

INTERMUNICIPAL AGREEMENT
BETWEEN THE TOWNS OF EASTHAM AND WELLFLEET
FOREXTENSION OF PUBLIC WATER SUPPLY

This AGREEMENT (this “**Agreement**”) is dated as of 2/26/2024, between the Town of Eastham, Massachusetts (“**Eastham**”) acting by and through its Board of Water Commissioners, and The Town of Wellfleet, a Massachusetts corporation with a usual address of 300 Main Street, Wellfleet, MA 02667 (“**Wellfleet**”) acting by and through its Selectboard.

R E C I T A L S

WHEREAS, Wellfleet is the owner of property, located at 80 State Highway, Route 6, Wellfleet, Massachusetts (the “Property”), which Property is not currently served by a public water supply system.

WHEREAS Eastham operates a public water supply for the provision of potable water to its residents and businesses.

WHEREAS, although located entirely within the Town of Wellfleet, the Property is located in close proximity to the terminus of the Eastham public water supply line.

WHEREAS Wellfleet desires to connect the Property to the Eastham public water supply system for existing and future commercial and/or residential uses of the Property.

WHEREAS, Eastham has the capacity and ability to provide a supply of public water for the proposed uses at the Property.

WHEREAS, the Town of Wellfleet agrees that Eastham may supply water to the Property, subject to the terms and conditions of this Agreement; and

WHEREAS Eastham deems it to be in the public interest for it to supply and sell, and for Wellfleet to receive and pay for a potable water to supply to the Property; and

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions herein contained, the Parties agree as follows:

ARTICLE I
WATER SYSTEM EXTENSION

Section 1.1. Water System Extension. Eastham shall design, permit, and construct an extension of its public water supply system from its present terminus at the Eastham/Wellfleet town boundary, along, under and within the layout of State Route 6, to a location just prior to West Road in Wellfleet. A connection shall be made to the front of the Property, the precise location of the connection point shall be at Eastham's sole discretion. Eastham shall install a curb stop at the connection point which is suitable for the connection of a service line to the facilities on the Property. Upon completion, the water system extension to the extension point shall be accepted as part of Eastham's water supply system.

Section 1.2. Service Line. Wellfleet shall, at its sole cost and expense, design, permit and construct a service line from the curb stop at the connection point to the facilities on the Property. The service line shall be designed, permitted, and constructed in accordance with the Rules and Regulations of the Eastham Municipal Water System, as revised through July 15, 2019, and as may be further revised from time-to-time, and all other applicable laws. Said Rules and Regulations as are in effect at the time of this Agreement are incorporated herein and attached hereto and shall herein after be referred to as the "Rules and Regulations." The parties agree Eastham shall not be required to provide any water to the Property unless and until the service line

is approved in accordance with the Rules and Regulations. Upon completion, the service line shall be owned by Wellfleet and Wellfleet shall be solely responsible for its maintenance and operation.

Section 1.3. Permitting and Approvals. The parties acknowledge and agree that the work required by this Agreement is subject to permits and approvals from entities not subject to the control of the parties, including but not limited- to regulatory boards of the Towns of Eastham and Wellfleet and the Massachusetts Department of Transportation (MassDOT) Highway Division. Should any permit or approval required for the work under this agreement be withheld or denied, such that the work cannot proceed, this Agreement shall be deemed null and void. This Agreement does not constitute a permit and shall not in any way relieve the parties of their obligation to obtain any permits and comply with the requirements of any applicable laws relative to the work.

Section 1.4. System Extension Fee. Upon execution of this Agreement, Wellfleet shall pay to the Town of Eastham a one-time Capital System Extension Fee of eight hundred and fifty thousand dollars (\$850,000.00). The parties agree that this fee is to reimburse Eastham for its costs in designing, permitting, and constructing the extension of the system to serve the Property. Upon termination of this Agreement for failure to obtain necessary permits or approvals, or successful completion of the extension, any unused portion of the System Extension Fee will be refunded to Wellfleet. No portion of the System Extension Fee shall be refunded for any other reason.

