

**MEMORANDUM OF AGREEMENT
BETWEEN THE
TOWN OF WINDHAM, MAINE
AND THE
PORTLAND WATER DISTRICT**

This Memorandum of Agreement (the “Agreement”) is made this 26th day of May, 2020, by and between the Portland Water District, a quasi-municipal corporation located at Portland, Maine, (the “District”); and the Town of Windham, a municipal corporation located at Windham, Maine, (the “Town”).

WHEREAS, The Town has determined that a wastewater treatment system is needed in the North Windham Area to mitigate groundwater pollution and to provide for more growth opportunities (North Windham System); and

WHEREAS, Over 50 percent of the wastewater flow in a 2,300- acre Planning Area is generated in the most densely developed 270 acres in North Windham along Route 302 between River Road and Whites Bridge Road (Phases 1,2,3) and

WHEREAS, the Planning Area is zoned for additional commercial development, while the desired growth is severely restricted due to the lack of a public wastewater treatment system. and

WHEREAS, The District, pursuant to its Charter, is responsible for design, construction and maintenance for interception sewers and treatment facilities located in its service territory, including the Town; and

WHEREAS, The District and the Town desire to memorialize an Agreement for the construction and operation of the North Windham System;

NOW THEREFORE: In consideration of the foregoing and the promises and material obligations contained herein, the Town and the District agree as follows:

1. The North Windham System shall be designed to incorporate the area (“Area”) as described in Exhibit A, attached hereto and incorporated herein by reference.
2. The Area shall be a Town approved designated sewer district area per zoning (could be overlay).
3. The North Windham System design will be mutually agreed to by both parties before any commitment is made by either party to construct it.
4. In conjunction with the design and operation of the North Windham System, the District shall undertake all of the following actions:
 - a. Develop a Request for Proposal from Engineering Consultants for the engineering and design of the North Windham System (the “Project”).

- b. Provide the Town with estimated engineering costs at the preliminary design phase and at the 90% design phase.
 - c. Advertise and bid for all work for the Project and provide the Town a project budget before entering any contracts for construction of the Project.
 - d. Develop a budget to operate and maintain the Wastewater System as part of the District annual assessment to the Town.
 - e. Finance the Project and investigate funding opportunities such as the State Revolving Loan Fund and or any Stimulus funds that may be available for the construction of the Project.
5. The Town agrees to undertake all of the following actions:
- a. Provide the District with all previous studies regarding the North Windham System.
 - b. Acquire and convey to the District by quitclaim deed any real estate interest, whether fee interest or easement interest, required to construct and operate the North Windham System.
 - c. Cooperate with the District in obtaining all applicable licenses, permits and approvals for all of the actions contemplated by this Agreement per federal, state and local laws.
 - d. Designate a sewer district and establish a sewer user fee for users of the North Windham System.
 - e. Pursue all available funding options in cooperation with the Portland Water District for the successful development of this project.
6. Expenses incurred by either party in the design, construction and operation of the North Windham System pursuant to this Agreement shall be paid by the Town through its annual assessment by the District.

The District will bond finance all costs associated with the design and construction of the North Windham System and the Town will reimburse the District for the annual debt service charge and operating cost through the District's annual sewer assessment pursuant to the District's Charter.

The Town agrees to secure Town meeting approval for all long-term obligations at the annual or a special town meeting prior to the District's commitment to finance the North Windham System.

7. The advertising of any request for proposal or bid and the award of any contract, including but not limited to engineering contract and construction contract(s) shall be contingent on a vote of authorization by the District Board of Trustees and by the Windham Town Council.

8. The District and Town agree to amend the current South Windham System contracts dated March 16, 1987 to include the operation and maintenance of the collection system and the billing of wastewater fees for the North Windham System. Such amendment shall be completed prior to the North Windham System becoming operational.
9. Each party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other party; provided however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry its intent.
10. Except as otherwise explicitly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services which are to be provided or contractual obligations which are to be assumed by any other party and nothing in this Agreement shall be deemed to constitute a partnership, agency relationship or other business venture among the Parties or to create any fiduciary relationship between or among the Parties.
11. Unless otherwise provided herein, any notice or communication which is required or permitted to be given hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, with a copy sent by overnight mail, courier, electronic transmission, or telecopy, as follows:

To the District: Carrie Lewis, General Manager
Portland Water District
225 Douglass Street
P.O. Box 3553
Portland, Maine 04104
E-mail: clewis@pwd.org

To the Town: Barry Tibbetts
Town Manager
Town of Windham

Windham Maine
E-mail: batibbetts@Windhammaine.us

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other parties.

12. The waiver by any party of a default or of a breach of any provision of this Agreement by any other party shall not operate or be construed to operate as a waiver of any subsequent default or breach.
13. The provisions of this Agreement shall constitute the entire agreement between the parties, and may be modified only by written agreement duly executed by both parties.

14. The parties shall execute an agreement for the operation and maintenance of the collection system and the billing for the North Windham system prior to the North Windham System becoming operational.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed by their duly authorized representatives as of the day and year first written above.

For the Town:

TOWN OF WINDHAM

By: 

Name: Barry Tibbetts

Title: Town Manager

For the District:

PORTLAND WATER DISTRICT

By: 

Name: Carrie Lewis

Title: General Manager