERVICES</b>					
<b>GENERAL LIBRARY</b>					
CS-1	Wages (14 FTE)	582,017	616,168	636,629	636,629
CS-2	Expenses	196,514	194,233	194,233	194,233
<b>NATURAL RESOURCES</b>					
CS-3	Wages (8 FTE + Seasonal)	625,910	630,358	647,481	647,481
CS-4	Expense	133,952	144,046	144,046	144,046

**SENIOR SERVICES**

CS-5	Wages (7.3 FTE)	316,615	330,412	377,143	377,143
CS-6	Expense	93,011	100,321	100,871	100,871

**RECREATION**

CS-7	Wages (2 FTE + Seasonal)	325,467	347,369	435,643	435,643
CS-8	Expense	35,560	38,667	38,667	38,667
CS-9	Recreation Offset Wages (2 FTE)	388,536	487,013	441,685	441,685
CS-10	Recreation Offset Expenses	133,471	152,000	150,900	150,900

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TOTAL WAGES		2,238,545	2,411,320	2,538,581	2,538,581
TOTAL EXPENSES		592,508	634,729	628,717	628,717
TOTAL COMMUNITY SERVICES		2,831,053	3,046,049	3,167,298	3,167,298

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Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
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**PUBLIC SAFETY****POLICE**

	Overtime in wages line-item	(879,622)	(634,411)	(634,411)	(634,411)
PS-1	Wages (75 FTE + reserves)	6,969,989	7,170,932	7,171,734	7,171,734
PS-2	Training	127,235	100,000	100,000	100,000
PS-3	Proactive anti-crime team	100,784	100,000	100,000	100,000
PS-4	Expense	215,804	221,404	279,404	279,404

**FIRE**

PS-5	Overtime in wages line-item	(1,182,843)	(922,503)	(922,503)	(922,503)
PS-6	Wages (71 FTE + call FF)	6,611,153	6,775,263	7,199,986	7,199,986
PS-7	Training	81,578	100,000	100,000	100,000
PS-8	Expense	467,193	486,191	521,191	521,191

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TOTAL WAGES	13,890,739	14,246,195	14,671,720	14,671,720
TOTAL EXPENSES	682,997	707,595	800,595	800,595
TOTAL PUBLIC SAFETY	14,573,736	14,953,790	15,472,315	15,472,315

Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
<b>MUNICIPAL INSPECTIONS</b>					
<b>BUILDING INSPECTOR</b>					
MI-1	Wages (8 FTE)	489,136	505,019	529,028	529,028
MI-2	Expense	38,331	42,134	58,720	58,720
<b>BOARD OF HEALTH</b>					
MI-3	Wages (7 FTE)	455,011	448,752	498,283	498,283
MI-4	Expense	22,777	33,279	33,279	33,279
MI-5	Human Services	65,156	66,170	76,170	76,170
MI-6	Veterans – expenses	139,952	214,345	217,226	217,226
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	TOTAL WAGES	944,147	953,771	1,027,311	1,027,311
	TOTAL EXPENSES	266,216	355,928	385,395	385,395
	TOTAL MUNIC. INSPECTIONS	1,210,363	1,309,699	1,412,706	1,412,706
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Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21

**MUNICIPAL OPERATIONS**

**INFORMATION TECHNOLOGY**

MO-1	Wages (5 FTE + PT)	383,013	388,105	490,548	490,548
MO-2	Expense	352,634	453,049	487,592	487,592

TOTAL WAGES	383,013	388,105	490,548	490,548
TOTAL EXPENSES	352,634	453,049	487,592	487,592
TOTAL MUNICIPAL OPERATIONS	735,647	841,154	978,140	978,140

Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
<b>PUBLIC WORKS</b>					
<b>ADMINISTRATION/ENGINEERING</b>					
PW-1	Wages (3 FTE)	229,079	231,600	352,374	352,374
PW-2	Expenses	339,920	502,935	502,903	502,903
<b>HIGHWAY</b>					
PW-3	Wages (14 FTE)	737,316	810,603	823,764	823,764
PW-4	Expense	151,110	152,292	152,292	152,292
PW-5	Tree expense	10,098	10,302	60,000	60,000
PW-6	Greenhead fly	2,700	2,700	2,700	2,700
<b>SNOW &amp; ICE</b>					
PW-7	Wages (overtime)	64,802	41,000	41,000	41,000
PW-8	Expense	176,659	156,100	156,100	156,100
<b>FACILITIES</b>					
PW-9	Wages (2.5 FTE)	170,657	171,172	224,257	224,257
PW-10	Expense	99,420	126,286	126,286	126,286
<b>SANITATION</b>					
PW-11	Wages (11.3 FTE)	575,165	605,706	598,965	598,965

PW-12	Expense	2,658,093	2,710,075	3,060,744	3,060,744
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**PARKS**

PW-13	Wages (6 FTE + Seasonal)	464,703	486,379	512,573	512,573
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PW-14	Expense	131,086	144,259	143,674	143,674
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**CEMETERY**

PW-15	Wages (1 FTE + Seasonal)	100,397	94,401	108,956	108,956
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PW-16	Expense	35,831	40,374	40,374	40,374
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TOTAL WAGES		2,342,119	2,440,861	2,661,889	2,661,889
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TOTAL EXPENSES		3,604,917	3,845,323	4,245,073	4,245,073
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TOTAL PUBLIC WORKS		5,947,036	6,286,184	6,906,962	6,906,962
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Code		Actual FY19	Budget FY20	Request FY21	Fincom FY21
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**DEBT SERVICE**

DS-1	Regular Debt	322,874	242,823	262,493	262,493
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DS-2	Exempt Debt	1,003,759	710,952	379,395	379,395
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TOTAL DEBT		1,326,633	953,775	641,888	641,888
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Town-Wide		Actual FY19	Budget FY20	Request FY21	Fincom FY21
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GRAND TOTAL WAGES (all Depts.)		21,916,575	22,689,675	23,776,270	23,776,270
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GRAND TOTAL EXPENSES (all Depts.)		15,582,886	16,412,315	16,798,233	16,798,233
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<b>GRAND TOTAL ARTICLE 2</b>		<b>37,499,461</b>	<b>39,101,990</b>	<b>40,574,503</b>	<b>40,574,503</b>
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Selectmen Will Recommend from the Floor  
 Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #3:** To see what sums of money the Town will vote to raise, appropriate, or transfer from available funds to fund the operating budget of the Golf Enterprise, or take any action thereon:

	<b>Actual FY19</b>	<b>Budget FY20</b>	<b>Request FY21</b>
<b>GOLF</b>			
Wages (15 FTE + Seasonal)	1,440,521	1,511,845	1,573,535
Expense	2,286,208	2,172,973	2,262,785
<b>Total Golf Enterprise Operating Budget</b>	<b>3,726,729</b>	<b>3,684,818</b>	<b>3,836,320</b>
Funded from Golf Enterprise Revenues	3,645,364	3,535,692	3,611,320
Funded from General Fund – Free Cash	364,000		
Funded from Retained Earnings*		149,126	225,000
<b>Total Golf Enterprise Funding</b>	<b>4,009,364</b>	<b>3,684,818</b>	<b>3,836,320</b>

\* *Golf Enterprise reserves/retained earnings is \$277,727 as of 7/1/2019*

**EXPLANATION:** *This article is the operating budget for the golf division and funds employee salaries, benefits, and other golf operating expenses. This year’s budget is funded entirely by golf fees and other revenue generated by the golf division.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #4:** To see what sums of money the Town will vote to raise, appropriate or transfer from available funds to fund the operating budget of the Water Department for the purpose set forth in the Acts of 1928, Chapter 146, or under Massachusetts General Laws, Chapter 41, Section 69B, or to take any other action thereon:

	<b>Actual FY19</b>	<b>Budget FY 20</b>	<b>Request FY21</b>
<b>WATER</b>			
Wages (23.8 FTE)	1,557,863	1,574,477	1,482,268

Expense	1,702,728	2,465,615	2,402,743
Costs Appropriated in the General Fund	344,938	353,000	494,550
Total Water Department Operating Budget	3,300,653	4,393,092	4,379,561
Funded from Water Department Revenues*	4,392,308	4,393,092	4,379,561
Total Water Department Funding	4,392,308	4,393,092	4,379,561

\* Water Special Revenue Fund reserves is \$2,952,455 as of 7/1/2019.

**EXPLANATION:** This article is the operating budget for the water division, which funds employee salaries, benefits, and other water operating expenses. The water division operates as a distinct special revenue fund, much like the golf and septage operations, and is fully funded by water fees.

Selectmen Will Recommend from the Floor  
 Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #5:** To see what sums of money the Town will vote to raise, appropriate or transfer from available funds to fund the operating budget of the Septage Enterprise, or take any other action thereon:

	Actual FY19	Budget FY 20	Request FY 21
<b>SEPTAGE ENTERPRISE</b>			
Wages	65,374	51,760	0
Expense	1,833,366	2,001,305	2,284,503
Costs Appropriated in the General Fund	114,101	114,101	173,000
Total Septage Enterprise Operating Budget	2,012,840	2,167,166	2,457,503
Funded from Septage Enterprise Revenues	3,152,769	2,167,166	2,457,503
Funded from Septage Retained Earnings*			
Total Septage Enterprise Funding	3,152,769	2,167,166	2,457,503

*\*Septage Enterprise retained earnings is \$3,296,218 at 7/1/2019.*

**EXPLANATION:** *This is the operating budget for the Septage Treatment Plant which is treated as an enterprise fund. The costs are fully covered by fees charged to contractors that dispose of septic waste at the plant. This enterprise fund, like golf and water, is fully supported by fee revenue.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #6:** To see if the Town will vote to raise and appropriate or transfer from available funds and appropriate a sum of money to fund the Town of Yarmouth’s share of the Dennis-Yarmouth Regional School District budget for fiscal year 2021, or take any other action thereon.

<b>Actual FY 19</b>	<b>Actual FY 20</b>	<b>Certified FY 21</b>
\$33,973,474	\$35,298,335	\$35,930,816

**EXPLANATION:** *This article funds the Town’s share of the Dennis-Yarmouth Regional School District. The FY21 Assessment is based upon the revised regional agreement.*

Selectmen Will Recommend from the Floor (Dennis-Yarmouth Regional School District)  
Finance Committee Will Recommend from the Floor

**ARTICLE #7:** To see if the Town will vote to raise and appropriate or transfer from available funds and appropriate a sum of money to fund the Town of Yarmouth’s share of the Cape Cod Regional Technical High School District budget for fiscal year 2021, or take any other action thereon.

<b>Actual FY 19</b>	<b>Actual FY 20</b>	<b>Certified FY 21</b>
\$2,341,152	\$2,292,475	\$4,090,207

**EXPLANATION:** *This article funds the Town’s share of the Cape Cod Regional Technical High School District.*

Selectmen Will Recommend from the Floor (Cape Cod Regional Technical High School)  
Finance Committee Will Recommend from the Floor

**ARTICLE #8:** To see what sums of money the Town will vote to raise, or transfer from available funds, and appropriate to purchase and equip the following goods and services, or take any other action thereon:

<b>Division/Department</b>	<b>Item/Project</b>	<b>Amount Recommended</b>
<b>(N)=New, (R)=Replacement, (M)=Maintenance</b>		
<b><u>Routine Capital Budget from Tax Levy</u></b>		
Parks & Cemeteries	Peter Homer Park Softball Infield Renovation (M)	17,000
Parks & Cemeteries	Drinking Fountain Upgrades (N)	20,000
Parks & Cemeteries	Bunker and Field Rake (R)	12,000
Parks & Cemeteries	Front-End Loader (R)	18,750
Facilities	Various HVAC Repairs (M)	50,000
Facilities	Town Hall Entry Doors (R)	15,000
Recreation	Replace Beach Vehicle (R)	35,000
Highway	40 GVW Dump Truck (R)	190,000
IT	PC and Component Replacements (R)	55,000
IT	Network Infrastructure Replacement (R)	50,500
IT	Town-wide telephone system Replacement (R)	130,000
IT	Software and server licensing and applications (R)	140,000
Natural Resources	Replace 4x4 Pick Up J41 (R)	47,000
Natural Resources	Replace 4x4 Pick Up J46 (R)	49,000
Natural Resources	Permitting for Fish Reef Enhancement Project (N)	33,000
Natural Resources	Channel Dredging/Beach Nourishment (N)	50,000
Police	Vehicle Replacement (R)	120,000
Police	Radio System Upgrade (R)	200,000
Police	Firearms Shooting Trailer (N)	100,000
Police	Taser Replacement (R)	27,960

Schools	ME Small Roof Repairs (M)	50,000
Schools	DY High School Boiler Replacement (R)	91,895
	Subtotal Capital Budget from Tax Levy	<u>1,502,105</u>

**Roadway Improvements from Tax Levy**

Highway	Roadway Improvements (M)	1,307,556
DPW Engineering	Storm Water Improvements (M)	225,000
	Subtotal Roadway Improvements from Tax Levy	<u>1,532,556</u>

**Waste Management Capital from Recycling Fund**

Waste Management	Replace Sanitation Vehicle (R)	43,000
Waste Management	C&D Pad – Engineering/Design/ Permitting	50,000
	Subtotal Waste Management Capital from Recycling Fund	<u>93,000</u>

**Golf Department from Golf Enterprise Retained Earnings**

Golf	Replace Dump Truck (R)	50,000
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**Fire Department Routine Capital From Fire Receipts Reserved for Appropriation**

Fire	Replace 2009 Ambulance 53 (R)	300,000
Fire	Replace Ford Escape Car 59 (R)	55,000
Fire	Replace Station 1 Generator (R)	40,000
Fire	Replace 2016 Pierce Pumper (R)	*100,000
	Subtotal Fire Department Capital Requests	<u>495,000</u>

GRAND TOTAL ARTICLE 8 APPROPRIATION 3,672,661

Amount Funded From Fire Receipts Reserved For Appropriation 495,000

Amount Funded from Recycling Fund 93,000

Amount Funded from Golf Enterprise Fund	50,000
Amount Funded From Tax Levy	3,034,661
<b>TOTAL ARTICLE 8 FUNDING SOURCES</b>	<b>3,672,661</b>

*\*Repayment of loan to Stabilization Fund*

**EXPLANATION:** *Each year the Capital Budget Committee (CBC), appointed by the Finance Committee, reviews and evaluates requests for capital projects and equipment submitted by all Town departments. This article contains lists of recommended expenditures for: routine capital projects, equipment and vehicles funded by taxes; roadway and storm water improvements funded by taxes; waste management capital funded by recycling revenue; Golf Course equipment funded by Golf revenues and retained earnings; and, fire department vehicles and life safety equipment funded by ambulance revenue.*

Selectmen Will Recommend from the Floor  
 Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #9:** To see if the Town will vote to raise, appropriate, and transfer from available funds in the DPW Water Division Water Fund balance, a sum of funds for capital expenses of the water department, pursuant to the Acts of 1928, Chapter 146, or under Mass. General Laws, Chapter 41, Section 69B, as follows:

<b>Item/Project</b>	<b>Amount Recommended</b>
Well Redevelopment (M)	205,000
Facilities Improvement (M)	1,300,000
Water Tank Painting (M)	215,000
Distribution System Improvements (R)	250,000
Production System Hardware (R)	100,000
<b>Total Water Department Capital Requests</b>	<b>2,120,000</b>

**EXPLANATION:** *This article includes capital funding for the water department to maintain water department plant, wellfield, and equipment required to deliver safe clean drinking water. Funds for these capital items come from the water reserve account which are funds derived from water fees.*

Selectmen Will Recommend from the Floor  
 Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #10:** To see if the Town will vote to transfer \$1,345,000 from Free Cash and \$250,000 from the FEMA Disaster Reimbursement Fund for a total of \$1,595,000 and appropriate these sums for the following amounts and purposes indicated, or act on anything relative thereto:

Item/Project	Amount Recommended
Town Hall Attic Insulation (FEMA)	50,000
Bridgewater University Building – Roof Repair (FEMA)	200,000
Town-wide Vehicle and Equipment Maintenance (FC)	130,000
Police Department Investigation System (FC)	20,000
Police Department Technology, Tablets & Phones (FC)	10,000
Police Department Furniture Replacement (FC)	14,000
Invasive Species Management (FC)	36,000
Matching Funds for Grant Applications (FC)	32,000
Historic Property Maintenance (FC)	25,000
Media Operations Improvement (FC)	50,000
Electric Vehicle & Charging Station expansion (FC)	30,000
Substance Abuse Awareness (FC)	25,000
Nursing Services Programs & Efforts (FC)	10,000
OSHA Training & Compliance (FC)	50,000
Town Clerk Voting Tabulators (FC)	56,000
Town Clerk Voting Booths (FC)	20,000
Wastewater Planning (FC)	200,000
Tagged Shark Monitoring Buoy (FC)	7,000
Cape Cod Bay Scallop Propagation (FC)	7,000
Fire Department Roof Repairs (FC)	15,000
Flax Pond Boating Program Kayaks (FC)	3,000
Local Comprehensive Plan Development (FC)	60,000
Transfer to Other Post-Employment Benefits Fund (FC)	545,000

Total \$ 1,595,000

**EXPLANATION:** *This article provides one-time funding for the purposes listed above. This spending is from surplus or unspent funds and is not included in the operating or capital budgets. These one-time funding purposes do not increase the operating budget, nor do they require the hiring of additional staff.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #11:** To see if the Town will vote to raise and appropriate an amount of money to pay for salary and wage adjustments for FY21 as a result of the settlement of collective bargaining agreements and for non-union personnel.

