

**INTER-MUNICIPAL WATER AGREEMENT
BETWEEN THE TOWN OF PROVINCETOWN AND THE TOWN OF TRURO**

This **Inter-Municipal Water Agreement** is made within the County of Barnstable, Commonwealth of Massachusetts, on this 12TH day of April, 2010 between the **Town of Provincetown** and the **Town of Truro**, acting by and through their respective Boards of Selectmen under M.G.L. chapter 40, section 4A:

PURPOSE: To protect the water resources within the Town of Truro in such a manner that both the Town of Provincetown and the Town of Truro provide the people of both towns with present and future adequate and potable water supplies, and to provide the terms and conditions under which Provincetown will supply potable water to residents and business within Truro;

WHEREAS, The Town of Provincetown, through the special legislation of the Statutes of 1907, Chapter 483, Section 1, and the Statutes of 1952, Chapter 439, Section 2, has been empowered to take and has taken two (2) parcels of land within the Town of Truro, to sink water wells upon them, and to transport water so obtained through the Town of Truro for use by inhabitants of the Town of Provincetown and inhabitants of the Town of Truro;

AND WHEREAS, the Towns of Truro and Provincetown are concerned about the protection of the water resources of the Lower Cape, the protection of the existing water table, and the future use of such water table. The Towns are also concerned with ensuring that the current and future users of the Provincetown Water System ("PWS") located in both Towns continue to have access to a safe and reliable potable water supply at a reasonable cost;

AND WHEREAS, the parties first entered into an Agreement Between The Town Of Provincetown And The Town Of Truro dated August 17, 1982, as modified by the Four-Year Extension to the Inter-Municipal Agreement Between the Town Of Provincetown and the Town Of Truro dated October 2004, which expired on December 31, 2008;

AND WHEREAS, the parties seek to enter into this Intermunicipal Agreement which shall run through December 31, 2034, upon the terms and conditions as set forth below:

BE IT THEREFORE RESOLVED AND AGREED:

Part I – Terms and Conditions

1. The Town of Provincetown agrees and covenants that it will not increase the area within the Town of Truro to be utilized as well fields for the PWS beyond that existing on December 31, 1981, by exercise of its eminent domain powers under Statutes 1907, Chapter 483, and Statutes 1952, Chapter 439 without the prior approval of the Truro Board of Selectmen ; nor will the Town of Provincetown sink more wells in its present sites, with the exception of the North Union

Well Field and replacement wells for existing wells at other locations in Truro, without the approval of the Truro Board of Selectmen.

2. In order to facilitate the development of the North Union Field as a redundant water supply source, the Board of Selectmen of the Town of Truro hereby agrees to lease North Union Field, so-called, composed of Lots 71, 73 and 77 on Truro Assessor's Map 40, pursuant to Chapter 439 of the Acts of 1952, for a term of 99 years, upon terms mutually agreeable to the Boards of Selectmen of the Towns of Provincetown and Truro herein referred to as the parties, and subject to all required approvals; provided, however, that the lease payment shall be \$55,567.82 per year for the first fifty (50) years of the lease. During the first fifty (50) years of the lease, the Town of Provincetown shall not be responsible for pilot payments. After fifty (50) years, the Town of Provincetown shall be responsible for pilot payments based on then existing rates. The Boards of Selectmen agree to negotiate and execute a lease in conformance with this Agreement forthwith after receiving all necessary approvals, including, an authorizing vote from both the Provincetown and Truro Town Meetings, said lease to provide that the lease shall not commence until the Special Act referenced in Paragraph 14 of this Agreement increasing the size of the Provincetown Water and Sewer Board is enacted by the General Court and the Town of Truro receives approval from the General Court under Article 97 of the Massachusetts Constitution, if necessary, to lease the land. Although Provincetown has not yet completed the Source Final Report for submission to the Department of Environmental Protection, Provincetown anticipates that the safe yield of the North Union Field will be between 550,000 and 650,000 GPD. The Boards recognize that bringing North Union Field on line will constitute part of the redundancy for South Hollow and all of the replacement of the NTAFB wells. After the North Union Field is brought on line, it is anticipated that the NTAFB wells will continue to be available to meet the emergency needs of the Provincetown Water System. The Town of Provincetown agrees that any new well fields developed after the North Union Well Field becomes operational will be located outside of the zone of contribution of existing well fields of the PWS.

