

SEWERAGE SERVICE CONTRACT

THIS AGREEMENT made this 13TH day of March, 1981 by and between the Portland Water District, a quasi-municipal corporation located at Portland, Maine (DISTRICT) and the Town of Falmouth, a municipal corporation located at Falmouth, Maine (FALMOUTH).

WHEREAS, the Portland Water District, a quasi-municipal corporation organized and existing pursuant to Chapter 84 of the Private and Special Laws of the State of Maine of 1975, as amended, located at 225 Douglass Street, Portland, County of Cumberland, State of Maine, intends to construct sewerage facilities to service the Town of Cumberland.

WHEREAS, the DISTRICT'S regional plan as approved by the Maine Department of Environmental Protection, provides for the joint-use of certain sewage and pollution control facilities to receive and transmit flows from the Town of Falmouth and the Town of Cumberland (Cumberland), and

WHEREAS, FALMOUTH maintains an existing sewerage system and desires to modify the system to accommodate the acceptance of flows from Cumberland, and

WHEREAS, the parties desire to establish specific rules and regulations for proper use of joint-use sewage facilities (both existing and to be constructed) and set procedures for establishing rates, prices, and rentals for the use of any joint-use facilities by both parties,

NOW, THEREFORE, the parties hereto agree as follows:

1. FALMOUTH agrees to accept wastewater flows from the DISTRICT as collected within the Town of Cumberland, to provide treatment of such flows to a degree sufficient to meet the water quality classification of the Presumpscot River imposed by Title 38 M.R.S.A., Section 368, as it may be amended from time to time, and to act as the administrator of any jointly used facilities under this agreement located in the Town of Falmouth. The quality of discharge flowing from Cumberland shall conform with the applicable standards set forth in Sewerage Ordinance of FALMOUTH. Said Ordinance which may be amended from time to time, shall not place separate or arbitrary standards on the quality of discharge flowing from Cumberland or seek to eliminate flows from Cumberland except for reasons detailed hereinafter. FALMOUTH has received or will obtain all necessary licenses, permits, and other approvals as required by the Maine Department of Environmental Protection (D.E.P.) and the United States Environmental Protection Agency to operate the wastewater treatment facility and will maintain all such licenses, permits, and other approvals during the term of this agreement. DISTRICT agrees to deliver flows to said FALMOUTH system as collected in Cumberland from the presently planned collection

system in Cumberland as shown in Alternative III in the Step I Facility Plan filed with the State of Maine Department of Environmental Protection and such additions thereto as may be accommodated by the capacities provided for herein.

2. FALMOUTH agrees to maintain separate and accurate accounting records of the operation and maintenance of the Falmouth sewer system and such records shall be available for reasonable inspection by DISTRICT upon request.
3. The DISTRICT agrees to operate and maintain its facilities in Cumberland in accordance with good operating practices and to meet all applicable federal, state and local laws and regulations.
4. The DISTRICT agrees that it will consult, assist and coordinate in all planning and engineering to provide for the modification and upgrading of the existing FALMOUTH wastewater system to accommodate flows from Cumberland and, if subsequently authorized or requested by FALMOUTH, to arrange for, or to cooperate with and assist FALMOUTH in making the arrangements and contracts for, the engineering, construction and financing of such improvements. DISTRICT shall provide services requested by FALMOUTH at cost. The fee to FALMOUTH for the processing of necessary grant applications is estimated not to exceed \$3,000 and

cost to FALMOUTH for final engineering data is estimated not to exceed \$12,500. Any fees due to DISTRICT, including fees for the aforementioned assistance, consultations, and coordination, under this paragraph shall be billed periodically and shall be paid within sixty (60) days after billing.

5. The parties agree to cooperate in applying for any grants from any state or federal governmental agency for the modifications within the Falmouth wastewater system anticipated within this agreement. FALMOUTH shall be and remain the sole and exclusive owner of any sewage facility within said town which is built, expanded or improved pursuant to this agreement.
6. Both DISTRICT and FALMOUTH agree to maintain accurate cost records during all phases of the necessary modifications to FALMOUTH'S system in a manner that the capital costs of such modifications, including planning, engineering and administrative costs applicable to said modifications can be segregated and identified apart from other sewage costs which DISTRICT and FALMOUTH may incur, and said costs records shall be made available by each party for reasonable inspection by the other party.
7. DISTRICT shall pay to FALMOUTH a share of the unreimbursed (by federal or state grants) costs of joint-use modifications and joint-use improvements

(including design cost) to the FALMOUTH system, it being agreed by the parties that said modifications and/or improvements are required as a result of the treatment of Cumberland sewage by FALMOUTH, in accordance with the percentage shares of each party for said necessary modifications, as set forth in Appendix A, attached hereto. In addition the DISTRICT agrees to pay to the Town of Falmouth forty-three per cent (43%) of the expenses incurred by FALMOUTH directly attributable to its obligations under this agreement subsequent to the date of this agreement but prior to the actual hook-up of the DISTRICT's system in Cumberland to FALMOUTH including without limitation costs in connection with the processing of necessary grant applications, administrative costs, consulting fees, engineering fees, legal expenses, and charges to FALMOUTH by DISTRICT under paragraph 4 hereof. Such expenses shall not include normal administrative costs which FALMOUTH would incur were it not for its obligations hereunder.

8. FALMOUTH agrees to allot the DISTRICT, upon completion of Cumberland's wastewater facilities, 35% of the peak capacity (1.076 M.G.D. peak flow value) in the Mill Creek Pumping Station and Mill Creek Force Main and 30.0% (0.468 M.G.D.) of capacity in FALMOUTH'S existing wastewater treatment facility. In return for

said allocation DISTRICT shall pay FALMOUTH for past and current unreimbursed capital expenditures as follows:

- (a) The modification and/or improvement cost as set forth in Paragraph 7 above and in Appendix A.
 - (b) For Mill Creek Pumping Station, the sum of \$5,250 plus interest thereon at the following rates: at 4% per annum from May 1, 1971 to May 31, 1978; at 5.5% per annum from June 1, 1978 to the date payment of the entire amount due is made pursuant to this agreement.
 - (c) For Force Main, the sum of \$5,500 plus interest thereon at the following rates: at 4% per annum from May 1, 1971 to May 31, 1978; at 5.5% per annum from June 1, 1978 to the date payment of the entire amount due is made pursuant to this agreement.
 - (d) For treatment facility, the sum of \$38,100 plus interest thereon at the following rates: at 4% per annum from May 1, 1971 to May 31, 1978; at 5.5% per annum from June 1, 1978 to the date payment of the entire amount due is made pursuant to this agreement.
9. FALMOUTH agrees to allot to DISTRICT 64% (1.79 M.G.D. peak flow value) of the original capacity of the Route 88 Interceptor from the Cumberland-FALMOUTH town line to the Mill Creek Pumping Station and 56% (2.03 M.G.D.

peak flow value) of the original capacity of the Mill Creek Interceptor. The cost to DISTRICT shall be as follows:

(a) For Route 88 Interceptor, \$26,000 plus interest thereon at the following rates: at 4% per annum from May 1, 1971 to May 31, 1978; at 5.5% per annum from June 1, 1978 to the date payment of the entire amount due is made pursuant to this agreement.

(b) For Mill Creek Interceptor, \$23,208, plus interest thereon at the following rates: at 4% per annum from May 1, 1971 to May 31, 1978; at 5.5% per annum from June 1, 1978 to the date payment of the entire amount due is made pursuant to this agreement.

10. The DISTRICT agrees, by use of a parshall flume meter system, to measure and record all flows entering FALMOUTH'S system from Cumberland at an appropriate metering location, and FALMOUTH agrees to measure and record all flows passing through the treatment plant, with all records, including equipment calibration, being available for reasonable inspection and review by either party. The parties shall have the right on reasonable notice at all reasonable times to check the calibration of any devices used to measure the flows and to take such samples and conduct such tests on said flows as they deem necessary.

11. DISTRICT agrees to compensate FALMOUTH for the use of its interception and treatment facilities in accordance with the following procedure and schedule:

(a) DISTRICT'S share as set forth in this agreement of modifications or improvements to facilities owned by FALMOUTH (as listed in Appendix A) including net financing costs, shall be paid by DISTRICT to FALMOUTH as follows:

1. Design Costs - Within 60 days following receipt of D.E.P.'s written approval of the plans and specifications.
2. Construction Costs - Within thirty days of receipt of billing from FALMOUTH. Said billing to start after one year of the receipt of Step III (Construction phase) grant approval for the project from federal and state funding agencies.
3. Other Costs - Within thirty days of receipt of billing from FALMOUTH said billing to start upon the execution of this agreement.

(b) The cost to DISTRICT reflecting the share of certain capital costs of the presently existing Falmouth sewer system as set forth in this agreement, shall be paid, including all accrued interest thereon, to FALMOUTH within thirty (30) days of the receipt of Step III (Construction

phase) grant approval for the project from federal and state funding agencies.

- (c) The direct and indirect operating and maintenance costs of the FALMOUTH sewer system shall be allocated on the basis of percentage of total measured flow contributed by each party, measurements to be made at the locations specified in this agreement and shall be applied to appropriate units of the system. Such costs shall include, without limitation an allocation of general and administrative costs, consulting fees, legal expenses, insurance costs, fines or penalties except as otherwise provided, judgments or amounts paid as damages to third parties, and all other direct and indirect costs which may be reasonably allocated to the FALMOUTH sewer system. In recognition of the fact that FALMOUTH is to be reimbursed for costs and is not being otherwise compensated for the unforeseen or unforeseeable risks of operating a joint sewage collection and treatment facility, it is the intent of this agreement that all unforeseen or unforeseeable costs arising out of or incurred in connection with the FALMOUTH sewer system shall be allocated between the parties under this paragraph.

12. The fiscal year for FALMOUTH for wastewater and sewage operations shall be the municipal fiscal year (July 1 to June 30).
13. Upon completion of the DISTRICT'S facilities in Cumberland, the amounts due FALMOUTH pursuant to Paragraph 11(c) above shall be computed as follows:
 - (a) Upon completion of the DISTRICT'S facilities in Cumberland and the Joint-Use Modifications, but prior to the actual hook-up of the DISTRICT'S system in Cumberland into the FALMOUTH system, FALMOUTH shall determine the total anticipated amount to be received from DISTRICT pursuant to this agreement based on FALMOUTH'S best estimate to provide for the operation of the jointly used portions of the wastewater and sewage system for the remaining portion of that fiscal year.
 - (b) For each succeeding fiscal year, FALMOUTH shall issue a similar estimate to DISTRICT prior to June 1 of each year.

If it becomes obvious during any succeeding quarter of the fiscal year that the estimate was inaccurate, a revised estimate will be submitted to DISTRICT by FALMOUTH. The DISTRICT shall pay any amount estimated by FALMOUTH in substantially equal monthly installments with the first monthly installment to be payable within one (1) month after the hook-up of the

DISTRICT'S system in Cumberland into FALMOUTH system and with subsequent payment to be made monthly thereafter. The deficit or surplus caused by the difference between the actual costs due FALMOUTH hereunder and the amounts paid by DISTRICT pursuant to said estimates shall be adjusted by a net assessment to be paid in equal monthly installments over the ensuing 12-month period by DISTRICT or a credit to DISTRICT which reduces the ensuing year's estimate.

14. In the event capital improvements in FALMOUTH are necessary or in the event FALMOUTH elects, using sound engineering principals and judgment, to improve, modify, reconstruct or replace any interceptor, pumping station, force main or treatment facility in FALMOUTH utilized by DISTRICT in whole or in part under this agreement, DISTRICT shall be responsible for its percentage of the cost of said improvement, modification, reconstruction or replacement as set forth in this paragraph. Assuming the same capacity in the facilities to be improved, modified, reconstructed or replaced, DISTRICT'S share of such improvements, modifications, reconstruction or replacement shall be the same percentage as allotted to the DISTRICT in this agreement in paragraphs 8 and 9. If FALMOUTH elects to increase capacity at the same time the above stated capital improvements are

made and such increased capacity is solely for FALMOUTH'S use, then the DISTRICT'S share of the cost shall be proportionally reduced, and the DISTRICT'S percentage of capacity in the modified, improved or reconstructed facility shall be proportionally lowered. If, prior to such improvement, modification, reconstruction or replacement, DISTRICT'S use of the facilities has exceeded on a sustained or recurring basis the amount of capacity reserved for the use of the DISTRICT in this agreement, or in the event DISTRICT requests a greater portion of the facilities to be reserved for its use in the future, then DISTRICT'S share of the costs shall be based on its actual past excess usage or DISTRICT'S stated needs for future capacity, whichever amount is greater. Nothing contained in this paragraph shall be construed to require any action by FALMOUTH nor shall anything in this agreement obligate FALMOUTH to make any alterations, modifications or improvements in its sewage system to accommodate any capacities for DISTRICT above those set forth in Paragraphs 8 and 9 herein.

If one party has not exceeded its designated M.G.D. capacity as an existing facility, it shall not be responsible for paying for any part of the cost of constructing additional capacity which may be

requested or needed by another party unless the first party requests an increase for itself in M.G.D. allocations, in which case the first party shall pay its fair proportionate share. As a hypothetical example, assume that an existing facility has a capacity of 1.5 M.G.D. with 1.0 M.G.D. reserved to party #1 and 0.5 M.G.D. allocated to party #2 under this agreement. Assume that party #2 exceeds the 0.5 M.G.D. allocation and uses 0.9 M.G.D. (in which case extra charges would be paid pursuant to other sections of this agreement). Further assume that party #1's usage is 0.6 M.G.D., thus bringing the facility up to its full capacity and potentially requiring the construction of a new or expanded facility. Because party #1 had not exceeded its 1.0 M.G.D. allocation, party #1 would not be responsible for any part of the cost of the new or expanded facility unless party #1 requested an additional allocation in same.

15. FALMOUTH and DISTRICT agree that if the 5-day Biochemical Oxygen Demand of the waste flow entering the treatment facility exceeds an average of 300 milligrams per liter as measured in a 24-hour composite sample using standard laboratory procedures, the power costs at said facility shall be allocated on the basis of percentage of 5-day Biochemical Oxygen Demand contributed by each party.

16. The parties agree that in the event of the discharge from the DISTRICT'S system in Cumberland of any material into the FALMOUTH system which will be toxic or otherwise upset the normal operation of the treatment facility, including flowage exceeding the capacity reserved for DISTRICT, the DISTRICT shall bear any extra treatment costs and the expense of any damages, repairs or additional facilities attributable to such discharge, including, without limitation, any fines or penalties which may be levied by any state or federal agency for any violation of FALMOUTH'S discharge permit. If it is determined that such toxic materials or excess flowage originated in FALMOUTH, all of the foregoing costs shall be the sole responsibility of FALMOUTH and if the source of such toxic materials or excess flowage cannot be determined, all of the foregoing costs shall be allocated between the parties on the basis of percentage of total measured flow contributed by each party for the prior 30 day period, as set forth in paragraph 11(c) hereof. The sole responsibility of determining the origination of said discharges shall be FALMOUTH'S. The DISTRICT agrees to assist, at the request of FALMOUTH, in making said determination. Nothing contained herein shall prevent FALMOUTH from restricting the flow from Cumberland or taking other

appropriate steps to limit flowage from the DISTRICT system in Cumberland to the standards, capacity and allowances set forth in this agreement or to proceed on any theory against any party for breach of any part of this agreement.

17. If, for any reason, a sewer system is not constructed in Cumberland, DISTRICT shall nonetheless be responsible for paying FALMOUTH for its share of any costs covered by paragraph 7 of this agreement. If Cumberland constructs or authorizes the construction of a sewer system which does not connect with the FALMOUTH system, DISTRICT shall likewise be responsible for the above mentioned costs incurred by FALMOUTH under this agreement.
18. The term of this agreement shall be thirty (30) years and it shall continue thereafter for successive three (3) year extensions, unless and until terminated by both parties by written agreement entered into at least one (1) year prior to the end of the term of this agreement or any such extension. It is expressly understood that upon termination of this agreement all collection and treatment facilities located in FALMOUTH shall remain the sole property of FALMOUTH.
19. This agreement shall become fully effective upon its signing by the authorized representatives of the parties hereto and shall be binding on and inure to

their successors and assigns provided that the DISTRICT may not assign this agreement without the consent of FALMOUTH.

20. All claims, disputes and other matters arising out of, or relating to this Contract or the breach thereof, shall be decided by arbitration which shall be conducted in accordance with the rules of the American Arbitration Association.
21. Anything to the contrary herein notwithstanding, if FALMOUTH or any employee, agent or contractor of FALMOUTH is delayed in carrying out or unable to carry out or perform any action or duty required under this agreement by labor disputes, casualty, delays caused by arbitration, inability despite good faith efforts to obtain or maintain permits, changes in applicable law, regulations or water classifications, or by any causes whatsoever beyond the control of FALMOUTH or its employees, agents or contractors, performance of such action or duty, shall be excused for the period of the delay and the period for the performance of any such action or duty shall be extended for a period equivalent to the period of such delay. FALMOUTH shall not be responsible for any facilities or any collection or discharge of wastewater flows outside of the treatment and discharge of wastewater flows and the improvement, modification, reconstruction,

replacement, operation and maintenance of FALMOUTH'S sewer system, as contemplated by this agreement. In the event that FALMOUTH is unable to accept and treat wastewater flow from Cumberland within one (1) year of substantial completion of Cumberland's wastewater system, then monies paid to FALMOUTH by DISTRICT in accordance with paragraph 11(b) shall be refunded to DISTRICT. Said monies shall be held by DISTRICT until the intent of this agreement is fulfilled, whereupon they shall be returned to FALMOUTH.

22. The obligations of the parties hereunder shall be subject to obtaining the grants and permits contemplated herein and any necessary interim financing of the expenditures contemplated herein, except for costs incurred in good faith under paragraph 7.

IN WITNESS WHEREOF, the PORTLAND WATER DISTRICT and the TOWN OF FALMOUTH have caused this instrument to be signed and sealed in their respective names by their respective duly authorized officers this 13TH day of March, 1981.

Signed, Sealed and Delivered
in the Presence of

James W. West

Paul Plumptre

PORTLAND WATER DISTRICT

By Joseph B. Taylor
Its General Manager

TOWN OF FALMOUTH

By John D. Harris
Its TOWN MANAGER

APPENDIX A

	<u>DISTRICT PERCENTAGE SHARE</u>	<u>FALMOUTH PERCENTAGE SHARE</u>
<u>JOINT USE MODIFICATIONS</u>		
TREATMENT FACILITIES		
1. Grit Removal and Comminution in Headworks Building	50	50
2. 100,000 Gal. Aerated Sludge Storage Tank	70	30
3. Scum Removal and Tank Drainage Facilities at Chlorine Contact Tank	30	70
4. New Control System for Air Blowers	30	70
MILL CREEK PUMPING STATION		
1. Modification to Wet Well	100	0
2. New Pumps, Motors, and Controls	100	0
INTERCEPTORS AND FORCE MAINS		
1. Television and Grouting of System	0	100