**EXPLANATION:** *This article provides funding for settled or to be settled collective bargaining agreements. The Town strives to settle contracts that are fair to the employees and allows the Town to stay within the constraints of proposition 2 ½.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #12:** To see if the Town will vote to raise and appropriate \$379,279 to fund the Tourism Revenue Preservation Fund as authorized by Chapter 338 of the Acts of 2006, or take any other action relative thereto.

**EXPLANATION:** *The Tourism Revenue Preservation Fund was established by Special Legislation in 2006 and is funded by Rooms and Meals Tax receipts. Funding is overseen by the Community and Economic Development Committee and is used to stimulate the local tourism economy through physical improvements, marketing and special events.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #13:** To see if the Town will accept the provisions of Chapter 44, Section 53F ½ of the Massachusetts General Laws to establish a Water Resources Enterprise Fund effective July 1, 2020. Such fund to account for the activities of the Town's wastewater, storm water, septage plant and water department operations.

Furthermore, all assets, liabilities, equity, and accounts, of the Septage Enterprise Fund previously established under MGL Chapter 44, Section 53F ½ shall be transferred to the Water Resources Enterprise Fund, effective July 1, 2020, and the acceptance of this legislation for the Septage Enterprise Fund is revoked as of July 1, 2020.

Furthermore, all assets, liabilities, equity, and accounts, of the Water Surplus Fund, previously established under MGL Chapter 41, Section 69B shall be transferred to the Water Resources Enterprise Fund, effective July 1, 2020, and the acceptance of this legislation for the Water Surplus Fund is revoked as of July 1, 2020.

Or, to act on anything relevant, thereto.

**EXPLANATION:** *As part of the financing plan for the Town’s planned wastewater activities, the Water Resource Advisory Committee recommends the Town create an enterprise fund to account for the receipts and disbursements associated with these plans – similar to how we currently account for our water and septage plant operations. Enterprise Fund accounting separates an activity from the General Fund of the Town and enables a community to identify the costs of providing a service and establish rates to cover those costs; allows payments for direct and indirect costs; and retain any surplus from activities in the separate fund.*

*In addition, this article revokes previous Town Meeting authorizations establishing the water and septage funds and merges these activities into the consolidated Water Resources Enterprise Fund to help streamline administration of all of these related activities. Each activity would still be accounted for separately within the overall Enterprise Fund structure.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #14:** To see if the Town will vote to raise and appropriate \$625,000, and transfer from Septage Retained Earnings \$500,000, for a total appropriation of \$1,125,000 to transfer to a Wastewater Capital Reserve account, or to act on anything relative thereto.

**EXPLANATION:** *The amounts in this article represent funding sources identified to begin funding of our wastewater financing plan. \$500,000 of the appropriation is from new short-term rental revenues that are now being collected from third-party (private) rentals. \$125,000 is funded from energy savings from newly installed and to be installed solar PV arrays. These amounts will be deposited into a wastewater capital reserve that will be set aside to pay for future debt service associated with our wastewater project.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #15:** To see if the Town will vote to accept Massachusetts General Law Chapter 40, Section 39M, which establishes a special “Municipal Water Infrastructure Investment Fund” that may be appropriated and spent for maintenance, improvements and investments to municipal drinking, wastewater and storm water infrastructure assets, and further to approve a property tax

surcharge in the amount of .78 percent of the taxes assessed annually on real property, which will be dedicated to the fund, the surcharge to be imposed starting with taxes assessed for fiscal year 2021, beginning on July 1, 2020;

And furthermore, to assist in offsetting this additional surcharge in fiscal year 2021, to transfer from Free Cash \$500,000 to the Town's general fund to reduce the property tax levy;

And provided that such acceptance, surcharge and free cash transfer is contingent upon the passage of the ballot question adopting MGL Chapter 40, Section 39M; or take any other action relative thereto.

**EXPLANATION:** *The Water Resource Advisory Committee recommends the adoption of this fund as a mechanism to pay the debt service costs of implementing the Town's wastewater plans. Adopting this fund would result in a .78% property tax surcharge, similar to the Community Preservation Act property tax surcharge, which is now at 3%. To be effective, adoption of this fund also requires a majority vote at the Town election.*

*By law, this fund is separate and distinct from other town funds and operating budget, and, can only be used for maintenance, improvements and investments to municipal drinking water, wastewater and storm water assets. All proceeds from the adopted surcharge are deposit directly into the fund and can only be utilized by further appropriation by a majority vote of Town Meeting.*

*The amount of this surcharge generates approximately \$500,000 of additional revenue. To offset this impact to taxpayers, this article also proposes to contribute \$500,000 of Free Cash to the General Fund in fiscal year 2021, resulting in no overall increase in the amount of property tax or surcharge charged to taxpayers. For years beyond fiscal year 2021, this surcharge is offset by a reduction of the surcharge charged by the Community Preservation Act proposed in Article 16. If this Article and Article 16 were adopted, the result would be no overall impact on the level of taxation levied to Yarmouth taxpayers.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #16:** To see if the Town will adopt the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for \$100,000 of the value of each taxable parcel of residential real property, starting with taxes assessed for fiscal year 2022, beginning July 1, 2021. Or to take any other action relative thereto.

**EXPLANATION:** *This article proposes to adopt a \$100,000 "residential exemption" for the Community Preservation Act surcharge. The first \$100,000 of residential property values would not be included in the calculation of the CPA surcharge, resulting in a decrease of the total amount assessed to Yarmouth taxpayers by approximately \$500,000.*

*The intent of this exemption is to reduce the overall property tax surcharge assessed to taxpayers for CPA in order to offset the impact of adopting the surcharge associated with the Municipal*

*Water Infrastructure Investment Fund in Article 15. If both Articles 15 and 16 were to pass, the effect would be no overall increase in the amount of property tax surcharges assessed to taxpayers.*

*To be effective, adoption of this exemption also requires a majority vote at the Town election. Due to ballot question timing requirements, the exemption cannot be implemented until fiscal year 2022.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #17:** To see if the Town will vote pursuant to Chapter 88 of the Acts of 2019 to approve an Agreement among the Towns of Dennis, Harwich, and Yarmouth for the establishment of a three town wastewater district to be known as the DHY Clean Waters Community Partnership, a copy of said agreement is on file with the Town Clerks office; it being understood that by approving said agreement the Town will be financially responsible for its apportioned share of the costs for permitting, design, and construction of a wastewater treatment facility, effluent recharge facilities and related infrastructure as well as the Town’s apportioned share of the annual operation and maintenance cost of said facilities.

**EXPLANATION:** *This article is to see whether the Town would like to participate in the DHY Clean Waters Community Partnership. Town Meeting previously approved Special Legislation (Chapter 88 of the Acts of 2019) that allowed for the creation of the partnership, subject to the creation and approval of an operating agreement among the three towns of Dennis, Yarmouth, and Harwich. The purpose of the partnership is to build and operating a centralized wastewater treatment plant located in Dennis and effluent recharge facilities in each of the three towns. The Towns have drafted an operating agreement and a vote to approve participation in the partnership would commit the Town of Yarmouth to participating in the partnership, subject to affirmative votes in both Dennis and Harwich. Once approved in each of the three towns, the partnership is formed, Commissioners are appointed, and the process of permitting and design of the regional facilities may begin.*

*Yarmouth’s Water Resource Advisory Committee recommends this regional approach to resolving our wastewater needs due to the operating efficiencies and cost savings achieved through economies of scale, as well as other financial and operational benefits. Additional detailed information pertaining to this article is available separately on the Town’s website.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE #18:** To see if the Town will vote to raise and appropriate, borrow and/or transfer from available funds the sum of Five Million Two Hundred and Fifty Thousand Dollars (\$5,250,000), for the purpose of design, engineering, permitting and construction related to coordinating with Massachusetts Department of Transportation road work projects and Phase 1 of the towns proposed wastewater collection system, including all expenses incidental and related

thereto; provided that in accordance with Chapter 44, Section 20 of the General Laws, the premium received by the Town upon the sale of any bonds or notes thereunder, less any such premium applied to the payment of the costs of issuance of such bond or notes, may be applied to pay project costs and the amount authorized to be borrowed for each such project shall be reduced by the amount of any such premium so applied; and that to meet this appropriation the Treasurer with the approval of the Board of Selectmen is authorized to borrow up to this amount under G.L. c.44 or any other enabling authority; or take any other action relative thereto.

**EXPLANATION:** *This article allows the Town to proceed with the design, engineering and permitting of Phase 1 of the proposed wastewater collection system. This authorization also allows the town to coordinate some construction activities with Route 28 road work projects being undertaken by the Massachusetts Department of Transportation. Coordinating these activities is an opportunity for the Town to save significantly by avoiding additional paving and associated costs that will be funded by the State as part of their overall project. Furthermore, working in conjunction with the MA DOT allows the Town to move forward with its Phase 1 collection system construction in a timely manner by avoiding a five year construction moratorium on parts of Route 28 that will be in place once the State completes work on their projects.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #19:** To see if the Town will vote to rescind the following amounts of unissued borrowing:

Article 16, Annual Town Meeting of May 2016 - School Feasibility Study \$750,000

**Requires 2/3rds vote**

**EXPLANATION:** *This is a housekeeping article to remove debt authorization from the Town's books. The Massachusetts School Building Authority (MSBA) requires that the municipality have borrowing authority for the full amount of the Feasibility Study even though the MSBA will reimburse a portion of the study.*

*Instead of borrowing for the study, the Town used free cash for the portion that municipalities owed. The rest of the study was paid for by the MSBA. The borrowing authorization is no longer needed, cannot be used for another purpose and would be calculated in the outstanding debt the Town can issue by the rating agencies. Rescinding the borrowing is good for the Town's Bond Rating*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE #20: CPA FY21 Estimated Revenue**

To see if the Town will vote to appropriate the following sums of money from the FY 21 estimated annual revenues of the Yarmouth Community Preservation Act Fund as required by G.L. c.149, §298 of the Acts of 2004:

Appropriation	FY21 (3% Surcharge)	FY21 (3% w/ \$100k Exemption)
Community Housing Reserve	\$ 230,690	\$170,690
Historic Preservation Reserve	\$ 230,690	\$170,690
Open Space Reserve	\$ 230,690	\$170,690
Operating Expenses	\$ 98,000	\$ 85,345

**EXPLANATION:** *This article is a required housekeeping article that appears at every annual town meeting. As required under the Community Preservation Act, a minimum of 10% of CPA revenues must be set aside for each of the following purposes: community housing, historic preservation, and open space. Additionally, 5% of the total revenue is set aside for operating expenses.*

*FY21 CPA Revenues are estimated at \$2.3 million (\$1.7 million) and are based on an estimated property tax levy of \$64 million. Figures include an estimated 20% match of \$384,000 (\$284,000) including supplemental match distributions made for Communities that have adopted the 3% surcharge.*

Selectmen Will Recommend from the Floor  
 Finance Committee Will Recommend from the Floor (Community Preservation Committee)

**ARTICLE #21: Municipal Affordable Housing Trust**

To see if the Town will vote to transfer and appropriate for community housing purposes the sum of \$200,000 from the Community Preservation Act Housing Reserve Fund to the Town of Yarmouth Municipal Affordable Housing Trust created under G.L. c.44, §55C to create, preserve, and support affordable housing for households at or below 80% of the Area Median Income.

**Requires 2/3rds vote**

**EXPLANATION:** *This article appropriates CPA funds to the Yarmouth Municipal Affordable Housing Trust for community housing projects supported by the Housing Trust. To date, the Trust has created 137 housing units, preserved 7 more, and supported another 30. Yarmouth now has 599 affordable housing units, which is approximately 5% of the Town’s year-round housing stock*

Selectmen Will Recommend from the Floor  
 Finance Committee Will Recommend from the Floor (Community Preservation Committee)

**ARTICLE 22: CPA Affordable Housing Project**

To see if the Town will vote to transfer and appropriate for community housing purposes the sum of \$80,000 from the Community Preservation Act Housing Reserve Fund to the Harwich Ecumenical Council for Housing, Inc. to preserve homes with repairs for income-eligible homeowners.

**EXPLANATION:** *This article appropriates \$80,000 in CPA funds for community housing projects with the Harwich Ecumenical Council for Housing (HECH) Emergency Loan Program to preserve homes for low-income residents with both financial and technical assistance.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor (Community Preservation Committee)

**ARTICLE 23: CPA Historic Resource Projects**

To see if the Town will vote to transfer and appropriate for historic preservation purposes the following sums of money from the Community Preservation Act Historic Reserve Fund:

Item	Appropriate To	Purpose	Amount and CPA Funding Source	Total
A	Historical Society of Old Yarmouth	To preserve and protect grave markers in Ancient Cemetery from deterioration or destruction	\$13,000 Historic Reserve	\$13,000
B	Yarmouth Historical Commission	To create a reconnaissance survey to identify potential archeological sites in Yarmouth.	\$26,000 Historic Reserve	\$26,000
C	Historic New England	To produce an archeological study that will support future construction work.	\$11,100 Historic Reserve	\$11,100
D	St. David's Episcopal Church	Completion of the historic preservation of the Amos Baker House by restoring second floor dormer, windows, trim, insulation, and siding.	\$15,500 Historic Reserve	\$15,500
TOTAL				\$65,600

**EXPLANATION:**

**Project A** would provide \$13,000 to the Historical Society of Old Yarmouth to preserve and protect grave markers at Ancient Cemetery from destruction and deterioration. CPC funds will be used to cover costs of field equipment and supplies utilized by trained volunteers as well as record storage and information to be made available online to the public. Efforts are coordinated with the Town’s Cemetery Division.

**Project B** would provide \$26,000 to the Yarmouth Historical Commission to create a reconnaissance survey to identify potential archeological sites in Yarmouth. This project will provide the Town with a sensitivity maps showing relevant sites and surveyed areas as well as a written inventory of potential archaeological sites. Additionally, recommendations will be made regarding how archaeological resources may be preserved and how to mitigate impacts to resources from various development projects.

