

**Pleasant Bay Watershed Permitting  
Pursuant to the Massachusetts Clean Waters Act  
Intermunicipal Agreement  
Between  
The Towns of Brewster, Chatham, Harwich and Orleans**

This Intermunicipal Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2018 (the "Effective Date") by and among the Towns of Brewster, Chatham, Harwich and Orleans, each one a municipal corporation acting through their respective chief executive officers (collectively, with their successors and assigns, the "Parties").

**RECITALS**

WHEREAS, municipalities are authorized in accordance with G.L. c. 40, §4A to enter into intermunicipal agreements for the purpose of performing jointly, or on behalf of each other, activities or undertakings which any of the municipalities are authorized by law to perform; and

WHEREAS, Brewster, Chatham, Harwich and Orleans have been authorized to enter into this Agreement as evidenced by a vote of their respective Town Meetings, authorizing the execution of this Agreement by their respective Boards of Selectmen; and

WHEREAS, the Commonwealth of Massachusetts has, pursuant to the Federal Clean Water Act §208(b) (3) and 40 C.F.R. 130.6(e), prepared and certified the Cape Cod Water Quality Management Plan Update ("208 Plan Update") developed by the Cape Cod Commission, which was certified by the Governor of the Commonwealth on June 10, 2015, and submitted to the United States Environmental Protection Agency, Region 1 ("USEPA"); and

WHEREAS, USEPA approved the 208 Plan Update on September 15, 2015; and

WHEREAS, Section 2A of Chapter 259 of the Acts of 2014 requires Massachusetts Department of Environmental Protection (MassDEP) "to develop a watershed permitting approach to address and optimize nitrogen management measures intended to restore water quality to meet applicable water quality standards in watersheds included in an approved area wide nitrogen management plan developed pursuant to section 208 of the federal Clean Water Act," and

WHEREAS, the 208 Plan Update includes a number of recommendations for improving water quality in the estuaries and embayments on Cape Cod, including the development of a watershed-based permit program ("Permit") pursuant to Section 2A of Chapter 259 of the Acts of 2014; and

WHEREAS, the 208 Plan Update designates the towns as Waste Treatment Management Agencies (WMAs) responsible for meeting Total Maximum Daily Loads (TMDL) on a watershed basis; and

WHEREAS, the estuaries and embayments of the Pleasant Bay system have experienced greatly increased anthropogenic loads of nitrogen delivered to the water through surface and groundwater sources from an increasingly developed watershed, and that this increase in nitrogen has increased the rate of eutrophication of the waters causing adverse aesthetic, water quality, and habitat impacts that result in violation of state water quality standards, all as documented in the Massachusetts Estuary Project (“MEP”) report entitled, *“Linked Watershed-Embayment Model to Determine Critical Nitrogen Loading Thresholds for the Pleasant Bay System, Towns of Orleans, Chatham, Brewster and Harwich, Massachusetts, Final Report, May 2006”*; and

WHEREAS, MassDEP developed and USEPA approved the report entitled *“Pleasant Bay System, Total Maximum Daily Loads for Total Nitrogen (Report #96-TMDL-12, Control #244.0), MADEP, May, 2007,”* establishing 19 Total TMDLs for Total Nitrogen in Pleasant Bay; and

WHEREAS, meeting the established TMDLs for Pleasant Bay will require substantial reductions in the amount of nitrogen flowing into Pleasant Bay from current and future watershed sources; and

WHEREAS, the Towns of Brewster, Chatham, Harwich and Orleans share the watershed of Pleasant Bay and, by an inter-municipal memorandum of agreement entered into in 2018 (Attachment 1), have formed the Pleasant Bay Alliance (Alliance) to coordinate resource management of Pleasant Bay among the member towns and further that the provisions of said inter-municipal agreement relating to the receipt and expenditure of funds and the designation of Chatham as the fiscal agent for the Alliance are hereby incorporated by reference into this Agreement; and

WHEREAS, Pleasant Bay is a state-designated Area of Critical Environmental Concern (ACEC); and

WHEREAS, a Resource Management Plan for the Pleasant Bay ACEC and Watershed developed by the Alliance and approved by Town Meetings of the four member towns and the Secretary of the Executive Office of Energy and Environmental Affairs identifies excessive nitrogen loading from watershed surface and groundwater sources as a primary threat to the health and sustainability of Pleasant Bay; and

WHEREAS, the Parties agree that wastewater, fertilizer, and stormwater are the prime source of controllable watershed nitrogen causing impairment of the embayment and that, as a result, a joint effort is required to restore and protect beneficial uses and aquatic resources of the Bay and its tributaries; and

WHEREAS, each of the Parties have, to varying degrees, established or are in the process of preparing a Comprehensive Wastewater Management Plan (“CWMP”) or equivalent plan, pursuant to the requirements of MassDEP to address its share of

responsibility for reducing the amount of nitrogen flowing into Pleasant Bay from watershed sources; and

WHEREAS, the Alliance is charged under the locally- and state-approved Resource Management Plan to convene a Pleasant Bay Watershed Work Group consisting of representatives of the member towns to work with MassDEP, USEPA, and the Cape Cod Commission, among others, to facilitate efforts to meet TMDLs on a watershed basis, through activities such as monitoring, technical analysis, modeling, and coordination of regional activities as may be required under a watershed permit; and

WHEREAS, the Pleasant Bay Alliance has compiled the *Pleasant Bay Composite Nitrogen Management Analysis* (March 2017) which presents in a uniform way the attenuated nitrogen loads and load removal requirements contained in individual town plans; and

WHEREAS, on June 23, 2017 the Select Boards of Brewster, Chatham, Harwich and Orleans voted to sign a *Resolution of the Towns Sharing the Watershed of Pleasant Bay* endorsing the *Pleasant Bay Composite Nitrogen Management Analysis* (March 2017) as an accurate representation of each Town's share of current attenuated nitrogen load and its responsibility to remove nitrogen in Pleasant Bay, as follows:

Town	Share of Attenuated Pleasant Bay Watershed Nitrogen Load	Share of Attenuated Pleasant Bay Watershed Nitrogen Load Removal
Brewster	6,359 kg/yr (13%)	2,262 kg/yr (13%)
Chatham	16,572 kg/yr (34%)	4,076 kg/yr (23%)
Harwich	10,929 kg/yr (23%)	4,399 kg/yr (25%)
Orleans	14,646 kg/yr (30%)	6,980 kg/yr (39%)
Total	48,503 kg/yr (100%)	17,717 kg/yr (100%)

and

WHEREAS, MassDEP initiated a new voluntary program of Watershed Permitting to facilitate removal of excess nitrogen loads impacting coastal embayments. The Alliance and member towns were invited by MassDEP to participate in a Watershed Permit Pilot Project for Pleasant Bay, to fully examine the requirements and benefits of entering into such a permit, and to compile the information required for such a permit; and

WHEREAS, based on the pilot project, Brewster, Chatham, Harwich, and Orleans believe that it is in their mutual best interests to jointly execute a Watershed Permit for the following reasons: (1) a Watershed Permit will allow greater flexibility to achieve TMDL compliance by providing a MassDEP accepted framework of nitrogen mitigation measures beyond a traditional MassDEP issued groundwater discharge permit; (2) a Watershed Permit will recognize community efforts to achieve compliance with the Clean Water Act through non-traditional nitrogen management approaches; (3) a Watershed Permit will support the towns' application for State Revolving Loan Fund (SRF) financing for non-traditional technologies and allow for higher priority for SRF financing for both traditional and non-traditional technologies for qualified projects; (4) a Watershed Permit will provide

an assured procedure for documenting nitrogen removal credit(s) toward TMDL compliance; and (5) a Watershed Permit will allow communities to demonstrate they are undertaking a MassDEP approved framework of actions to address water quality impairment and excess nitrogen in the Pleasant Bay watershed and in so doing obtain forbearance from MassDEP enforcement efforts intended to compel action to address water quality impairment and TMDL compliance; and

WHEREAS, a core aspect of the permit is a Targeted Watershed Management Plan (TWMP), found in Attachment 2. The TWMP summarizes the nutrient management plans (i.e., CWMPs) already prepared by the towns for the watershed, and is an elaboration of the Composite Analysis completed in March 2017 that was the basis for the June 2017 joint resolution; and

WHEREAS, In order to obtain a Watershed Permit, a four-town inter-municipal agreement will need to be executed that confirms each town's share of nitrogen removal responsibility and its intended implementation schedule, giving all towns the assurance that the towns are working together and that improved water quality will be not delayed by one town's inactions; and

WHEREAS, following the execution of this agreement, the Parties will be free to submit a Watershed Permit application for MassDEP review and approval (Attachment 3) as specified below.

NOW, THEREFORE, in consideration of the promises and mutual benefits to be derived by the Parties hereto, the Parties agree as follows:

1. **Recitals** to this Agreement are incorporated into and are part of this Agreement.

2. **Watershed Boundary**

The Pleasant Bay Watershed is comprised of all land and water in the Towns of Brewster, Chatham, Orleans, and Harwich that have been determined by USGS, as shown depicted in the Linked Watershed-Embayment Model to Determine Critical Nitrogen Loading Thresholds for the Pleasant Bay System, Towns of Orleans, Chatham, Brewster and Harwich, Massachusetts, Final Report, May 2006, to be contributing groundwater or surface water flow into Pleasant Bay and its fresh and saltwater lakes, ponds, rivers, creeks, bays, coves, and other wetlands.

3. **Targeted Watershed Management Plan**

a. The Parties agree that the most cost-effective means in terms of total cost, of meeting the TMDL requirements and attaining water quality and beneficial use goals, may be a regional, watershed-based approach to mitigate nitrogen at locations within the watershed where contributing loads are the greatest and methods useful for nitrogen reduction are most effective.

b. The Parties agree that the Targeted Watershed Management Plan (TWMP) is a fair representation of its CWMP and thereby endorse that document.

c. The Parties agree that the implementation table [specific reference] in the TWMP reflects their respective town's intent with respect to implementing nitrogen control plans. Further, the Parties recognize that nitrogen removal plans in the first five years of the implementation table represent DEP enforceable commitments and that later nitrogen removal measures are presented for planning purposes.

d. The Parties acknowledge the likely growth in watershed nitrogen loads from future development and intend to enact nitrogen growth management strategies contained in their respective local nitrogen management plan (i.e. CWMP) and summarized in the TWMP.

#### **4. Joint Responsibilities and Shared Activities.**

a. Each Party will continue to develop and/or implement its own MassDEP approved CWMP or comparable plan, as described in the TWMP, but shall include in their respective plan, if appropriate, any joint efforts undertaken by the Parties pursuant to this Agreement.

b. The Parties agree to be named joint permittees on a Permit for the Bay pursuant to the 208 Plan Update and Chapter 259 of the Acts of 2014, and any future requirements for such Permits established by MassDEP pursuant to any applicable state or federal regulations. The 20-year permit will require nitrogen removal activities as described in the TWMP, which is found in Attachment 2.

c. The Towns further agree to individually fund those measures expected to achieve control of their respective share of the load identified in the TWMP unless they mutually agree to joint efforts to mitigate nitrogen. The Parties agree to adopt a fair and practical methodology for implementing the most cost-effective approach, in order to comply with any permits issued by MassDEP, and to share on a fair and equitable basis the capital, operating, administrative, legal, operational, and other ancillary costs associated with a regional, watershed-based wastewater and/or nutrient management system.

d. The Parties agree to develop, if deemed mutually beneficial based on comparison of other wastewater management options of each Town, a fair and practical methodology for a reasonable nitrogen trading mechanism, including metrics for determining a nitrogen credit trading "currency" in terms of dollars per pound or other trading metric, as a means to implement a watershed-based plan.

e. The Parties agree to measure key parameters, share data and compile an annual report of progress as required under the Permit. Accordingly, the Parties agree to continue to support on-going system-wide monitoring and modeling of water quality and other nutrient-related ecological parameters in the Pleasant Bay system and to share equitably in the costs of these activities as set forth in the Memorandum of Agreement establishing the Alliance.

f. Each Party shall cooperate with the other Parties and other entities as appropriate to identify, apply for, secure, manage, and fairly allocate federal, state, or other funding sources, as such may become available, to finance the planning and implementation of multi-town or regional nutrient management plans resulting from the cooperative efforts of the Parties under this Agreement.