ARTICLE II **SUPPLY OF WATER**

Section 2.1. Water Supply. Eastham hereby represents that the Eastham water system has sufficient capacity to provide an adequate water supply to the Property, and it hereby agrees to provide a supply of potable water to the Property in a total volume that shall not exceed fifty million gallons per year. Wellfleet, or any other entity developing and operating the Property

pursuant to a conveyance, lease, or license agreement, shall not exceed the total volume of water allocated herein without the express written approval of Eastham and Eastham reserves the right in its sole and exclusive discretion to refuse to provide any volume of water in excess of said amount.

Section 2.2. Conditions of Supply and Use. All water supplied by Eastham shall be for the sole purpose of supporting the current and proposed future residential and/or commercial uses at the Property, which uses shall be deemed customers of the Eastham Municipal Water System, and not for re-sale to third parties. Wellfleet's connection to Eastham's water supply system and its use of water supplied therefrom shall be in accordance with Eastham's Rules and Regulations.

Section 2.3. Impairment of Supply. Notwithstanding anything herein to the contrary, Eastham does not guarantee constant water pressure and uninterrupted service. Further, Wellfleet acknowledges and agrees that it is not assured the full volume of water set forth in Section 2.1 of this Agreement or the required pressure per square inch necessary to effectively operate any appliances and/or fixture on the Property. The same rule holds true of all variable conditions that may take place in the use of water from the water supply extension. Eastham will use all reasonable care and diligence to avoid interruptions and fluctuations in the service, but neither Eastham, nor its contractors and employees, shall be held liable or responsible to Wellfleet, or any entity occupying the Property for any loss or damage from any excess or deficiency in the pressure or volume or supply of water.

Section 2.4. Change in Use. There shall be no change in the type or intensity of the uses at the Property that may reasonably be expected to result in an increase in water usage, beyond the annual cap of fifty million gallons, without the express written consent of Eastham.

Section 2.5. Assignment. Wellfleet may assign all or any portion of the total volume of water allocated to the Town to any other party operating a use on the Property, provided that such assignment is approved, in writing, by Eastham, and that the assignment will not result a change in use that may reasonably be expected to result in an increase in water usage, beyond the annual cap for the Property as noted above, except as provided herein.

Section 2.6. Notice of Agreement. Wellfleet shall record in the chain of title to the Property, a notice of this Agreement, in a form approved by Eastham, at the Barnstable County Registry of Deeds

ARTICLE III **WATER USAGE and FEES**

Section 3.1. Applicability of Rules and Regulations. Upon activation of the Property's connection to the Eastham water supply system, Wellfleet shall be considered a "customer" of the Town of Eastham, and it shall be subject to all provisions of Eastham's Rules and Regulations.

Section 3.2 Non-Eastham Resident System Development Fee. In addition to water use charges and fees payable under Eastham's Rules and Regulations, a portion of the real property taxes paid by Eastham property owners are used to off-set the debt service on the water system construction. To put Wellfleet on equal footing with Eastham property owners, Wellfleet will pay an additional Non-Eastham System Development Fee. The Non-Resident System Development Fee will be fixed at **\$7,500** per year, based on the current assessed value of the Property of **\$3,075,300**. This fixed Non-Eastham Resident System Development Fee will be billed in quarterly installments of **\$1,875** together with the other rates and charges set forth in Eastham's Rules and Regulations. This System Development fee will begin on the day of

execution of this agreement and continue for the full 25 years of the contract. The fee will not continue beyond this contract.

Section 3.3. Assessment of Fees. Wellfleet shall promptly pay any fees, assessments and water use charges for the water supplied by Eastham in accordance with the fee and billing procedures in Eastham's Rules and Regulations. Said fees shall be based on metered usage at the rates published in Eastham's Water Use and Rate Schedule, as may be amended from time-to-time. The Rate Schedule in effect at the time of this Agreement is incorporated herein and is appended hereto.