In the event that the Town of Provincetown is unable to develop the North Union Well Field in accordance with the intent of this Agreement for any reason, including without limitation, the inability of Provincetown (1) to obtain a U.S. Department of Agriculture Rural Development Grant for the well development costs, (2) to acquire the privately-owned land required to complete site control of the Zone 1 surrounding the North Union Well Field, or (3) to obtain all necessary permits and approvals for the development of the well field and to implement this Agreement, this Agreement shall be deemed null and void. In that event, the parties agree to meet for the purpose of negotiating a new intermunicipal agreement.

3. The Town of Truro covenants and agrees that during the term of this agreement or any extension of it, it will actively support and cooperate with the Town of Provincetown with respect to planning for and implementation of long-range water supplies and with respect to the improvement of present water supplies for the mutual benefit of both towns.

4. The Town of Provincetown agrees to supply the Town of Truro with plans for any requested expansion, development or change in use from those conditions generally in effect prior to the date of this Agreement, of the water sources under its control within the Town of Truro. The Town of Provincetown further agrees to obtain the permission of the Town of Truro for any capital improvements to the Provincetown Water System in Truro. Such capital improvements must be mutually agreed upon by the Town of Truro Board of Selectmen and the Town of Provincetown Board of Selectmen before any implementation. In consideration of Truro's agreement to lease to Provincetown the land identified in Section 2 of this Agreement, the Town of Truro shall not be responsible for any past or future capital improvements incurred in the development of the Provincetown Water System. If there are any future capital improvements that cannot be recovered entirely from user fees and, as a result, Provincetown funds the improvements in whole or in part from its tax levy, the users of the PWS located in Provincetown and Truro may be charged a surcharge on the water rate or a special assessment to cover such capital improvements. Notwithstanding the foregoing, no extension of the Provincetown Water System to new areas in Truro shall be permitted except with the prior approval of both Boards of Selectmen.
5. The Town of Truro agrees and covenants that, in consideration of the above, it shall not introduce or reintroduce any form of legislative bill or take any, other action which would restrict in any way, the taking of water from within the Town of Truro by the Town of Provincetown, as long as this agreement remains in effect or, unless Truro is able to demonstrate that the taking of water from Truro by Provincetown is detrimental to the Town of Truro.
6. The Town of Truro agrees to cooperate with the Town of Provincetown in the pursuit of payment of unpaid water bills from properties in the Town of Truro.
7. The Town of Provincetown agrees that it will apply any and all rates imposed upon the water system subscribers with uniformity regardless of whether the system subscriber is located in the Town of Truro or the Town of Provincetown.
8. The Town of Provincetown agrees and covenants that it will continue to supply the Town of Truro with monthly reports substantiating usage from its present sources. The Town of Provincetown will promptly comply with the Leak Detection Regulations outlined in 360 CMR 12.00, et. Seq., as they may be amended from time to time. The Boards of Selectmen of the Towns of Provincetown and Truro agree to meet at least once a year for the purpose of making joint findings about the Provincetown Water System. Such joint findings may include, but are not limited to, results of the most recent meter readings; system pumpage and consumption figures and the calculation of "unaccounted for" water; what actions each Town has taken regarding water conservation and growth management. At said meeting, the Boards of Selectmen shall also address the Master Management Plan filed with, or to be filed with, the

Department of Environmental Protection. The Boards may also jointly make five-year projections regarding future water pumpage and consumption for the Provincetown Water System.

9. The parties agree jointly to develop, implement, and oversee public outreach programs, including a joint resource conservation plan for the territory of both Towns served by the Provincetown Water System located within the Pamet Lens; jointly to monitor and approve water usage, quality, and adequate water pressure throughout the System; and to issue annual statistical reports that summarize system operations.
10. The existing Pamet Lens Oversight Group (PLOG) comprised of two representatives from each Town, appointed by their respective Boards of Selectmen, shall continue until disbanded in accordance with Section 14 of this Agreement. Alternate members may also be appointed. PLOG is an advisory group charged to make recommendations to both boards of selectmen. The Boards of Selectmen retain all executive and policy authority with regard to all matters covered by this Agreement. Any issues that cannot be resolved by PLOG will be presented to a joint meeting of the two Boards of Selectmen for review and resolution. PLOG will adhere to its charge, which will include, as a minimum, oversight of the implementation of and adherence to all components of this Agreement and the development of its several plans, as follows:
 - a. A Conservation Plan to focus on preservation of Pamet Lens groundwater. This plan will include but is not limited to: the reduction in unaccounted-for water; the restriction of water use in times of drought or emergency; and the development of a program of public education to promote wise use of potable water.
 - b. A Watershed Management Plan as set forth in Section 11 below.
 - c. A Water System Master Plan as set forth in Section 12 below.
11. ***Watershed Management Plan.*** The parties agree to jointly develop, fund and adopt a watershed management plan for the Pamet Lens that coordinates current withdrawals across all well fields and wells; recognizing the limited and fragile nature of the supply and consistent with the multi-straw approach, so called. This Plan is to focus on the protection of streams and wetlands thereby protecting and preserving the Pamet Lens. This plan will include but is not limited to prevention and control of point and non-point source pollution, goals to be accomplished by determining and mapping the size, boundaries, topography and soil type of the watershed(s) within the Pamet Lens, and by systematic evaluation and monitoring of land-use trends in the watershed(s). Such plan shall provide for environmental monitoring consistent with the requirements of the Massachusetts Department of Environmental Protection, and applicable federal, state, and county regulations.

12. **Water System Master Plan.** The parties agree to jointly develop, fund and adopt an update to the June 28, 2002 Water System Management Study prepared by Environmental Partners Group on for the Provincetown Water System. The updated report shall incorporate projections of future supply and demand, including new large users and areas of system expansion; identifies future viable water source; and ensures adequate capacity, including redundancy, and controls the authorized rate of withdrawal; and pumping schedule for all well sites. This plan will include but is not limited to the expansion of the water system, including system expansion within the towns of Provincetown and Truro. The plan will develop projections of future use of water from the system within each town, and an evaluation of those projections relative to the projected available water. All projections, expansion, withdrawal rates and pumping schedules shall be approved by a majority vote of the two boards.
13. Each Board of Selectmen shall ensure coordination with its Town's boards relative to implementation of the watershed management plan, the water system master plan, and the water conservation plan.
14. The Water and Sewer Board of the Town of Provincetown currently consists of five members, all of which are residents of the Town of Provincetown. Upon execution of this Agreement, the Town of Provincetown shall undertake any and all necessary steps to modify the Water and Sewer Board so that when it is acting as a Water Board, the Board shall consist of seven members, four of whom shall be residents of the Town of Provincetown and three of whom shall be residents of the Town of Truro. The Towns recognize that the implementation of this change to the composition and authority of the Provincetown Water and Sewer Board requires special legislation. To that end, the Provincetown Town Meeting at a Special Town Meeting held on April 5, 2010, will be asked to authorize the Board of Selectmen to file a home rule petition for special legislation. Upon the effect date of the special legislation, PLOG shall be disbanded and the Water and Sewer Board shall become responsible for the oversight of the Conservation Plan, Watershed Management Plan and Water System Master Plan among its existing duties and responsibilities regarding the PWS.
15. The parties agree that filings made by the Town of Provincetown with any county, state, or federal agency shall be consistent with any water system master plan and the watershed management plan jointly approved by the two Boards of Selectmen. The Truro Board of Selectmen will be afforded the opportunity of commenting on the content of any such filings prior to their being submitted. The Town of Truro shall actively support such filings with the exception of any aspects not addressed by Provincetown to Truro's satisfaction.
16. The parties shall keep and maintain service and rate uniformity for all system subscribers, and shall ensure that Provincetown's Water Enterprise Fund revenues are used solely for the operation of the water system or retained for future capital expenses or to reduce user fees. The parties agree that the Provincetown Town Manager's budget request and rate structure for the Provincetown Water Enterprise Fund shall be based on any water system master plan that

the two Boards of Selectmen jointly adopt. Said budget request shall be submitted to both Boards of Selectmen by the third Monday in December. The Truro Board of Selectmen may provide their written comments thereon; and, if they so request, to meet with the Provincetown Selectmen during the month of January to discuss such comments. If the Enterprise Fund budget proposes the expenditure of \$50,000 or more for any single capital item, the Water and Sewer Board reconstituted pursuant to Section 14 of this Agreement must approve said expenditure by no fewer than 5 votes. Notwithstanding the foregoing, in the event of an emergency jointly declared by both Boards of Selectmen, approval of the Water and Sewer of any capital expenditure to address such an emergency shall not be required. The Provincetown Board of Selectmen shall present said budget to the April Annual Town Meeting for adoption. The Truro Board of Selectmen or their agent shall have the option to review all supporting financial data.

17. The Truro Board of Selectmen or its designee shall participate in any selection process that Provincetown may establish for Provincetown's hiring of consultants on any aspect of this Agreement or other related documents, jointly approved by the parties, regarding the water system. The scope of such consulting services shall be in compliance with any policy or plan that the two Boards of Selectmen have jointly adopted. All final decisions shall be made by the Town of Provincetown.
18. In the event of a situation that would require an act outside of this agreement, it is mutually agreed that both Boards will meet immediately in an attempt to find a solution.
19. The Water and Sewer Board, when acting as a Water Board pursuant to Section 14 of this Agreement, and in consultation with the Boards of Selectmen of Towns of Provincetown and Truro, may adopt and from time to time amend regulations for new and expanded water connections from the Provincetown Water System. In accordance with Chapter 483 of the Acts of 1907 and Chapter 439 of the Acts of 1952, the inhabitants of the Towns of Truro and Provincetown shall be allowed to connect to the Provincetown Water System, pursuant to the terms and conditions established by the Water and Sewer Board. Said terms and conditions shall be uniformly applied to all users of the Provincetown Water System.
20. Termination and/or modification of this Inter-Municipal Agreement may take place only through mutual written agreement.

Part II – Dispute Resolution Procedures

1. Any dispute which may arise between the parties concerning the applications, meaning, or interpretation of this Agreement, shall be settled in the following manner:
 - a. Either Board of Selectmen shall deliver to the other a written statement of the dispute, which shall specify the provision of this Agreement alleged to have been violated, and identify

the proposed remedy. Such notice shall be delivered in hand or by certified mail within thirty (30) days after the initiating party first gained knowledge of the occurrence or failure of occurrence of the incident upon which the dispute is based.

b. Within thirty (30) days after receipt of the dispute statement in 1.a, the two Boards of Selectmen shall jointly conduct one or more meetings to attempt to resolve the dispute. Any resolution shall be reduced to writing and approved by vote of both Boards of Selectmen, and shall become an appendix to this Agreement.

c. If the dispute is not resolved through joint meetings held under 1.b, then the matter may, by vote of both Boards of Selectmen, be referred to arbitration under 1.d.

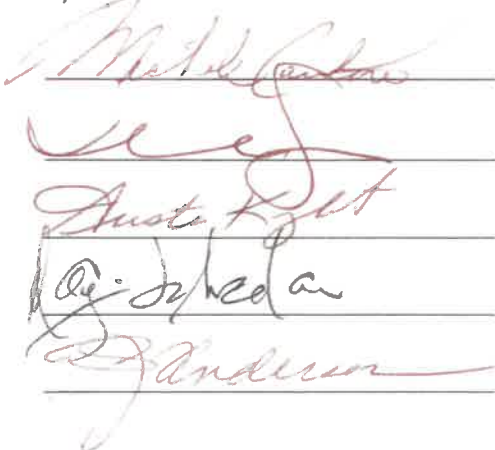
d. The arbitration shall be conducted by the American Arbitration Association under its existing rules of procedure. The decision of the arbitrator shall be final and binding upon the parties except that the arbitrator shall make no decision which alters, amends adds to or detracts from the Agreement or which modifies or abridges the management rights and prerogatives of the Towns. Costs of the arbitration proceedings, except for transcripts requested by a party, shall be shared equally by both Towns.

e. If at the end of the thirty (30) days next following the occurrence, or failure of occurrence, of any dispute first became known by either party, and the dispute shall not have been presented as outlined in Section II, Paragraph 1.a above, the dispute shall be deemed to have been waived. Notwithstanding, any time limits herein set forth may be waived and/or extended by mutual agreement of the parties in writing.

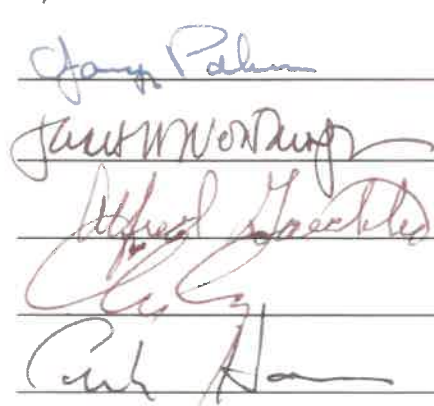
2. These procedures shall apply only to alleged violations of the terms and conditions of this Agreement.

Agreed this 12th day of April, 2010.

TOWN OF PROVINCETOWN
By its BOARD OF SELECTMEN



TOWN OF TRURO
By its BOARD OF SELECTMEN



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