5. **Pleasant Bay Alliance.** The Parties hereby agree that the Alliance comprised of town representatives appointed in conformance with Memorandum of Agreement forming the Alliance, will oversee the Permit referenced in this IMA. The Alliance's responsibilities in this regard will be to:

- a. Coordinate joint activities of the Parties under this Agreement;
- b. Coordinate with the various departments and boards of their respective towns to apply for and implement a Permit for the Bay, subject to approval by each of the Parties prior to filing;
- c. Share or develop engineering and economic studies and evaluations to define means of meeting the Parties' respective nitrogen reduction targets and to develop cost-performance relationships that define most cost-effective technologies and practices for the removal of nitrogen;
- d. Coordinate system-wide monitoring and modeling of water quality and other nutrient-related ecological parameters in the Pleasant Bay system as needed to support implementation of the TWMP and compliance with the terms of the Permit;
- e. Develop and propose for adoption amendments to this IMA, if necessary, or other forms of agreement that will define and require the action of each Party to implement agreed-upon plans to apply for and implement, a Permit;
- f. The Alliance has no authority to bind one or more of the Parties. Its role shall be solely administrative in nature and to make recommendations to the Parties for actions required to implement such recommendations. The incurrence of any obligation under this Agreement by any Party shall be subject to the approval of the chief executive officer of each Party (e.g., Board of Selectmen) and the legislative body (e.g., Town Meeting), if required, to implement such recommendations.

## 6. **Terms of Agreement**

a. **Effective Date of Agreement** – The effective date of this Agreement shall be the date upon which this Agreement is entered into as first written above.

b. **Term of Agreement** – Pursuant to G.L. c. 40, §4A, the maximum term of this Agreement shall be twenty years, unless otherwise renewed or extended by mutual agreement. Coterminous with the Memorandum of Agreement establishing the Alliance, this Agreement will be reassessed by the Boards of Selectmen of each participating town at intervals of five years, or, if more stringent, in accordance with any permit renewal

requirements established by the MassDEP and may be modified by mutual agreement of the Parties through an amendment of this Agreement, if necessary, to achieve permit renewal and compliance.

c. Termination – This Agreement may be terminated by any one Party upon sixty (60) days notice to the other Parties, provided, however, that any obligations created by a joint Watershed Permit issued by the MassDEP shall continue for each of the Parties unless the Permit is modified pursuant to a joint application filed by all or the remaining Parties. Should a town elect to opt out of the Watershed Permit, the Permit shall remain in force and effect on the remaining towns, accepting that modification to the Permit may be necessary to the extent certain permit activities relied upon the opt out town's participation.

d. Dispute Resolution – In the event of a dispute arising out of or in relation to the terms of this Agreement, representatives of the Parties shall meet and endeavor to settle the dispute in an amicable manner through mutual consultation. If such persons are unable to resolve the dispute in a satisfactory manner within thirty (30) calendar days, either party may seek assistance of an independent third party, mutually-agreeable to both or all Parties.

e. Assignment - Any Party may assign to another governmental entity established for the purpose of addressing wastewater issues in the Town the responsibility in whole or in part for implementing the watershed permitting activities contemplated in the Agreement.

f. Amendment of this Agreement – This Agreement may be changed or modified through a mutually agreed upon written Amendment executed by each and all of the Parties to this Agreement. Any Amendment shall be attached to and shall become part of this Agreement.

g. Mutual Indemnification – Each party to this Agreement shall indemnify and hold harmless each and all other Parties to this Agreement, their officers, agents, consultants, employees and assigns for all liability arising out of the activities under this Agreement.

h. Subject to Appropriation – The obligations of each of the Parties shall be subject to appropriation and the availability of funds.

i. No Remuneration – Parties to this Agreement shall be solely responsible for any and all costs incurred by themselves, their agents, their employees, committee members, consultants or other persons or entities resulting from activities undertaken pursuant to this Agreement.

j. Governance – This Agreement shall be governed by, construed under and enforced in accordance with the laws of the Commonwealth of Massachusetts.

k. Severability – If any provision of this Agreement is determined to be illegal, unenforceable, or void, then all Parties shall be relieved of their obligations under

that provision, provided, however, that the remainder of the Agreement shall remain in full effect.

1. Entire Agreement - This Agreement constitutes the entire agreement between the Parties.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the first date written above.

Town of Brewster  
By its Select Board

Town of Chatham  
By its Board of Selectmen

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Town of Harwich  
By its Board of Selectmen

Town of Orleans  
By its Board of Selectmen

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Attachments:

1. Alliance Memorandum of Agreement
2. Targeted Watershed Management Plan
3. Watershed Permit Application and Conditions