**Project C** would provide funds to produce an archeological study that will support future construction work that will include new museum space at the Winslow Crocker House as well as a Visitor Center for the northside of Town that will include additional parking and restrooms.

**Project D** would provide \$15,500 to the St. David’s Episcopal Church to complete the historic preservation of the Amos Baker House by restoring second floor dormer, windows, trim, insulation, and siding.

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Community Preservation Committee)

**ARTICLE 24: CPA Recreation Project**

To see if the Town will vote to transfer and appropriate for recreational purposes the sum of \$28,000 from the Community Preservation Act Fund Undesignated Reserve to the Yarmouth Department of Public Works to fund removal and replacement of the existing north-side backstop fence at the Little League Field.

**EXPLANATION:** *This article appropriates \$28,000 in CPA funds for removal and replacement of the existing north-side backstop of the Little League field. This is the backstop closest to Sylvan Way. The project will be overseen by the Yarmouth DPW and is supported by the Yarmouth Little League.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Community Preservation Committee)

**ARTICLE 25: Land Disposition**

To see if the Town will vote to authorize the Board of Selectmen to lease for terms up to thirty (30) years, or to sell, transfer or otherwise convey a fee interest or easement, on terms and

conditions acceptable to the Board of Selectmen, in up to 500 square feet of the land at 220 South Street (Assessor's Parcel 26.116), as shown on a plan on file with the Board of Selectmen.

**Requires 2/3rds vote**

**EXPLANATION:** *This article would permit the Board of Selectmen to dispose by lease, easement or sale, a small portion of land currently part of Smugglers Beach. A disposition would potentially resolve a long-term encroachment in a mutually beneficial manner whereby use could continue, but with the Town receiving some compensation. This disposition is subject to MGL Chapter 30B in order to provide for fair and open process.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE 26:** To see if the Town will vote to authorize Assessors contracts with vendors for valuation services for a period of up to 5 years as authorized under Massachusetts General Law chapter 30B.

**EXPLANATION:** *With the passage of the "Act to Modernize Municipal Finance and Government," in 2016, cities and towns in the Commonwealth have changed to a 5-year valuation cycle. However, to avoid DOR scheduling conflicts, Yarmouth's scheduled FY 2019 valuation certification year was deferred until FY 2021.*

*Prior to passage of the Municipal Modernization Act, the valuation cycle was 3 years and any valuation consulting contracts reflected this cycle.*

*The MA DOR, Bureau of Local Assessment certification process consists of continuous, data quality review, statistical ratio studies review, and valuation review to ensure that proper appraisal methodology was utilized while uniformly and equitably applied to all property.*

*A valuation program is based on the mass appraisal process utilizing the components of an acceptable mass appraisal system. The mass appraisal system is comprised of data management, valuation, performance analysis, administration and appeals.*

*It is these various statutory requirements of the valuation certification process that valuation consultants help guide cities and towns through.*

*For continuity, efficiency and economic reasons, the Assessor's office would like to continue to execute a contract pursuant the provisions of MA G.L chapter 30B to mirror the 5 year valuation cycle.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Board of Selectmen)

**ARTICLE 27:** To see if the Town will vote to accept the provisions of General Laws Chapter 59, §5, Clause Twenty-Second H, as amended by Section 15 of Chapter 218 of the Acts of 2018,

which authorizes the real estate tax exemptions available to certain surviving parents or guardians of veterans.

**EXPLANATION:** *This article would establish a full real estate tax exemption for qualifying Gold Star parents or guardians of soldiers and sailors, members of the National Guard and veterans who were active in the military and killed in the line of duty or suffered an injury or illness that was a proximate cause of their death or are missing in action with a presumptive finding of death as a result of active duty service; provided that the real estate is occupied as the domicile of the surviving parents or guardians; and provided further, that the surviving parents or guardians shall have been domiciled in the commonwealth for the 5 consecutive years immediately before the date of filing for an exemption pursuant to this clause or the soldier or sailor, member of the National Guard or veteran was domiciled in the commonwealth for not less than 6 months before entering service.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE 28:** To see if the Town will vote to authorize the Board of Selectmen to lease for terms up to thirty (30) years, on terms acceptable to the Board of Selectmen, portions of, one or more of the town-owned parcels listed below, such lease presently intended for solar facilities. Land use under any said lease is subject to approval of the appropriate Federal, State and Local land use regulatory agencies.

Line #	Assessors Map/Lot	Location	Street
1	86/11	Sanitation Drop-off Facility	597 Forest Road
2	55/26	Police Department HQ	340 Higgins Crowell Road
3	45.88	Fire Station 3	92 Town Brook Road
4	87/204	Senior Center Facility	528 Forest Road
5	59/180	Town Hall	1146 Route 28
6	45/90.1	New DPW Facility	507 Buck Island Road
7	48/1	Water Department	99 Buck Island Road

**Requires 2/3rds vote**

**EXPLANATION:** *The Town is actively pursuing opportunities to implement solar pv installations, including ground mounted panels and solar canopies, where appropriate. The listed sites present opportunities on town-owned parcels that may be attractive for an installation. State law prohibits contract terms in excess of three (3) years, unless specifically authorized by Town*

*Meeting. This article provides the Board of Selectmen with the flexibility to reach agreements with potential vendors who are often seeking long-term commitments (more than 3 years) given the level of investment involved in solar PV projects.*

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Board of Selectmen)

**ARTICLE 29:** To see if the Town will vote to adopt the following as a general by-law and to insert it into the Code of the Town of Yarmouth, Massachusetts.

Section 1. Sale of Single-use Plastic Water Bottles

Effective on September 1, 2021, it shall be unlawful to sell non-carbonated, unflavored drinking water in single-use plastic bottles of less than one gallon in the Town of Yarmouth. Enforcement of this regulation will begin September 1, 2021.

Section 2. Definitions

A single-use plastic bottle is a beverage container made from any type of plastic resin.

Section 3. Exemptions

Sales or distribution of non-carbonated, unflavored drinking water in single-use plastic bottles occurring subsequent to a declaration of emergency (by the Emergency Management Director or other duly authorized Town, County, Commonwealth or Federal official) affecting the availability and/or quality of drinking water to residents of the Town shall be exempt from this bylaw until seven days after the declaration has ended.

Section 4. Enforcement

Enforcement of this article shall be the responsibility of the Town Manager or his/her designee. The Town Manager shall determine the inspection process to be followed, incorporating the process into other Town duties as appropriate.

Any establishment conducting sales in violation of this article shall be subject to a non-criminal disposition fine as specified in G. L. c. 40 § 21D. The following penalties apply:

- First violation: Written warning
- Second violation: \$150 fine
- Third and subsequent violations: \$300
- Each day a violation continues constitutes a separate violation, incurring additional fines. Any such fines collected shall be payable to the Town of Yarmouth.

Selectmen Will Recommend from the Floor

Finance Committee Will Recommend from the Floor

(Petitioner)

**ARTICLE 30:** To see if the Town will vote to adopt the following as a general by-law and to insert it into the Code of the Town of Yarmouth, Massachusetts as chapter 74, §74-1:

The Town of Yarmouth recognizes that the climate emergency, driven by human activity including energy consumption and land use practices and leading to global warming, rising seas, deadly

storms, dangerous heat waves, acidifying oceans, and melting ice sheets, poses an imminent threat to the health, safety and economic security of the residents of the Town. The Town of Yarmouth therefore adopts as its policy the objective of reducing net greenhouse gas emissions from human activity within and by the Town to zero at the earliest technically and economically feasible time, and directs that all officers and departments of the Town take such measures within the scope of their respective responsibilities and authority as may be necessary and prudent to facilitate such policy and objective.

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Petitioner)

**ARTICLE 31:** To see if the Town will vote to authorize the Board of Selectmen and the Town Administrator to investigate and report on the feasibility of the conversion and re-purposing of the Links Course, formerly the site of the Town Landfill, to a Solar Farm whose potential income would be applied to offsetting the capital expenditures of the Town, as applied to Capital projects including Golf, Wastewater System, New DY Middle School, , New Town Library, and other future Capital projects, as well as previously approved debt exclusions for the DPW Building and Cape Tech construction.

**EXPLANATION:** *The article is proposed in view of reports of little or minimal use of the Links Course as well as the recent report of the National Golf Association citing lowered conditions and needed infrastructure repairs. Agreements or special conditions which established the Links Course are administrative and as such may be altered from time to time as necessary. Any funds or financial obligations by the Town have the potential of being offset by the Solar Proposal. The principle benefit of establishing a Solar Farm at this site is the generation potential of an estimated 28 to 30 Megawatts. Conservative estimates have shown that benefit may exceed \$9 to \$10 million, annually. The Capital obligations facing the Town will, by necessity, fall upon property tax assessments for payment. The Solar Farm represents a different means of meeting those obligations.*

Selectmen Will Recommend from the Floor  
Finance Committee Will Recommend from the Floor (Petitioner)

AND, also, in the name of the Commonwealth, you are hereby directed to serve this Warrant by posting attested copies thereof at four public places, one on the north side of Town and three on the south side and also by publication in the Yarmouth Register at least seven days before the time of holding said meeting, as aforesaid.

Hereof, fail not, and make return of this Warrant with your doings thereon at the time place of said meeting. Given under our hands and the seal of the Town of Yarmouth, hereto affixed this 16th of March 2020.

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Michael Stone, Chairman

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Mark Forest, Vice-Chairman

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Erik J. Tolley

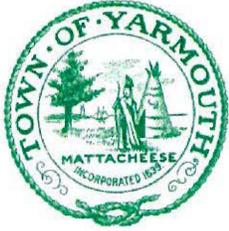
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Tracy Post

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Norman Holcomb

**Town of Yarmouth Board of Selectmen**



# TOWN OF YARMOUTH

1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-4492  
Telephone (508) 398-2231, Ext. 1277, Fax (508) 398-2365

Department of  
Community  
Development

## MEMO

To: Michael Stone, Chairman - Board of Selectmen  
From: Karen Greene, Director of Community Development  
Date: April 22, 2020  
Re: 275 Route 28 – Conservation Restriction

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Attached, for your review and consideration is the Conservation Restriction for 275 Route 28 (the former Yankee Village).

Please note, this Conservation Restriction was drafted in collaboration with Mark Robinson from the Compact of Cape Cod Conservation Trusts and Town Counsel, and has been reviewed and approved as drafted by the State as is standard process before signatures are obtained. The Yarmouth Conservation Trust has graciously agreed to hold this restriction.

As stated in the Conservation Restriction and as voted at Town Meeting, the purpose of this Conservation Restriction is *to assure that the Premises will be maintained in perpetuity for recreation purposes, in an open and scenic condition, and to prevent any use or change that would impair or interfere with its open space and recreation values*. In addition to protecting the parcel in perpetuity for the reasons stated, a Conservation Restriction is required to meet the requirements for acquisitions funded through Community Preservation Act Funds as well as the Commonwealth's Parkland Acquisitions and Renovations for Communities (PARC) Grant program.

I respectfully request that the Board, acting in its capacity as Park Commissioners of the Town of Yarmouth, vote to approve and grant the foregoing Conservation Restriction to the Yarmouth Conservation Trust pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws. For your convenience, I have attached a draft motion to this memo.

Subsequent to the Board's vote, I further request that Selectmen plan to visit the Town Clerk's office to sign the document so that they may complete the notary information. We need the majority of the Board's signatures at minimum. I will work with the Town Clerk's office to schedule these appointments. Please have each Selectmen contact me by email with their availability. Once signatures have been collected, I will work with Mr. Robinson to collect the signatures from the Yarmouth Conservation Trust and submit a complete package to the State.

Cc: Mark Robinson, Compact of Cape Cod Conservation Trusts

**Motion:** I hereby move that the Board of Selectmen approve and grant a Conservation Restriction for nominal consideration to the Yarmouth Conservation Trust for the property located at 275 Route 28 in the form attached hereto, in compliance with the terms of the PARC Project Agreement dated June 10, 2019 between the Town and the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Energy and Environmental Affairs, and as authorized by Article 22 of the May 5, 2018 Annual Town Meeting.

**Second:** \_\_\_\_\_

Vote: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Secretary Signature: \_\_\_\_\_

True and Accurate Copy: \_\_\_\_\_  
Town Clerk

**GRANTOR:** Town of Yarmouth

**GRANTEE:** Yarmouth Conservation Trust

**ADDRESS OF**

**PREMISES:** 275 Main Street, Route 28, West Yarmouth, MA

**FOR**

**GRANTOR'S**

**TITLE SEE:** Barnstable County Registry of Deeds  
at Book 32664, Page 305.

**CONSERVATION RESTRICTION**

**TOWN OF YARMOUTH**, a Massachusetts municipal corporation with offices located at 1146 Route 28, South Yarmouth, Barnstable County, Massachusetts 02664, acting in its capacity as Park Commissioners of the Town of Yarmouth, being the sole owner and constituting all of the owner(s), for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants, with QUITCLAIM COVENANTS, to Sharon K. Donegan, Donald F. Henderson, Elizabeth G. Manning, Richard F. Martin, and Christine Marzigliano, as **TRUSTEES OF THE YARMOUTH CONSERVATION TRUST**, under a Declaration of Trust dated March 3, 1986 and recorded with the Barnstable County Registry of Deeds in Book 5301, Page 44, as amended, and filed with the Barnstable County Registry District of the Land Court as Document No. 633110 on Land Court Certificate No. 136277, as amended, with a mailing address of P.O. Box 376, Yarmouth Port, Massachusetts 02675, their permitted successors and assigns ("Grantee"), for nominal consideration of One and 00/100 Dollar (\$1.00), **IN PERPETUITY AND EXCLUSIVELY FOR RECREATION PURPOSES**, the following Conservation Restriction on land located in West Yarmouth containing 66,550 square feet, more or less ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B both of which are incorporated herein and attached hereto.

**I. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for recreation purposes, in an open and scenic

condition, and to prevent any use or change that would impair or interfere with its open space and recreation values (“open space and recreation values”).

The Premises was acquired using M.G.L. c. 44B Community Preservation Act funds, and a copy of the Town Meeting Vote authorizing the use of such funds for such purpose is attached hereto as Exhibit C.

The Premises was acquired utilizing, in part, assistance from the Parkland Acquisitions and Renovations for Communities program pursuant to Section 2A of Chapter 286 of the Acts of 2014 (PARC) and therefore is subject to a Project Agreement (hereinafter the PARC Project Agreement) recorded at the Barnstable County Registry of Deeds at Book 32759 Page 225.

**The open space and recreation values include the following:**

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Lewis Bay, its tidelands and marshlands, and the protection of the Premises will enhance the open space value of these and nearby lands. The Premises abuts land already acquired and restored to an open and park-like condition by the Town, including Chase Brook Park and Mill Creek Park.
- Flood Plain Protection. The Premises borders the Mill Creek estuary and lies within the AE13 special flood hazard area and the Coastal A Zone, the zone subject to wave heights between 1.5 and 3 feet, making it vulnerable to moving water, overwash, breaking waves, storm surge, and wave run-up during a 100-year storm, all of which cause erosion, and property damage. The restoration and protection of this property will reduce storm and flood related impacts to this and neighboring properties.
- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, education, and nature study. The preservation of the Premises will create a continuous 5.67-acre area of open space of high scenic and water view value that will provide close-to-home passive recreational opportunities to Yarmouth residents and visitors.
- BioMap2. The Premises partially falls within an over 40,000-acre area of Critical Natural Landscape as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. Critical Natural Landscape identifies intact landscapes in Massachusetts that are better able to support ecological processes and disturbance regimes, and a wide array of species and habitats over long time frames. The Critical Natural Landscapes identified are Tern Foraging Area and Coastal Adaptation Area with high potential to support inland migration of salt marsh and other coastal habitats over the coming century.

- Water Quality Protection. The Premises lies within an environmentally sensitive area, on the edge of Chase Brook and the Mill Creek salt marsh estuary. Restoration and preservation of the property will improve water quality in the Mill Creek and Lewis Bay waterbodies, as well as bringing improvements to fisheries and wildlife habitat. Undeveloped land, free of septic systems and stormwater discharge, close to an embayment has a significantly beneficial impact on water quality through reduction of nitrogen and other inputs to the embayment.
- Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy. The Town of Yarmouth Open Space and Recreation Plan (2015 update) includes goals of protecting unique natural resources within the community and acquiring suitable additional properties to expand the amount of open space and conservation land.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, sign, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated on-site or off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired or within designated parking areas;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety)

which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

- (8) The use of the Premises for business, residential or industrial use, for more than *de minimis* commercial recreation or for any municipal use other than park and recreation purposes;
- (9) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its open space and recreational values.

#### **B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the open space and recreation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the open condition of the Premises, including water views, trails and meadows;
- (2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Wildlife Habitat Improvement. With the prior written approval of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (4) Archaeological Investigations. The right to conduct archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historic Commission (“MHC”) State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee.

Activities detrimental to archeological and historic resources, including but not limited to earth moving and the alteration of historic stone walls/cellar holes/features, shall not be deemed to be detrimental to archeological and historic resources if a description of the proposed activity and its location is submitted in writing (e.g., on a Project Notification Form) with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to MHC and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and

Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation on the Premises, including metal detecting, digging, or artifact collecting, without approval of the MHC State Archaeologist (or appropriate successor official), and shall promptly report any such prohibited activity to the MHC State Archaeologist (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises;

- (5) Trails. The marking, clearing and maintenance of trails for public use. With prior approval of the Grantee, the construction of new trails or the relocation of existing trails, provided that any construction or relocation results in trails that are no wider than eight (8) feet;
- (6) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, , the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the recreation on and public use of the Premises, the Reserved Rights, and the protected open space and recreation values;
- (7) Outdoor Passive Recreational Activities. Fishing, walking, picnicking, and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities; hunting is not permitted owing to state safety setbacks;
- (8) Park Development. The creation, use and maintenance of a public park in compliance with the Parkland Acquisitions and Renovations for Communities grant program policies and regulations, 301 CMR 5.00, Massachusetts General Laws Chapter 45, Section 2, as they may be amended, with a view to Mill Creek estuary, substantially in conformance with the design provided in Exhibit D attached hereto and consistent with the PARC Project Agreement; major modifications to said design shall require approval by Grantee as provided in Section II.C hereinbelow;
- (9) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the open space and recreation values and other natural features within the Premises, to Chase Brook and Mill Creek, and to Lewis Bay that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.
- (10) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

- (11) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

**C. Notice and Approval.**

1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.
2. Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the open space and recreation values or purposes of this Conservation Restriction. This Section II(C)(2) shall not apply to Section II(B)(8), in which case failure of Grantee to respond in writing within 60 days shall be deemed to constitute denial by Grantee of the request as submitted (a "Deemed Denial"). A Deemed Denial is not final or binding on Grantee, and Grantor may submit the same or a similar request for approval.

**III. LEGAL REMEDIES OF THE GRANTEE**

**A. Legal and Injunctive Relief.**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the open space and recreation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking

reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

**B. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

**C. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

**D. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

**IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section II(B)(7) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and open space and recreation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in

Section II(B)(7). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

## V. EXTINGUISHMENT

- A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Commonwealth of Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the purpose of this Conservation Restriction as set forth herein.
- B. Proceeds. The Grantor and the Grantee agree that donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, but does not entitle the Grantee to any proceeds upon an extinguishment of the Conservation Restriction. Any proceeds will be distributed to the Grantor only after complying with the terms of any gift, grant, or other funding requirements, including CPA funding and the PARC Project Agreement as herein noted.
- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the purpose of this Conservation Restriction.

## V. DURATION & ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VI. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **VII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **VIII. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **IX. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in open space and recreation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements, including the Community Preservation Act and the PARC Project Agreement, as herein noted. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

#### **X. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Barnstable County Registry of Deeds.

#### **XI. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Town of Yarmouth  
1146 Route 28  
South Yarmouth, MA 02664

To Grantee: Yarmouth Conservation Trust  
P.O. Box 376  
Yarmouth Port, MA 02675

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

## **XII. GENERAL PROVISIONS**

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

## **XIII. MISCELLANEOUS**

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

C. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor (Town of Yarmouth Board of Selectmen)  
Grantee Acceptance (Trustees of Yarmouth Conservation Trust)  
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of Premises

Exhibit C: Town Vote

Exhibit D: Park Site Design

We, the undersigned, being a majority of the Board of Selectmen of the Town of Yarmouth, acting in its capacity as Park Commissioners of the Town of Yarmouth, hereby certify that at a public meeting duly held on \_\_\_\_\_ 2020, the Board of Selectmen voted to approve and grant the foregoing Conservation Restriction to the Yarmouth Conservation Trust pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and do hereby grant the foregoing Conservation Restriction.

**TOWN OF YARMOUTH  
BOARD OF SELECTMEN**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE OF GRANT**

This Conservation Restriction from The Town of Yarmouth acting by and through its Board of Selectmen acting in its capacity as Park Commissioners of the Town of Yarmouth was accepted by the Yarmouth Conservation Trust this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Sharon K. Donegan, President and Trustee

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared Sharon K. Donegan, Trustee, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, on behalf of said Trust.

\_\_\_\_\_  
Mark H. Robinson, Notary Public  
My Commission Expires: 24 July 2020

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Yarmouth acting by and through its Board of Selectmen acting in its capacity as Park Commissioners of the Town of Yarmouth to the Yarmouth Conservation Trust has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
KATHLEEN A. THEOHARIDES  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

### Legal Description of Premises

The land situated Yarmouth (West), Barnstable County, Massachusetts, bounded and described as follows:

Beginning at the northeast corner of the granted premises on the State Highway at land of Lucy B. Chase, Widow of Alexander D. Chase, thence southerly, by said Chase's land as the fence now stands, to Mill River so called; thence westerly, by said Mill River to Land now or formerly of Bernice H. Tripp or Annie Doane; thence northerly, by said Doane's land, along the line of the creek, to the State highway; and thence by said State Highway to the point of beginning. Including the fee of said creek.

Said premises being shown also as Lot 1 on a plan entitled, "Plan of Land of #275 Route 28, West Yarmouth, MA Prepared for Yankee Village Motel, Date: December 18, 2019", prepared by Down Cape Engineering, Inc. and recorded in the Barnstable County Registry of Deeds in Plan Book 683, Plan 96, a reduced copy of which is attached hereto as Exhibit B.

For title, see deed to Town of Yarmouth recorded in the Barnstable County Registry of Deeds in Book 32664 Page 305.

Street Address: 275 Main Street, Route 28, West Yarmouth, Massachusetts 02673

**EXHIBIT B**

Reduced Copy of Plan of Premises

For official full size plan see Barnstable County Registry of Deeds Plan Book 683 Page 96

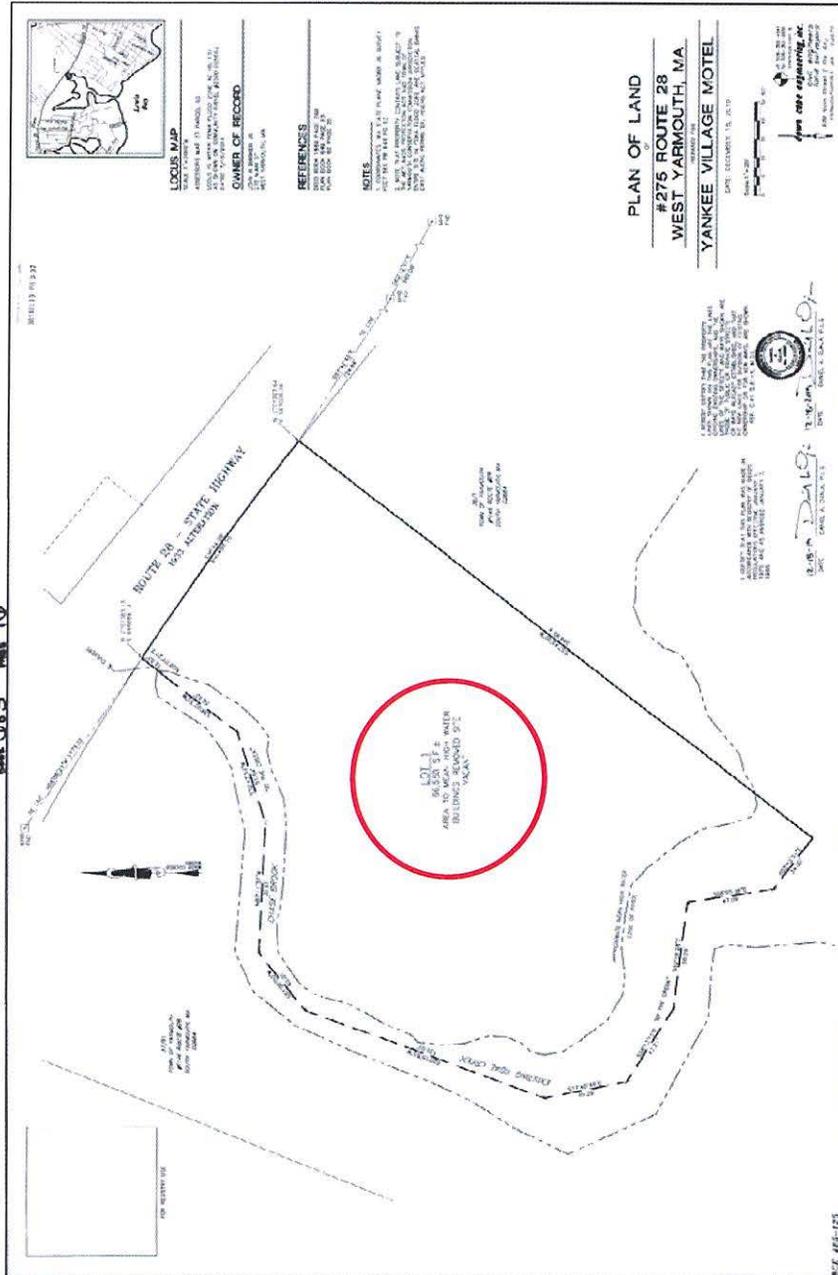


EXHIBIT C

Attested Town Meeting Votes



TOWN OF YARMOUTH

OFFICE OF THE TOWN CLERK  
1146 ROUTE 28, SOUTH YARMOUTH, MA 02664  
TELEPHONE 508-398-2231 FAX 508-760-4842

ANNUAL TOWN MEETING  
MAY 5, 2018

**ARTICLE #22:** To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain, or otherwise for conservation, open space and passive recreation purposes, for the general public, consistent with the provisions of Mass. Gen. Laws, c. 40, §8C, 310 C.M.R. 22.00, and Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, the land situated in the Town of Yarmouth, Massachusetts, consisting of a parcel of land located at 275 Route 28, and described as follows: 1.35 acres, more or less, together with all rights and easements and subject to rights and easements of record, the property located at 275 Route 28, known as the "Yankee Village Motel"; and which is identified on Assessor's Map 37, Lot 60; the parcel is described in a deed recorded on July 2, 1973 in Book 1889, Page 288 at the Barnstable County Registry of Deeds; and to appropriate \$975,000. from the Community Preservation Act Open Space Reserve, or any other sum, for said acquisition and site improvements; pursuant to the provisions of ch. 149, §298 of the Acts of 2004, as amended by c. 352, §§129-133 of the Acts of 2004, the so-called Community Preservation Act; to authorize the Board of Selectmen to apply for, accept and expend any funds which may be provided by the Commonwealth or other public or private source to defray a portion or all of the costs of acquiring this property, including but not limited to funding under the Self-Help Act, General Laws, c. 132A, &11, and/or the Federal Land & Water Conservation Fund, P.L. 88-568, 78 Stat 897; to authorize the Board of Selectmen to grant to a governmental agency or non-profit organization, for no consideration, a perpetual Conservation Restriction, pursuant to the provisions of General Laws, c. 184, §31 through §33, limiting the use of the property to the purpose for which it was acquired, to be recorded at the time of closing or within a reasonable amount of time thereafter; to authorize the Conservation Commission to assume the care, custody, control and management of the property; and to authorize the Board of Selectmen and Conservation Commission to enter into all agreements and execute any and all instruments as may be necessary on behalf of the municipality to affect this purchase and obtain reimbursement funding to be returned to the Community Preservation Act Fund, or to take any other action relative thereto.

**2/3 Vote Required**

Tom Durkin made and motion that was duly made and seconded to move Article 22 as printed in the warrant and to amend line 10 by inserting the amount of \$975,000. This article is to be funded by CPA Open Space Reserve.

Article 22 carries with the requisite 2/3 majority.

12:42pm

A TRUE COPY ATTEST:  
  
TOWN CLERK



## TOWN OF YARMOUTH

OFFICE OF THE TOWN CLERK  
1146 ROUTE 28, SOUTH YARMOUTH, MA 02664  
TELEPHONE 508-398-2231 FAX 508-760-4842

**ANNUAL TOWN MEETING**  
**MAY 4, 2019**

**ARTICLE 38: CPA Project - Yankee Village "Re-Vote"**

To see if the Town will vote to authorize use of land located at 275 Route 28, known as the Yankee Village, for recreational purposes consistent with MGL Chapter 45, Section 3 as required for receipt of funding through the Commonwealth's Parkland Acquisitions and Renovations for Communities (PARC) Grant Program. Said land is further identified on Assessor's Map 37, Lot 60. The parcel is described in a deed recorded on July 2, 1973 in Book 1889, Page 288 at the Barnstable County Registry of Deeds and was approved for acquisition by Article 22 at the May 5, 2018 Annual Town Meeting.

**Requires 2/3rds Vote**

Mr. Tolley made a motion that was duly made and seconded to move Article 38 as printed in the warrant.

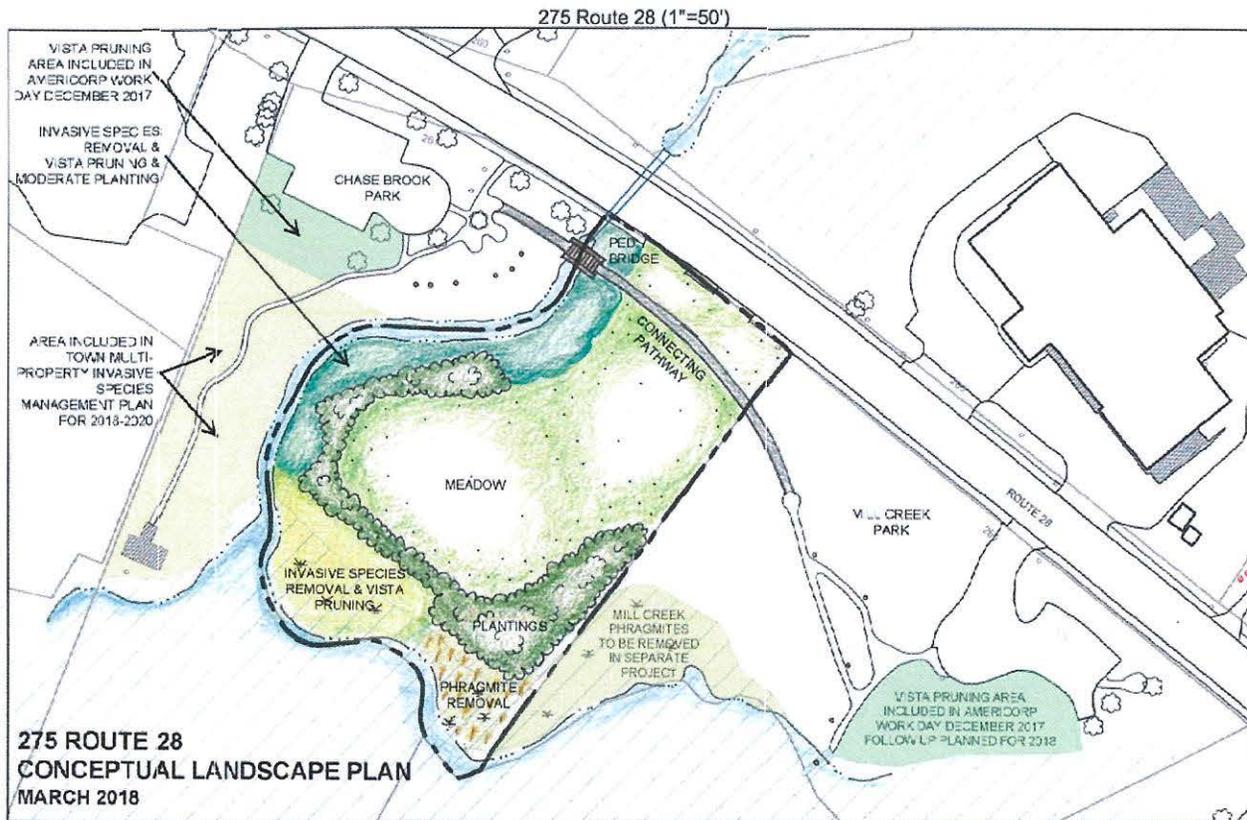
Article 38 passes with the requisite 2/3 majority.

A TRUE COPY ATTEST:

  
CMMC / CMO / TOWN CLERK

**EXHIBIT D**

**PARC Grant-Approved Park Site Design**



**FY20**

**IMA**

**with changes**

WEIGHTS AND MEASURES SERVICES INTERMUNICIPAL AGREEMENT  
BETWEEN  
TOWN OF BARNSTABLE  
AND  
TOWN OF YARMOUTH

PREAMBLE

This Intermunicipal Agreement (hereinafter "Agreement"), made and entered into this \_\_\_\_ day, of \_\_\_\_\_, 2020 pursuant to M.G.L. c. 40, §4A, executed in duplicate (each executed copy constituting an original) between the Town of Barnstable, a Massachusetts municipal corporation with its principal place 367 Main St. Hyannis, MA 02601, acting by and through its Town Manager (hereinafter "Barnstable") and The Town of Yarmouth, acting by and through its Town Administrator, as authorized by the Board of Selectmen (hereinafter "Town") (both Barnstable and Town are together referred to herein as the "Members", and sometimes referred to individually as a "Member").

RECITALS

WHEREAS Barnstable has town staff employed as a sealer of weights and measures and deputy sealers of weights and measures working within its Licensing Division; and

WHEREAS Town has no town staff currently employed or contracted as sealer of weights and measures; and

WHEREAS Town desires to enter into an agreement with Barnstable for services performed by the sealer and deputy sealers of weights and measures; and

WHEREAS, M.G.L. c. 40, § 4A allows the Chief Executive Officers of cities towns and districts to enter into agreements with one or more other governmental entities to jointly perform activities or undertakings which any of the contracting governmental entities are authorized by law to perform; and

WHEREAS, said M.G.L. c., 40 § 4A sets forth the requirements for and parameters of such "intergovernmental agreements"; and

WHEREAS, the Members participating in this Agreement each have authorized participation in this Agreement: by the Town Manager for Barnstable a copy of which is attached hereto as Exhibit A and by the Board of Selectmen for Town a copy of which is attached hereto as Exhibit B;

NOW, THEREFORE, the Members, in consideration of the mutual benefits to be derived by the Members hereto, pursuant to the authority contained in M.G.L. c. 40, § 4A, do hereby mutually agree as follows.

Deleted: ¶

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ARTICLE I  
SCOPE OF SERVICES

Barnstable agrees to provide to Town, Weights and Measures services of Barnstable employees who are certified sealers or deputy sealers of weights and measures pursuant to G. L. c. 98 §§ 34 and 35 under the following terms and conditions.

ARTICLE II  
RIGHTS AND OBLIGATIONS OF THE MEMBERS

1. The services to be provided under this Agreement shall be provided by the Town of Barnstable sealer of weights and measures and deputy sealers of weights and measures (collectively "Barnstable employees"), or by one or more such qualified successors as may be appointed by the Town Manager of Barnstable during the Term.

2. Barnstable agrees to provide the services subject to the availability of the Barnstable employees. Barnstable employees will schedule services directly with establishments in the Town. In the event that Barnstable employees are for whatever reason, unavailable to provide the services stipulated herein, Barnstable shall provide notice of such unavailability to the Town.

3. The services to be provided under this Agreement shall include the following.

a. Notice

The Barnstable employees shall give notice to each establishment in Town known to use weighing, measuring or scanning devices that testing of these devices is required, and shall annually give public notice, by advertisement or by posting notices in one or more public places in their towns or districts, to all inhabitants, or persons having usual places of business therein, using weighing or measuring devices for the purpose of buying or selling goods, wares or merchandise, for public weighing or for hire or reward, to bring them in to be tested, adjusted and sealed or to request that such devices be tested, adjusted and sealed at their place of business.

b. Testing

The Barnstable employees shall apply and enforce the provisions of the laws pertaining to weights and measures including devices, testing and certifying all devices as required in a timely fashion. In addition, testing of automated checkout systems, conducting reweighing of commodities, item price, scanner waiver, unit price code inspections, and consumer complaints.

c. Collection of Fees

Town shall accept the fees and fines established by Barnstable to be charged to Town establishments for services. Barnstable employees shall charge and collect fines and fees for services and shall account for and pay same into the Barnstable Consumer Protection Revolving Fund. All fees and fines so charged and collected shall belong entirely to Barnstable.

d. Reports

Barnstable shall maintain records and provide annual reports to Town as required By M. G.L. 98, § 34 and to the director as provided by § 37.

4. Barnstable shall provide the Barnstable employees with a vehicle and equipment for official use in performing the services, and shall bear the responsibility of registering, insuring, fueling and maintaining vehicles and equipment.

5. The Barnstable employees shall maintain regular office hours in Town of Barnstable and not in Town.

6. The Town shall pay to Barnstable the following sum for the weights and measures services of ~~\$4,032.00, beginning upon execution of this agreement until June 30, 2020. (The sum of \$4,032.00 represents the proposed entirety of the debt incurred by the town of Barnstable for services rendered to Yarmouth for the fiscal year beginning July 1, 2019 through June 30, 2020). The sum includes the costs for administrative expenses to provide the service. The sum due shall be assessed and billed by Barnstable and payment is due and payable within (15) fifteen days after the commencement of this agreement.~~

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7. Members agree to allow the Barnstable employees to enjoy such vacation, sick days, personal days and other leave as provided under applicable collective bargaining agreements and legislation. Neither Member shall make any demand on the Barnstable employees or take any action with respect to the services that is in violation of rights under any collective bargaining agreement or applicable legislation. In addition to statements provided pursuant to paragraph number 6 of this ARTICLE II, Barnstable shall prepare, at its cost, an annual report of costs and receipts incurred pursuant to the Agreement which shall be submitted to Town within thirty days of the end of the calendar year. All records supporting the billing shall be kept by Barnstable's Weights and Measures Division and made available for Town review upon request. If Town determines that an audit should be performed on the billing for these services Town shall bear the costs of such an audit and Barnstable shall provide all the records necessary to complete the audit.

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ARTICLE III

TERM / AMENDMENTS/INDEMNITY

1. The term of this Agreement shall commence ~~upon final execution and terminate on June 30, 2020. The Members intend that the Members entering into this Agreement are sole and exclusive beneficiaries of the Agreement.~~ Either Member may terminate this Agreement, at its sole discretion by providing 90 days' written notice to the other Member in accordance with paragraph 5 of this Article III.

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2. This Agreement shall not take effect until ~~it has been executed by the Members, at which time, it shall become the binding and legally enforceable Agreement of each such member.~~

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Deleted: July 1, 2020, by the Members, at which time, it shall become the binding and legally enforceable Agreement of each such member.

3. No officer, official, agent, or employee of any Member shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind any of the other Members by making any promise or representation not contained herein except by an authorized written amendment requiring approval by the Town's authorized entity and the approval of the Town Manager of Barnstable. Said amendment shall be executed in the same manner as this Agreement is executed. No Member may rely on any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of any other Members as having changed, modified or amended this Agreement. No Member shall be construed as waiving any provision of the Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by any Member of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by any Member shall not be construed as waiver of any term or condition hereto nor shall it limit the legal or equitable remedies available to the Member.

4. In the event that any claims, demands, suits, causes of action and costs and expenses arise with respect to the performance of services as provided to this Agreement, the Member receiving services shall be liable for and to the extent permitted by law, shall indemnify, and hold the other Member providing services harmless from and against any and all such claims, demands, suits, causes of action, costs and expenses, including reasonable attorney's fees, arising from services performed within its borders or on behalf of that Party, except to the extent of the negligence or willful misconduct of the Member providing the services.

5. This Agreement may be terminated by either Member for any reason or no reason on ninety (90) days written notice to the other. No such termination shall affect any obligation of indemnification that may have arisen hereunder prior to such termination or otherwise as provided by law.

6. No Member shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of the other Member.

7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision were not contained herein.

8. The obligations and conditions set forth in this Agreement may be waived only by a writing signed by the Member waiving such obligation or condition. Forbearance or indulgence by a Member shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that Member under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.

9. This Agreement shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without regard to the conflicts of law provisions thereof

10. Any notice permitted or required hereunder to be given or served on either Member by the other shall be in writing signed in the name of or on behalf of the Member giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of any hand delivery or three (3) business days after the date of any properly addressed notice sent by mail to the following.

11. This Agreement constitutes the entire agreement between the Members concerning the subject matter hereof, superseding all prior agreements and understandings. There are no other agreements or understandings between the Members concerning the subject matter hereof. Each Member acknowledges that it has not relied on any representations by the other Member or by anyone acting or purporting to act for the other Member or for whose actions the other Member is responsible, other than the express, written representations set forth herein.

12. Each Member shall notify the other Member in writing and keep the other Members informed of the changed names and titles of its official or officials responsible for the implementation of the terms of this Agreement.

13. In addition to the remedies, power and authority which each Member has at law or under its ordinances, by-laws, rules or regulations the following remedies shall be available to each Member:

- a. If any Member fails to fulfill any material obligation or condition of this Agreement (either a "Defaulting Member"), the other Member has the right to suspend this Agreement by giving sixty (60) days' notice (a "Default Notice"), in writing, of their intent to do so (the "Default Notice Period"). Upon receipt of such notice, the Defaulting Member shall have the right to prevent suspension by curing the default within thirty (30) days and diligently and continuously pursuing such cure to completion within any additional time which may be necessary to affect such cure. Suspension shall not release any Member from its obligation to pay all bills or sums due prior to suspension, in accordance with this Agreement.

b. Each Member reserves the right, either in law or equity, by suit, and complaint in the nature of specific performance or other proceeding, to enforce or compel performance of this Agreement. The remedies set forth in this Agreement are separate and cumulative, and the election of one does not preclude use of another. 5

14. Each Member shall immediately, within not more than twenty four (24) hours, notify the other Member of any emergency or condition which may affect its participation in or the carrying out of its responsibilities under this Agreement.

15. Employees, servants or agents of either of the Members shall not be deemed to be agents, servants or employees of any other Member for any purpose including, but not limited to, either Workers' Compensation or unemployment insurance purposes. Specifically, the Barnstable employees shall not be deemed to be employees of Town for such purposes and any Town or other staff appointed by said Town, whether as contemplated herein or otherwise, shall not be deemed to be employees of Barnstable.

16. Counterparts: This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which shall be deemed the same instrument. Facsimile and portable document format (PDF) copies shall be deemed original signatures.

This Intermunicipal Agreement shall be in effect until one of the parties dissolves this agreement with notice as provided above.

\_\_\_\_\_  
For the Town of Barnstable  
Town Manager

\_\_\_\_\_  
Signed this day

\_\_\_\_\_  
For the Town of Yarmouth  
Town Administrator

\_\_\_\_\_  
Signed this day

**FY20**

**IMA**

**Final Version**

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WEIGHTS AND MEASURES SERVICES INTERMUNICIPAL AGREEMENT  
BETWEEN  
TOWN OF BARNSTABLE  
AND  
TOWN OF YARMOUTH

PREAMBLE

This Intermunicipal Agreement (hereinafter "Agreement"), made and entered into this \_\_\_\_ day, of \_\_\_\_\_, 2020 pursuant to M.G.L. c. 40, §4A, executed in duplicate (each executed copy constituting an original) between the Town of Barnstable, a Massachusetts municipal corporation with its principal place 367 Main St. Hyannis, MA 02601, acting by and through its Town Manager (hereinafter "Barnstable") and The Town of Yarmouth, acting by and through its Town Administrator, as authorized by the Board of Selectmen (hereinafter "Town") (both Barnstable and Town are together referred to herein as the "Members", and sometimes referred to individually as a "Member").

RECITALS

WHEREAS Barnstable has town staff employed as a sealer of weights and measures and deputy sealers of weights and measures working within its Licensing Division; and

WHEREAS Town has no town staff currently employed or contracted as sealer of weights and measures; and

WHEREAS Town desires to enter into an agreement with Barnstable for services performed by the sealer and deputy sealers of weights and measures; and

WHEREAS, M.G.L. c. 40, § 4A allows the Chief Executive Officers of cities towns and districts to enter into agreements with one or more other governmental entities to jointly perform activities or undertakings which any of the contracting governmental entities are authorized by law to perform; and

WHEREAS, said M.G.L. c., 40 § 4A sets forth the requirements for and parameters of such "intergovernmental agreements"; and

WHEREAS, the Members participating in this Agreement each have authorized participation in this Agreement: by the Town Manager for Barnstable a copy of which is attached hereto as Exhibit A and by the Board of Selectmen for Town a copy of which is attached hereto as Exhibit B;

NOW, THEREFORE, the Members, in consideration of the mutual benefits to be derived by the Members hereto, pursuant to the authority contained in M.G.L. c. 40, § 4A, do hereby mutually agree as follows.

ARTICLE I  
SCOPE OF SERVICES

Barnstable agrees to provide to Town ,Weights and Measures services of Barnstable employees who are certified sealers or deputy sealers of weights and measures pursuant to G. L. c. 98 §§ 34 and 35 under the following terms and conditions.

ARTICLE II  
RIGHTS AND OBLIGATIONS OF THE MEMBERS

1. The services to be provided under this Agreement shall be provided by the Town of Barnstable sealer of weights and measures and deputy sealers of weights and measures (collectively "Barnstable employees"), or by one or more such qualified successors as may be appointed by the Town Manager of Barnstable during the Term.

2. Barnstable agrees to provide the services subject to the availability of the Barnstable employees. Barnstable employees will schedule services directly with establishments in the Town. In the event that Barnstable employees are for whatever reason, unavailable to provide the services stipulated herein, Barnstable shall provide notice of such unavailability to the Town.

3. The services to be provided under this Agreement shall include the following.

a. Notice

The Barnstable employees shall give notice to each establishment in Town known to use weighing, measuring or scanning devices that testing of these devices is required, and shall annually give public notice, by advertisement or by posting notices in one or more public places in their towns or districts, to all inhabitants, or persons having usual places of business therein, using weighing or measuring devices for the purpose of buying or selling goods, wares or merchandise, for public weighing or for hire or reward, to bring them in to be tested, adjusted and sealed or to request that such devices be tested, adjusted and sealed at their place of business.

b. Testing

The Barnstable employees shall apply and enforce the provisions of the laws pertaining to weights and measures including devices, testing and certifying all devices as required in a timely fashion. In addition, testing of automated checkout systems, conducting reweighing of commodities, item price, scanner waiver, unit price code inspections, and consumer complaints.

c. Collection of Fees

Town shall accept the fees and fines established by Barnstable to be charged to Town establishments for services. Barnstable employees shall charge and collect fines and fees for services and shall account for and pay same into the Barnstable Consumer Protection Revolving Fund. All fees and fines so charged and collected shall belong entirely to Barnstable.

d. Reports

Barnstable shall maintain records and provide annual reports to Town as required By M. G.L. 98, § 34 and to the director as provided by § 37.

4. Barnstable shall provide the Barnstable employees with a vehicle and equipment for official use in performing the services, and shall bear the responsibility of registering, insuring, fueling and maintaining vehicles and equipment.

5. The Barnstable employees shall maintain regular office hours in Town of Barnstable and not in Town.

6. The Town shall pay to Barnstable the following sum for the weights and measures services of \$4,032.00, beginning upon execution of this agreement until June 30, 2020. (The sum of \$4,032.00 represents the proposed entirety of the debt incurred by the town of Barnstable for services rendered to Yarmouth for the fiscal year beginning July 1, 2019 through June 30, 2020). The sum includes the costs for administrative expenses to provide the service. The sum due shall be assessed and billed by Barnstable and payment is due and payable within (15) fifteen days after the commencement of this agreement.

7. Members agree to allow the Barnstable employees to enjoy such vacation, sick days, personal days and other leave as provided under applicable collective bargaining agreements and legislation. Neither Member shall make any demand on the Barnstable employees or take any action with respect to the services that is in violation of rights under any collective bargaining agreement or applicable legislation.8. In addition to statements provided pursuant to paragraph number 6 of this ARTICLE II, Barnstable shall prepare, at its cost, an annual report of costs and receipts incurred pursuant to the Agreement which shall be submitted to Town within thirty days of the end of the calendar year. All records supporting the billing shall be kept by Barnstable's Weights and Measures Division and made available for Town review upon request. If Town determines that an audit should be performed on the billing for these services Town shall bear the costs of such an audit and Barnstable shall provide all the records necessary to complete the audit.

ARTICLE III

TERM / AMENDMENTS/INDEMNITY

1. The term of this Agreement shall commence upon final execution and terminate on June 30, 2020. The Members intend that the Members entering into this Agreement are sole and exclusive beneficiaries of the Agreement. Either Member may terminate this Agreement, at its sole discretion by providing 90 days' written notice to the other Member in accordance with paragraph 5 of this Article III.

2. This Agreement shall not take effect until it has been executed by the Members, at which time, it shall become the binding and legally enforceable Agreement of each such member.

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\_\_\_\_\_  
For the Town of Barnstable  
Town Manager

\_\_\_\_\_  
Signed this day

\_\_\_\_\_  
For the Town of Yarmouth  
Town Administrator

\_\_\_\_\_  
Signed this day

**FY21**

**IMA**

**Final Version**

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WEIGHTS AND MEASURES SERVICES INTERMUNICIPAL AGREEMENT  
BETWEEN  
TOWN OF BARNSTABLE  
AND  
TOWN OF YARMOUTH

PREAMBLE

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RECITALS

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WHEREAS Town has no town staff currently employed or contracted as sealer of weights and measures; and

WHEREAS Town desires to enter into an agreement with Barnstable for services performed by the sealer and deputy sealers of weights and measures; and

WHEREAS, M.G.L. c. 40, § 4A allows the Chief Executive Officers of cities towns and districts to enter into agreements with one or more other governmental entities to jointly perform activities or undertakings which any of the contracting governmental entities are authorized by law to perform; and

WHEREAS, said M.G.L. c., 40 § 4A sets forth the requirements for and parameters of such "intergovernmental agreements"; and

WHEREAS, the Members participating in this Agreement each have authorized participation in this Agreement: by the Town Manager for Barnstable a copy of which is attached hereto as Exhibit A and by the Board of Selectmen for Town a copy of which is attached hereto as Exhibit B;

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SCOPE OF SERVICES

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5. The Barnstable employees shall maintain regular office hours in Town of Barnstable and not in Town.

6. The Town shall pay to Barnstable the following sum for the weights and measures services of \$15, 375.00 , beginning July 1, 2020, with an increase according to the CPI or 2% whichever is greater, per fiscal year beginning in FY22 and billed each July 1<sup>st</sup>, for administrative expenses and cost to provide services including retirement and depreciation of equipment for replacement. The initial sum due shall be assessed and billed by Barnstable at the beginning of each FY and each payment is due and payable within fifteen (15) days after the commencement of such fiscal year.

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8. In addition to statements provided pursuant to paragraph number 6 of this ARTICLE II, Barnstable shall prepare, at its cost, an annual report of costs and receipts incurred pursuant to the Agreement which shall be submitted to Town within thirty days of the end of the calendar year. All records supporting the billing shall be kept by Barnstable's Weights and Measures Division and made available for Town review upon request. If Town determines that an audit should be performed on the billing for these services Town shall bear the costs of such an audit and Barnstable shall provide all the records necessary to complete the audit.

ARTICLE III

TERM / AMENDMENTS

INDEMNITY I . The term of this Agreement shall commence and be automatically renewed each year , and reviewed every three (3) years , unless sooner terminated as herein provided, not to exceed 25 years. The Members intend that the Members entering into this Agreement are the sole and exclusive beneficiaries of the Agreement. Either Member may terminate this Agreement, at its sole discretion by providing 90 days' written notice to the other Member in accordance with paragraph 5 of this Article III.

2. This Agreement shall not take effect until July 1, 2020,I by the Members, at which time, it shall become the binding and legally enforceable Agreement of each such member.

3. No officer, official, agent, or employee of any Member shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind any of the other Members by making any promise or representation not contained herein except by an authorized written amendment requiring approval by the Town's authorized entity and the approval of the Town Manager of Barnstable. Said amendment shall be executed in the same manner as this Agreement is executed. No Member may rely on any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of any other Members as having changed, modified or amended this Agreement. No Member shall be construed as waiving any provision of the Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by any Member of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by any Member shall not be construed as waiver of any term or condition hereto nor shall it limit the legal or equitable remedies available to the Member.

4. In the event that any claims, demands, suits, causes of action and costs and expenses arise with respect to the performance of services as provided to this Agreement, the Member receiving services shall be liable for and to the extent permitted by law, shall indemnify, and hold the other Member providing services harmless from and against any and all such claims, demands, suits, causes of action, costs and expenses, including reasonable attorney's fees, arising from services performed within its borders or on behalf of that Party, except to the extent of the negligence or willful misconduct of the Member providing the services.

5. This Agreement may be terminated by either Member for any reason or no reason on ninety (90) days written notice to the other. No such termination shall affect any obligation of indemnification that may have arisen hereunder prior to such termination or otherwise as provided by law.

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7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision were not contained herein.

8. The obligations and conditions set forth in this Agreement may be waived only by a writing signed by the Member waiving such obligation or condition. Forbearance or indulgence by a Member shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that Member under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.

9. This Agreement shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without regard to the conflicts of law provisions thereof

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11. This Agreement constitutes the entire agreement between the Members concerning the subject matter hereof, superseding all prior agreements and understandings. There are no other agreements or understandings between the Members concerning the subject matter hereof. Each Member acknowledges that it has not relied on any representations by the other Member or by anyone acting or purporting to act for the other Member or for whose actions the other Member is responsible, other than the express, written representations set forth herein.

12. Each Member shall notify the other Member in writing and keep the other Members informed of the changed names and titles of its official or officials responsible for the implementation of the terms of this Agreement.

13. In addition to the remedies, power and authority which each Member has at law or under its ordinances, by-laws, rules or regulations the following remedies shall be available to each Member:

a. If any Member fails to fulfill any material obligation or condition of this Agreement (either a "Defaulting Member"), the other Member has the right to suspend this Agreement by giving sixty (60) days' notice (a "Default Notice"), in writing, of their intent to do so (the "Default Notice Period"). Upon receipt of such notice, the Defaulting Member shall have the right to prevent suspension by curing the default within thirty (30) days and diligently and continuously pursuing such cure to completion within any additional time which may be necessary to affect such cure. Suspension shall not release any Member from its obligation to pay all bills or sums due prior to suspension, in accordance with this Agreement.

b. Each Member reserves the right, either in law or equity, by suit, and complaint in the nature of specific performance or other proceeding, to enforce or compel performance of this Agreement. The remedies set forth in this Agreement are separate and cumulative, and the election of one does not preclude use of another.

14. Each Member shall immediately, within not more than twenty four (24) hours, notify the other Member of any emergency or condition which may affect its participation in or the carrying out of its responsibilities under this Agreement.

15. Employees, servants or agents of either of the Members shall not be deemed to be agents, servants or employees of any other Member for any purpose including, but not limited to, either Workers' Compensation or unemployment insurance purposes. Specifically, the Barnstable employees shall not be deemed to be employees of Town for such purposes and any Town or other staff appointed by said Town, whether as contemplated herein or otherwise, shall not be deemed to be employees of Barnstable.

16. Counterparts: This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which shall be deemed the same instrument. Facsimile and portable document format (PDF) copies shall be deemed original signatures.

This Intermunicipal Agreement shall be in effect until one of the parties dissolves this agreement with notice as provided above.

\_\_\_\_\_  
For the Town of Barnstable  
Town Manager

\_\_\_\_\_  
Signed this day

\_\_\_\_\_  
For the Town of Yarmouth  
Town Administrator

\_\_\_\_\_  
Signed this day

**Original Request  
from Barnstable  
For  
FY20/21 IMAs**



## Meeting Agenda

Meeting Title: Intermunicipal Agreement – Weights & Measures Program  
Conducted by: Town of Barnstable  
Date: November 19, 2019  
Time: 8:00 AM  
Location: Town of Yarmouth

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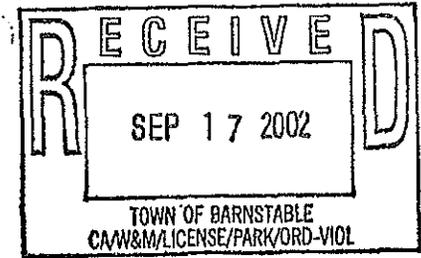
### Agenda Details:

- A. Original Agreement
- B. List of Fees and Services
- C. Fiscal/Calendar Years and Annual Reports
- D. Inspection fees vs. TOB expenses
- E. Photos

# Original Agreement



**Town of Barnstable**  
**Regulatory Services**  
Thomas F. Geiler, Director  
200 Main Street  
Hyannis, MA 02601



Admin: 508-862-4670

Fax: 508-778-2412

## Memorandum of Understanding

By and between the Town of Barnstable and the Town of Yarmouth

The purpose of this MOU is to provide efficient and effective weights and measures services to the businesses and citizens of the parties to the agreement.

The Town of Yarmouth desires to utilize the staff and equipment of the Town of Barnstable, Department of Regulatory Services, Consumer Affairs Division, to conduct inspections and testing of all weighing and measuring devices as provided in Massachusetts General Laws Chapter 98.

Barnstable Weights and Measures staff is authorized to enter the Town of Yarmouth and visit the locations of all commercial weighing and measuring devices and scanners for the purpose of inspection and/or testing authorized by the provisions of Massachusetts General Laws Chapter 98.

Barnstable Weights and Measures staff shall be authorized to conduct inspections and/or tests of all devices used for weighing and measuring under MGL and take official action as authorized to a sealer of weights and measures.

Fees for testing and sealing of devices used in weighing and measuring shall be those fees authorized by MGL, as they relate to weights and measures and approved by the Barnstable Town Council (fee schedule attached). At the time of providing services, or within 72 hours of providing service, Barnstable Weights and Measures staff shall cause an invoice to be issued to the owner of the device. The invoice shall include a list of devices inspected, tested, sealed, or rejected. It will also include the date of inspection, the name of the inspector, the official results of the inspection and/or test, and the amount of fee due to the Town of Barnstable.

The results of inspections shall be provided to the Town of Yarmouth on a monthly basis, as well as a recap of the inspection during a calendar year.

The Town of Barnstable shall collect all fees for related services from device owners and payment shall go directly to the Town of Barnstable.

Page 2

Memorandum of Understanding

The fee for minor adjustments to bring the device into tolerance shall be \$0.00. The fee for re-inspection because of noncompliance shall be \$75.00. Device owners are required by law to maintain the device in compliance. Device owners are urged to comply with this requirement to avoid a re-inspection fee.

If payment is not remitted to the Town of Barnstable within a reasonable amount of time after which the invoice is produced and sent to the owner of the device, then the Town of Barnstable is authorized to enforce the nonpayment of the invoice. Nonpayment for services rendered may result in removal of the seal by the Barnstable Sealer of Weights and Measures. A re-inspection fee may then be charged, along with any late fees for the original inspection, to the device owners.

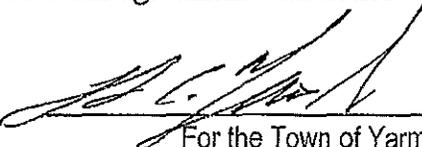
The Town of Barnstable Department of Regulatory Services, Consumer Affairs Division, Massachusetts Weights and Measures certified staff shall provide additional non-fee based services at the discretion of the Yarmouth Town Administrator. The fee for all additional hours shall be \$40.00 per hour payable to the Town of Barnstable by the Town of Yarmouth.

Non fee based services shall include; net weight compliance inspections and testing, unit price and/or item price compliance inspections and consumer complaints and any other weights and measures service deemed appropriate by the Yarmouth Town Administrator.

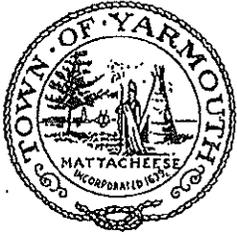
This MOU shall be in effect until one of the parties dissolves this agreement with notice.

\_\_\_\_\_  
For the Town of Barnstable

\_\_\_\_\_  
Signed this date

  
\_\_\_\_\_  
For the Town of Yarmouth

*JUNE 5, 2002*  
\_\_\_\_\_  
Signed this date



# TOWN OF YARMOUTH

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492  
Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2365

BOARD OF  
SELECTMEN

TOWN  
ADMINISTRATOR  
Robert C. Lawton, Jr.

## Memorandum of Understanding

RECEIVED

MAR - 3 1999

By and between the **Town of Barnstable** and the **Town of Yarmouth**

The purpose of this MOU is to provide effective weights and measures services to the businesses and citizens of the parties to the agreement.

TOWN OF BARNSTABLE  
WEIGHTS AND MEASURES  
LICENSING / PARKING

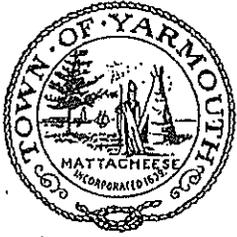
The Town of Yarmouth desires to utilize the staff and equipment of the Town of Barnstable, Department of Health, Safety and Environmental Services, Consumer Affairs Division, to conduct inspections and tests of motor fuel dispensers, as provided in MGL Chapter 98, in the Town of Yarmouth.

Barnstable Weights and Measures staff are authorized to enter the Town of Yarmouth and visit the locations of all commercial motor fuel dispensers requiring inspection and or testing by the provisions of MGL Chapter 98. Barnstable Weights and Measures staff shall be authorized to conduct the inspections and or tests of all motor fuel devices authorized by MGL Chapter 98 and to take such official action as authorized to a sealer of weights and measures in the town with respect to motor fuel devices.

Fees for testing, sealing or inspection of motor fuel devices within the Town of Yarmouth shall be those fees authorized by MGL Chapter 98 and approved by the Barnstable Town Council (fee schedule attached). At the time of providing services, or within 72 hours of providing service Barnstable Weights and Measures staff shall cause an invoice to be issued to the owner of the devices. The invoices shall include a list of devices inspected, tested, sealed or rejected, the date of the inspection, the name of the inspector, the official results of the inspection or test and the amount of any fee due to the Town of Barnstable. A copy of the invoice shall be provided to the Town of Yarmouth.

The Town of Barnstable shall collect the fees for the services rendered on behalf of the Town of Yarmouth. Fees for Barnstable staff services shall be, per meter on each dispenser tested. For 3 or less meters at a single location, \$25.00 each. For more than 3 meters at a single location, \$20.00 each. The fee for minor adjustments to bring the device into tolerance shall be \$0.00. The fee for reinspection because of non-compliance shall be \$50.00 Device owners are required by law to maintain the device in compliance. Device owners are urged to comply with this requirement and avoid a reinspection fee.





# TOWN OF YARMOUTH

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492

Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2365

BOARD OF  
SELECTMEN

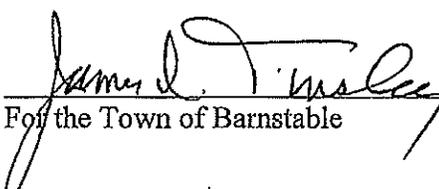
TOWN  
ADMINISTRATOR  
Robert C. Lawton, Jr.

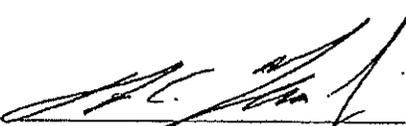
Page 2

## Memorandum of Understanding

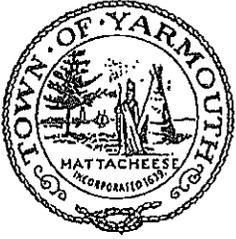
If payment is not remitted to the Town of Barnstable within a reasonable amount of time after which the invoice is produced and sent to the owner of the devices, then the Town of Yarmouth is authorized to enforce the non-payment of the invoice. Non-payment for services rendered may result in removal of the seal by the Yarmouth Sealer of Weights and Measures. A re-inspection fee may then be charged, along with any late fees for the original inspection, to the device owners.

This MOU shall be in effect for the period beginning January 1, 1999 and expiring on December 31, 1999 and may be renewed by agreement of both parties.

  
For the Town of Barnstable

  
For the Town of Yarmouth





# TOWN OF YARMOUTH

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492  
Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2365

BOARD OF  
SELECTMEN

TOWN  
ADMINISTRATOR  
Robert C. Lawton, Jr.

June 5, 2002

Mr. Thomas F. Geiler  
Director Regulatory Services  
Town of Barnstable  
200 Main Street  
Hyannis, Ma. 02601

Dear Mr. Geiler:

I reviewed the Memorandum of Understanding you have submitted to the Town of Yarmouth for you to provide inspection and testing services for all weights and measures devices within the town and have signed it.

I have also forwarded the second set of documents to Robert Canevazzi, Acting Town Administrator in Dennis for his review and signature.

We look forward to our continuing relationship with the Town of Barnstable to provide Sealer of Weights and Measures services.

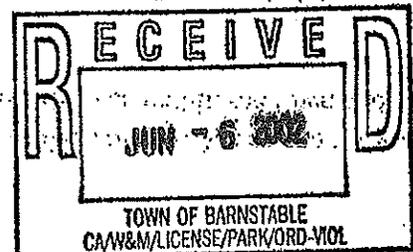
Respectfully,

Robert C. Lawton, Jr.  
Town Administrator

jd

cc: Jim Brandolini

05



List of Fees  
and  
Services

§ 76-3 Weights and measures annual fees (MGL c. 98, § 56)

Description	Fee Per Device	
	1 to 3	4 or more
Scale with capacity over 10,000 pounds	\$275.00	\$250.00
Scale with capacity 5,000 to 10,000 pounds	\$145.00	\$120.00
Scale with capacity 100 to 5,000 pounds	\$90.00	\$80.00
Scale with capacity less than 100 pounds	\$60.00	\$55.00
Weights (each)	\$10.00	\$8.00
Liquid measures	\$40.00	\$40.00
Liquid measure meters	-----	-----
Lubricant meters	\$60.00	\$55.00
Motor fuel meters	\$60.00	\$55.00
Vehicle tank meters	\$120.00	\$110.00
Vehicle tank meter gravity	\$185.00	\$160.00
Bulk storage tank meter	\$185.00	\$160.00
Mechanical pumps, each stop	\$15.00	\$15.00
Taxi meters (semiannually)	\$60.00	\$55.00
Commercial odometer - hubodometer	\$60.00	\$65.00
Leather measure	\$185.00	\$160.00
Dry measure, one bushel or less	\$95.00	\$95.00
Dry measure, more than one bushel	\$130.00	\$130.00
Counting device	\$35.00	\$35.00
All other measuring devices	\$135.00	\$135.00
Rope, wire or chain measuring devices	\$35.00	\$30.00
Reinspection fee (after official rejection)	\$100.00	\$100.00
Reverse vending machines		
Bottle and can redemption inspection		
Disposable test material supplied by inspector	\$35.00	\$30.00
Disposable test material supplied by store	\$20.00	\$15.00
Automatic electronic check-out systems		
3 or less cash registers (per inspection)	\$95.00	
4 to 11 cash registers (per inspection)	\$180.00	
12 or more cash registers (per inspection)	\$300.00	

**DEVICES WE  
INSPECT FOR  
ACCURACY  
AND  
SUITABILITY**

- **TAXI CAB METERS**
- **OIL TRUCK METERS &  
AIR ELIMINATORS**
- **RETAIL STORE SCALES**
- **INDUSTRIAL SCALES**
- **VEHICLE SCALES**
- **GAS STATION  
DISPENSERS**
- **MARINA PUMPS**
- **CORDAGE MEASURERS**
- **STORE SCANNER  
SYSTEMS**
- **LINEAR MEASURERS**
- **WHOLESALE FUEL  
RACKS**
- **AIRPORT REFUELERS**

**WHO DOES THE WORK???**

The Weights & Measures Inspectors who perform these various duties are certified by an examination and field observation by the Massachusetts Division of Standards.

The Division of Standards is the state agency responsible for administering all laws regarding weights and measures in Massachusetts.

All of our inspectors are members of the Massachusetts Weights & Measures Association and the Eastern Massachusetts Weights & Measures Association. These professional organizations help us to keep up to date on changes in the law and especially on the new designs and features constantly being generated by the device manufacturers.

We also belong to the National Conference on Weights & Measures. The NCWM is the organization that creates the standards for devices, inspection procedures and tolerances applied.

**BARNSTABLE  
WEIGHTS & MEASURES PROGRAM**

200 MAIN STREET  
HYANNIS MA 02601

P 508 – 862 – 4671 F 508 – 778 – 2412

Email:

[weight\\_measure@town.barnstable.ma.us](mailto:weight_measure@town.barnstable.ma.us)

OR

[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us), link to Licensing Department, link to Weights & Measures

**BARNSTABLE**

**WEIGHTS & MEASURES  
PROGRAM**



Part of  
Licensing Department  
Director-Richard Scali  
Sealer of Weights and Measures  
Jane Zulkiewicz

**SERVING**

*BARNSTABLE  
BOURNE  
BREWSTER  
CHATHAM  
DENNIS  
HARWICH  
MASHPEE  
ORLEANS  
SANDWICH  
YARMOUTH*

**BOARD  
AND  
COMMITTEE  
ACTIONS**

*Selectmen*

April 14, 2020

Conservation Administrator  
Attn: Kelley Grant

Dear Kelley:

Please accept this letter as my resignation as Conservation Commissioner effective 4/17/2020. It was a pleasure to work with you and to serve the town of Yarmouth.

Thank you.

Philip B. Johnston

**TO:** BOARD OF SELECTMEN  
**FROM:** Mark Forest, Appointments Chairman *Mark R Forest*  
**SUBJECT:** Appointment – Conservation Commission  
**DATE:** April 22, 2020

---

**OPENINGS:** 1 Regular position (3-year unexpired term)  
**Number of Interviewers:**  
\_\_\_\_\_ Selectmen  
\_\_\_\_\_ Commission/Committee Members

**Numerical Evaluation of Candidates**  
**\*\*Maximum Score = 20\*\***

<b>APPLICANT</b>	<b>COMMISSION RATING</b>	<b>SELECTMEN RATING</b>	<b>AVG. RATING</b>
David Bernstein			

**RECOMMENDATION:** To appoint Mr. Bernstein as a regular member to the Conservation Commission. This appointment is to fill a three-year, unexpired term, which will run through June, 2023.

**Barnes, Pam**

---

**From:** noreply@civicplus.com  
**Sent:** Monday, August 13, 2018 10:23 AM  
**To:** Barnes, Pam  
**Subject:** Online Form Submittal: Interested in joining a Committee, Commission or Board?

**Interested in joining a Committee, Commission or Board?**

The Board of Selectmen would like your experience and expertise to serve on a committee, board or special study group.

Please complete this form to enter your information into our database. You may also call 508-398-2231 ext. 270 with any questions.

**Contact Information**

**First Name:** David

**Last Name:** Bernstein

**Street Address 1:** [REDACTED]

**Street Address 2:** *Field not completed.*

**City/Town:** West Yarmouth

**State:** MA

**ZIP:** [REDACTED]

**Phone Number:** [REDACTED]

**Email:** [REDACTED]

**Residency:** Full-time

**I Am Interested In Serving On The Following Board(s)** Board of Appeals, Government Oversight Committee, Community and Economic Development Committee, Conservation Commission, Energy Committee, Library Board, Open Space Committee, Planning Board, Recreation Commission, Water Resources Advisory Committee

Please enter more detailed information about yourself

Work Experience/Occupation:	High School English teacher for 35 years. Worked for Mass Teachers Association as a Field Rep and lobbyist. Adjunct College professor in Education.
Educational Studies:	BA UMass Amherst English and Communications MA UMass. Amherst American Studies CAGS UMass. Amherst Education Leadership and Administration
Community Service Record:	Coached youth Baseball, Soccer and basketball
Personal History: (Optional)	<i>Field not completed.</i>
State briefly why you are interested in serving the Town in the area(s) of government indicated:	I am now able to dedicate the proper time to serve on committees. Depending upon time commitment I am most interested in Appeals, Capital busget, Energy, Library or Water resources.

Email not displaying correctly? [View it in your browser.](#)

**TO:** BOARD OF SELECTMEN  
**FROM:** Mark Forest, Appointments Chairman *Mark R Forest*  
**SUBJECT:** Reappointment – Cape Cod Commission  
TOY Representative  
**DATE:** April 22, 2020

---

**OPENINGS:** 1 Regular position (3-year term)

**Number of Interviewers:**

\_\_\_\_\_ Selectmen

\_\_\_\_\_ Commission/Committee Members

**Numerical Evaluation of Candidates**

**\*\*Maximum Score = 20\*\***

<b>APPLICANT</b>	<b>COMMISSION RATING</b>	<b>SELECTMEN RATING</b>	<b>AVG. RATING</b>
------------------	------------------------------	-----------------------------	------------------------

Jack McCormack

**RECOMMENDATION:** To reappoint Mr. McCormack as the Town of Yarmouth's representative to the Cape Cod Commission. This appointment is for a three-year, term, which will run through April, 2023.

Selectmen



3225 MAIN STREET • P.O. BOX 226  
BARNSTABLE, MASSACHUSETTS 02630

CAPE COD  
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • [www.capecodcommission.org](http://www.capecodcommission.org)

March 4, 2020

Board of Selectmen  
c/o Town Administrator's Office  
1146 Route 28  
South Yarmouth, MA 02664

**RE: Yarmouth Representative to the Cape Cod Commission**

Dear Selectmen:

As you know, towns are requested to appoint a representative to the Cape Cod Commission for a term of three years. After reviewing our records, we noted that your town's appointment, John McCormack, Jr., is due to expire on April 24, 2020.

At this time, I would ask your Board to either reappoint Mr. McCormack or make a new appointment, for the **three-year term effective April 25, 2020 through April 24, 2023**. According to legislation, all appointments are for three years and all members must be residents and registered voters in Barnstable County.

As you consider your appointment for this position, please know that I am available at your convenience to discuss this with you. Enclosed for your review are the "*Roles and Responsibilities of Cape Cod Commission Members*."

Please forward all appointment letters to Lisa Dillon at the Cape Cod Commission office at the address above. Thank you for your prompt attention to this matter.

Sincerely,

  
Harold W. Mitchell, Chairman

Enclosure

cc: John McCormack, Jr. Yarmouth Representative  
Lisa Dillon, Commission Clerk

**APPROVAL**  
**OF**  
**MINUTES**



## Board of Selectmen Board of Selectmen Meeting Minutes November 19, 2019

The regular meeting was called to order at approximately 6 p.m. in the Town Hall Hearing Room by Chairman Stone. Selectmen present: Erik Tolley, Tracy Post, Mark Forest, and Norm Holcomb. Also attending: Yarmouth Interim Assistant Town Administrator, Rich Bienvenue.

### 1. Public Announcements and Comments

An unidentified resident spoke in favor of the Town continuing to support and invest in the Town golf operations.

### 2. Presentation to Deputy Police Chief Steven Xiarhos

The Selectmen presented a proclamation to Deputy Police Chief Steven Xiarhos thanking him for his 40 years of service to the Yarmouth Police Department. It was noted that Deputy Chief Xiarhos was the recipient of 22 various police department awards and decorations during his tenure with the Town. Deputy Chief Xiarhos will be retiring from his position on December 8, 2019.

Deputy Chief Xiarhos received a round of applause from the Selectmen and audience members. He thanked the Selectmen and the people of Yarmouth for their continued support of the Police Department. Police Chief Frank Fredrickson stated there would be an open house on December 6<sup>th</sup> from 12 – 2:30 pm for anyone who wanted to stop by to wish him well. Chief Fredrickson also stated his appreciation for working with Deputy Chief Xiarhos for many years and wished him the best in his future endeavors.

### 3. Public Hearings

a. Grand Café License Renewal. Licensing Chairman Michael Stone read the legal ad into the record. Mr. Stone explained that the Board of Selectmen need to approve the license transfer (that was previously approved) due to time constraints not being met regarding paperwork that needed to be submitted to the ABCC. Mr. Stone explained that the document needed for ABCC approval of the license transfer was finally submitted, but the ABCC has required the Yarmouth Board of Selectmen to approve the license transfer again due to how long it has been since the Selectmen's approval occurred.

Mr. Stone recommended that the Board re-approve the transfer of the liquor license from Luis Paguay into the name of his corporation (which was previously approved by Selectmen). Selectman Post stated that having a liquor license is a privilege and the applicant did not submit the necessary paperwork to the ABCC in a timely manner which is why the matter is before the Selectmen for a second time. Selectman Tolley agreed and urged the applicants to deal with these matters in a more proactive role going forward so they did not have to return to the Selectmen.

**MOTION: To move that the Board of Selectmen approve the transfer of the liquor license from Luis Paguay to his corporation's name.**

**Motion by: Erik Tolley**

**Seconded by: Mark Forest**

**Yea 5 Nay 0**

b. Veterans' Beach Sticker Policy (2<sup>nd</sup> Hearing). The Selectmen previously received a presentation on this matter from Jeff Colby, DPW Director. No one from the audience asked to speak on this matter.

**MOTION: To move that the Board of Selectmen approve the Veterans' Beach Sticker Policy as presented.**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

c. Golf Fees Increase (2<sup>nd</sup> Hearing)

**MOTION: To move that the Board of Selectmen approve the golf fee increases as presented.**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

#### **4. Weights and Measures Inter-Municipal Agreement with Barnstable**

Richard Scalley, Licensing Director for the Town of Barnstable, presented an update on the Inter-Municipal Agreement with the Town of Barnstable regarding the weights and measures program. Mr. Scalley reviewed the original agreement between the two towns and noted that it was signed in 1999. Since this time, the Town of Barnstable has provided Sealer of Weights and Measures services to Yarmouth along with other towns on the Cape. The list of fees and services was then reviewed, as well as a list of locations in Yarmouth where they are provided. Mr. Scalley also reviewed the FY19 Annual Report of the Weights and Measures program and explained that the total revenue of the program was \$45,847.00 (through fees and fines).

It was explained that the Weights and Measures program is now running at a deficit. Instead of increasing the fees assessed to businesses, assessments are proposed to be levied on the towns participating in the program. Assessments will be calculated based on the percentage of devices each town has that requires the weights and measures services. Yarmouth's assessment for FY21 will be \$15,375.00, with a 2.5% increase annually. The agreement lasts 25 years but there will be a review of the agreement after 3 years.

Selectman Tolley asked why there is a deficit within the program after many years of it operating with a balanced budget. Mr. Scalley responded that equipment replacement and retirement benefits (which used to be included in Town of Barnstable's budget) have prompted the change. Selectman Tolley stated that he believed there was good value to the Town of Yarmouth with this agreement. Selectman Post questioned why the increased expense should be borne by the Town and taxpayers instead of the businesses. Mr. Scalley responded that the fees businesses pay are already high and they felt it would be unfair to further increase the expense to small businesses. Furthermore, he stated that residents benefit from this program as well. Selectman Post stated that she believed the cost should be shared between the Town and the businesses. Selectman Stone stated that Town Counsel would have to review and evaluate the agreement before they could take any action on it.

#### **5. Proposed Bylaw Prohibiting Polystyrene Presentation by RASWAC**

Carol Ewing and Jill Talladay, co-chairs of the Yarmouth Recycling and Solid Waste Committee, presented the proposed bylaw that would prohibit polystyrene in Yarmouth. They explained that the general goal of the bylaw is to protect the environment and health of Yarmouth residents. It was explained that polystyrene is a form of plastic that is based on styrene, which is a

probable carcinogen (and is commonly referred to as styrofoam). This material is not accepted for recycling at the Yarmouth Disposal Area and has been a source of unsightly litter in Yarmouth.

The proposed bylaw would prohibit the use of disposable polystyrene containers as food service containers. It would apply to all retail and food establishments as well as food trucks and farmers' markets. It would exclude foam packaging used for transport such as packing "peanuts" or packing for raw meat and eggs. There are currently similar existing polystyrene bans in place across five towns on the Cape. It was explained that alternatives to polystyrene currently exist in the market such as plant based compostable materials, metals and other types of plastic that can be recycled easily.

The outreach efforts related to this proposed bylaws were also reviewed, and it was noted the committee met with the Yarmouth Board of Health, DY School Administration, and local businesses (through the Chamber of Commerce). There will be future public meetings held at the libraries and Senior Center to review the bylaw and its effects. Roby Whitehouse, Waste Management Superintendent, also spoke in favor of the bylaw. Ms. Ewing and Ms. Talladay (on behalf of the RASWAC) requested that the Board of Selectmen place the Polystyrene Reduction Bylaw on the 2020 Spring Town Meeting warrant.

Selectmen Forest noted his support of the bylaw but recommended that Town Counsel review the bylaw before Selectmen agreed to place it on the Town Meeting warrant. Selectmen Post noted a concern with the Police Department enforcing the bylaw and suggested that the Health Department would be a more suitable enforcing agent. Selectmen Tolley noted his supported the bylaw in general but would not support it if the ban of plastic cutlery and straws was included (as the draft bylaw indicates that it would). Selectmen generally supported the bylaw but requested more input from the business community on how they would adapt to the bylaw before deciding to place it on a Town Meeting Warrant.

## 6. Board and Committee Actions

- a. Approval of Minutes for June 18, 2019.

**MOTION: To move that the Board of Selectmen approve the minutes of June 18,, 2019.**

**Motion by: Tracy Post  
(Erik Tolley abstained)**

**Seconded by: Norm Holcomb**

**Yea 4 Nay 0**

- b. Upcoming Agenda Review

The next Board of Selectmen meeting will take place on December 10, 2019. There will be various items on the agenda including a review of Selectmen goals and the Town committee handbook. There will also be a swearing in of the new Deputy Police Chief and a presentation on the Town Visioning project. There will also be a meeting on December 17, 2019 where the Town Administrator will give a FY21 Budget Presentation.

- c. Individual Items

Selectmen Post thanked the people of Dennis for their support of the new DY Regional School Agreement. Selectmen also reiterated their thanks for the outgoing Deputy Police Chief Steven Xiarhos for his many years of excellent service to the community.

## 7. Town Administrator Items

- a. Consent Agenda

Rich Bienvenue, Assistant Town Administrator, presented the Consent Agenda to the Board of Selectmen. He explained that there was a donation requests on the agenda to be

approved as well as a MoA between the Town of Yarmouth and the Yarmouth Professional Firefighters.

**MOTION:** To move that the Board of Selectmen approve the consent agenda.

Motion by: Erik Tolley

Seconded by: Norm Holcomb

Yea 5 Nay 0

**8. Adjourn**

**MOTION:** To move that the Board of Selectmen adjourn the meeting.

Motion by: Tracy Post

Seconded by: Erik Tolley

Yea 5 Nay 0

Meeting adjourned at approximately 8:10pm.

Respectfully submitted,



Linda Dennehy



# TOWN OF YARMOUTH BOARD OF SELECTMEN PROJECTED 2020 AGENDA ITEMS

MEETING DATE		BUDGET SCHEDULE DUE DATES	REGULAR BOS AGENDA ITEMS
FEBRUARY 27	<b>SAE</b>		<ul style="list-style-type: none"> <li>• TRI-TOWN BOS MEETING</li> </ul>
MARCH 3	NO MEETING ELECTIONS		
MARCH 10			<ul style="list-style-type: none"> <li>• EXECUTIVE SESSION: COLLECTIVE BARGAINING</li> <li>• NEW GENERAL PREMISE ALCOHOL LICENSE &amp; WEEKDAY &amp; SUNDAY ENTERTAINMENT LICENSES FOR ALPHA ENTERTAINMENT GROUP LLC DBA THE MUSIC ROOM</li> <li>• SHELLFISH LEASE REALLOCATION</li> <li>• CPC ARTICLE REVIEW</li> <li>• FY21 COMMDEV BUDGET REVIEW</li> <li>• FY21 FINANCE DEPARTMENTAL BUDGET REVIEW</li> <li>• FY21 ELECTED AND GENERAL BUDGET REVIEW</li> </ul>
MARCH 16	<b>MONDAY MEETING</b>	<ul style="list-style-type: none"> <li>• <i>FINAL BOS RECOMMENDATIONS ON ARTICLES</i></li> </ul>	<ul style="list-style-type: none"> <li>• CHANGE OF MANAGER FOR BLUE WATER; RIVIERA BEACH; AND BLUE ROCK CLUB</li> <li>• FY21 CCRT BUDGET REVIEW</li> <li>• FY21 INSPECTIONAL SERVICES BUDGET REVIEW</li> <li>• FY21 COMMUNITY SERVICES BUDGET REVIEW</li> <li>• APPROVE 2020 ATM WARRANT</li> </ul>
MARCH 19	NO MEETING		<ul style="list-style-type: none"> <li>• <b>DEADLINE FOR ATM WARRANT TO PRINTER &amp; THE REGISTER</b></li> </ul>
MARCH 24	NO MEETING		
MARCH 31	NO MEETING		
APRIL 7	TBD		<ul style="list-style-type: none"> <li>•</li> </ul>
APRIL 14			<ul style="list-style-type: none"> <li>• PUBLIC HEARING: MANAGEMENT AGREEMENT AMENDMENT FOR THE HARBOUR CLUB DBA TUGBOATS</li> <li>•</li> </ul>
APRIL 21	NO MEETING PATRIOTS DAY		
APRIL 28			<ul style="list-style-type: none"> <li>• COVID-19 UPDATE: FY20 &amp; FY21 BUDGET IMPACTS; ANNUAL TOWN ELECTION UPDATE</li> <li>• DHY UPDATE (AGREEMENT &amp; ARTICLES)</li> <li>• YANKEE VILLAGE CONSERVATION RESTRICTION &amp; POSSIBLE VOTE</li> <li>• BARNSTABLE COUNTY WEIGHTS &amp; MEASURES IMAS &amp; POSSIBLE VOTE</li> </ul>



# TOWN OF YARMOUTH BOARD OF SELECTMEN PROJECTED 2020 AGENDA ITEMS

MEETING DATE		BUDGET SCHEDULE DUE DATES	REGULAR BOS AGENDA ITEMS
MAY 5			<ul style="list-style-type: none"> <li>MVP PROJECT UPDATE</li> </ul>
MAY 12	NO MEETING		
MAY 19			<ul style="list-style-type: none"> <li>PUBLIC HEARING: ALTERATION OF PREMISE FOR TUGBOATS</li> <li>DY NEW MIDDLE SCHOOL PRESENTATION</li> <li>TRANSFER OF LICENSE HEARING FOR LIQUORS AND MORE (ALTERNATE DATE IS JUNE 9<sup>TH</sup>)</li> </ul>
MAY 26	NO MEETING MEMORIAL DAY		
JUNE 9			<ul style="list-style-type: none"> <li>PUBLIC HEARING: FY21 BUDGET PRESENTATION</li> </ul>
JUNE 22	<b>TOWN MEETING</b>		<ul style="list-style-type: none"> <li></li> </ul>

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|--|
| <ul style="list-style-type: none"> <li>RENAMING POLICY</li> <li>COMMITTEE REPORTS</li> <li>DHY AGREEMENT</li> <li>CLEAN WATER TRUST</li> <li>MATTACHEESE BUILDING &amp; REUSE COMMITTEE</li> <li>FINANCE UPDATE ON INTERNAL CONTROLS</li> <li>BARNSTABLE MUNICIPAL AIRPORT – AIRPORT MASTER PLAN (JUNE)</li> <li>CAPE COMMISSION UPDATE (JUNE)</li> <li>CAPE LIGHT COMPACT PRESENTATION</li> <li><b>JUNE 30<sup>TH</sup> – ELECTIONS</b></li> <li>CEDC GOALS AND SUPPORT OF WASTEWATER; AND SPECIAL EVENTS</li> <li>LEGAL SERVICES REVIEW</li> </ul> |
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**CONSENT  
AGENDA  
ITEMS**



**TOWN OF YARMOUTH  
RECREATION DIVISION**

424 Route 28, West Yarmouth, MA. 02673

Telephone (508) 398-2231 x-1520 Fax (508) 790-9152

Email: [recreation@yarmouth.ma.us](mailto:recreation@yarmouth.ma.us)

# CONSENT AGENDA

MEMORANDUM

TO: The Honorable Board of Selectmen  
FROM: Ruth D. Nee, Administrative Assistant  
DATE: March 17, 2020  
RE: Donations – Recreation Department

Please accept the following donations to the Town of Yarmouth Recreation Division.

The following donations will be used for the Gray's Beach Boardwalk:

1387	Kevin Litchfield	\$150.00	1388	Colin Mandigo	\$150.00
1389	Gaynor McMahon	\$150.00	1390	Erin Carey	\$150.00
1391	Jennifer Haggerty	\$150.00	1392	Mike Alexander	\$150.00
1393	Mike Alexander	\$150.00	1394	Mike Alexander	\$150.00
1395	Eileen McCarthy	\$150.00	1396	Jennifer Pavlovic	\$150.00
1397	Jennifer Haggerty	\$150.00	1398	Jennifer Haggerty	\$150.00
1399	Jennifer Haggerty	\$150.00	1400	Mike Alexander	\$150.00
1401	Mike Alexander	\$150.00	1402	Maryalice Smith	\$150.00
1403	Joshua Drohan	\$150.00	1404	Ruth Coyle	\$150.00
1405	William Winans	\$150.00	1406	Orla Coughlan	\$150.00
1407	Kathleen Sanders	\$150.00	1408	Ruth Coyle	\$150.00

**Boardwalk Total** **\$3,300**

**TOTAL DONATIONS:** **\$3,300**



# Yarmouth Police Department

*Excellence in Policing*

**Nicole M.N. Bohane**  
Administrative Assistant

## CONSENT AGENDA

TO: The Honorable Board of Selectmen

FROM: Nicole M.N. Bohane  
Administrative Assistant *Nicole M.N. Bohane*

SUBJECT: Donation Approval Request

DATE: April 17, 2020

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Please be advised that the Yarmouth Police Department has received a donation for \$100 from Richard A Ozimek Living Trust. These funds will be used for Miscellaneous Police Expenses. We respectfully request your approval for this donation.

If you should have any questions regarding this donation, please do not hesitate to contact my office. Thank you in advance for your attention in this matter.

xc: file

# **INFORMATION ITEMS**



ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

April 2, 2020



The Honorable Norman Holcomb  
Chairman, Board of Selectmen of Yarmouth  
1146 Route 28  
Yarmouth, MA 02664-4491

Dear Chairman, Board of Selectmen Holcomb:

I am pleased to inform you of a special allocation to your jurisdiction of Community Development Block Grant funds to be used to prevent, prepare for, and respond to the coronavirus (COVID-19). This allocation was authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, which was signed by President Trump on March 27, 2020, to respond to the growing effects of this historic public health crisis.

The CARES Act made available \$5 billion in Community Development Block Grant Coronavirus (CDBG-CV) funds. Of this amount, the Department is immediately allocating \$2 billion based on the fiscal year 2020 CDBG formula. The remaining \$3 billion shall be allocated based on needs using best available data, in the following tranches: \$1 billion shall be allocated to States and insular areas within 45 days of enactment of the CARES Act, and \$2 billion shall be distributed to states and local governments at the discretion of the Secretary. Up to \$10 million will be set aside for technical assistance. Given the immediate needs faced by our communities, the Department has announced the first allocation of funds. Your jurisdiction's allocation is \$75,880.

The CARES Act adds additional flexibility for both the CDBG-CV grant and, in some cases, for the annual FY2020 CDBG grants in these unprecedented times. The public comment period is reduced to not less than 5 days, grantees may use virtual public hearings when necessary for public health reasons, the public services cap is suspended during the emergency, and States and local governments may reimburse costs of eligible activities incurred for pandemic response regardless of the date.

In addition, the CARES Act authorizes the Secretary to grant waivers and alternative requirements of statutes and regulations the Secretary administers in connection with the use of CDBG-CV funds and fiscal year 2019 and 2020 CDBG funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements can be granted when necessary to expedite and facilitate the use of funds to prevent, prepare for, and respond to coronavirus.

The Department is developing a notice that will further describe the CARES Act's provisions, a Quick Guide to the CARES Act flexibilities and other provisions, and other resources to enable swift implementation of CDBG-CV grants. As these become available, they will be

posted on HUD's website and distributed to grantees. The Department will also support grantees with technical assistance.

As you develop your plan for the use of these grant funds, we encourage you to consider approaches that prioritize the unique needs of low- and moderate-income persons and the development of partnerships between all levels of government and the private for-profit and non-profit sectors. You should coordinate with state and local health authorities before undertaking any activity to support state or local pandemic response. CDBG-CV grants will be subject to oversight, reporting, and requirements that each grantee have adequate procedures to prevent the duplication of benefits. HUD will provide guidance and technical assistance on DOB and regarding prevention of fraud, waste, and abuse and documenting the impact of this program for beneficiaries.

The Office of Community Planning and Development (CPD) is looking forward to working with you to successfully meet the urgent and complex challenges faced by our communities. If you or any member of your staff has questions, please contact your local CPD Field Office Director or [CPDQuestionsAnswered@hud.gov](mailto:CPDQuestionsAnswered@hud.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'John Gibbs', written in a cursive style.

John Gibbs  
Acting Assistant Secretary  
for Community Planning and Development  
U.S. Department of Housing and Urban Development