Section 3.4. Non-Payment. Eastham shall have all of the remedies for collection of unpaid fees as are set forth in the Rules and Regulations and other applicable laws, including but not limited to termination of service and the assessment of interest on late payments. Wellfleet agrees that, to the extent permitted by law, Eastham shall have the same lien upon the Property to enforce the collection of such fees, assessments, and charges as it has under general or special law to enforce the collection of such fees, assessments and charges against property located within Eastham.

ARTICLE IV **TERM AND TERMINATION**

Section 4.1. Term. This Agreement shall remain in full force and effect for the maximum term of an intermunicipal agreement which is 25 years, or until Wellfleet is no longer an owner of the Property, whichever is sooner, unless a subsequent owner or occupant of the Property assumes the obligations of Wellfleet hereunder, or until this Agreement is terminated as set forth herein. In the event a subsequent owner or occupant of the Property assumes the obligations of Wellfleet hereunder, said owner or occupant shall be required to execute a separate agreement with Eastham, on such terms and conditions as Eastham may require, which separate agreement shall be in

addition to and consistent with the Agreement. This Agreement with Wellfleet shall run with the land. The parties may renew this Agreement for additional terms of up to 25 years.

Section 4.2. Availability of Wellfleet Water. The parties agree that if a public water supply owned and operated by the Town of Wellfleet is made available for connection to the Property, the Property will be disconnected from the Eastham system and the Property will connect to the Wellfleet system, subject to any requirements that the Town of Wellfleet sees fit to impose.

Section 4.3. Termination for Convenience. Either party may terminate this Agreement for any reason or no reason at all with five hundred forty (540) days' written notice to the other party; provided, however, that nothing in this section shall be deemed to impair Eastham's rights and remedies as set forth in the Rules and Regulations, including but not limited to its authority to terminate service for the reasons and in accordance with the procedures set forth therein.

ARTICLE V **MISCELLANEOUS**

Section 5.1. The Parties understand and acknowledge that this Agreement and the documents attached hereto contain the entire agreement between them, and the terms of this Agreement are contractual and not a mere recital.

Section 5.2. The Parties agree that each has contributed to the drafting of this Agreement and no party shall have any part of this Agreement interpreted against that party's interests on the basis that the party drafted the language to be interpreted.

Section 5.3. The Parties further state that they have carefully read the foregoing Agreement and fully understand the contents thereof, and that the signatories hereto are duly

authorized to sign this Agreement on behalf of the respective parties and that each sign and executes this Agreement as their free act and deed.

Section 5.4. The Parties hereby acknowledge that no promise or inducement which is not herein expressed has been made and in executing this Agreement, the Parties do not rely upon any statement or representation made by any person, firm, or entity hereby released other than those set forth in this Agreement.

Section 5.5. This Agreement may not be varied in its terms by an oral agreement or representation or otherwise, and none of the terms hereof may be waived, except by an instrument in writing of subsequent date hereof executed by all of the Parties.

Section 5.6. Notwithstanding anything to the contrary herein, there are no third-party beneficiaries to this Agreement. Should Wellfleet convey all or a portion of the Property, the new owner shall execute an agreement delineating its rights and obligations to the Eastham Municipal Water System, and Wellfleet's rights and obligation under this Agreement shall be adjusted in proportion to the portion of the Property retained by Wellfleet.

Section 5.7 Each provision of this Agreement shall be considered separate and if, for any reason, any provision herein is determined to be invalid or contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, except that if all or any part of the release of claims provided by a Party is deemed invalid, the Agreement shall be deemed invalid.

Section 5.8 This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and the respective heirs, legal representatives, successors and assigns of each.

Section 5.9 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. This Agreement shall be deemed an intermunicipal agreement pursuant to G.L. c. 40, §4A. The respective Select Boards of each Town has authorized this Agreement by executing the Agreement. Any litigation arising hereunder shall be brought solely in the courts of the Commonwealth of Massachusetts.

Section 5.10 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The facsimile signature or signature sent electronically by .pdf or otherwise.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as a sealed instrument as of the date first above written.

Select Board
Board of Water Commissioners
Town of Eastham, Massachusetts









Town of Wellfleet, Massachusetts
By its Selectboard:








