

Franklin County Solid Waste Management District

District Agreement

I. Organization

There is hereby established the Franklin County Solid Waste Management District, a public body politic and corporate, hereafter referred to as the District. Said entity shall function as a refuse disposal District operating with the regional responsibilities and powers provided to regional solid waste management districts pursuant to the Enabling Act and all other provisions of law which may apply to such districts.

The District is created and shall exist for the purpose of providing solid waste management services for its member municipalities for solid wastes generated within the District. The forms of solid waste management may include, but are not limited to removal, transportation, disposal, recovery, reduction, recycling, composting or any combination thereof and whatever associated administrative support services may be required.

The District shall not be organized nor function for the purpose of disposing of hazardous waste except at the discretion of the District Board of Representatives.

The District shall be composed of all the lands and residents within the municipalities of Bernardston, Buckland, Charlemont, Colrain, Conway, Deerfield, Erving, Gill, Hawley, Heath, Leyden, Montague, New Salem, Northfield, Orange, Rowe, Shelburne, Sunderland, Warwick, Wendell, Whately and any other municipalities in Franklin County as shall by vote as provided below accept the provisions of the Enabling Act and agree to participate in its creation. Other municipalities can be subsequently admitted to the District as herein provided; municipalities may also withdraw from the District as herein provided. The municipalities composing the District shall constitute its members and are herein designated as member municipalities.

Municipalities having a town meeting form of government shall vote to join the District at the next annual town meeting or at a special town meeting held prior to June 30, 1989; municipalities having a council form of government shall vote to join the District by council action which becomes final prior to June 30, 1989. The District shall not incur any debt or long-term contractual liabilities until approval of this agreement by the Massachusetts General Court.

After June 30, 1989, municipalities must seek admission as new member municipalities as set forth in Section VIII.

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II. District Board of Representatives

Authority. The legislative power and authority of the District and the administration and the general supervision of all fiscal, prudential, and governmental affairs thereof shall be vested in a governing body known as the District Board of Representatives except as specifically provided otherwise by the Agreement. The District Board of Representatives shall draw up a set of By-laws which must be approved by all voting representatives to provide for the conduct of its business and the exercise of powers of the District when the manner of exercise is not specifically provided herein. The District Board of Representatives has the authority to amend the By-laws with the approval of two-thirds (2/3) of the voting representatives. By-laws and any amendments to by-laws must be read one meeting before being voted on.

Voting. Each member municipality is entitled to voting representatives as specified in the following chart:

Population: 0-4,999	one voting representative
5,000-9,999	two voting representatives
10,000-14,999	three voting representatives
15,000-19,999	four voting representatives
20,000-24,999	five voting representatives
25,000 and above	six voting representatives

The determination of population shall be made based upon the most recent Federal census.

Each member municipality is entitled to and encouraged to appoint a representative and an alternate for each voting representative position as listed in the chart above.

The representatives from each member municipality shall be appointed by the Executive Body of such municipality. All appointments shall be in writing signed by the respective Executive Body, or its chairman, and presented to the Secretary of the District. Representatives shall serve a two-year term. The District Board of Representatives shall be composed of all duly appointed representatives from each member municipality. For each District Board of Representatives meeting, in the absence of a representative from a member municipality, an alternate will be selected from the attending alternate representatives for that member municipality, as specified in the By-laws.

Subcommittees. The District Board of Representatives may from time to time form ad-hoc or standing subcommittees and appoint representatives and/or alternates from member municipalities to serve and vote on such subcommittees. The District Board of Representatives may give charges to these subcommittees, and may optionally require that certain subcommittee actions be approved by the District Board of Representatives as set out in the By-laws. All representatives and/or alternates appointed to a subcommittee shall have voting power on that subcommittee. There will be no substitute representation at the subcommittee level.

Quorum. For the purposes of transacting business, a quorum shall constitute the presence of more than 50% of the total votes of appointed representatives.

Officers. At its annual meeting, the District Board of Representatives shall elect from its membership a Chair and a Vice-Chair each of whom shall hold office for one year and until his or her successor is duly elected and qualified. For the election of officers each member municipality shall have one vote.

The District Board of Representatives shall appoint a Secretary of the District and a Treasurer of the District neither of whom need be members of the Board of Representatives.

### III. Powers

The powers of the District shall be as specified in the Enabling Act and as specified below.

Except as otherwise provided the District shall have the powers specified in the Enabling Act, with the following exception: The District may purchase or take by eminent domain under Chapter 79 land within member municipalities only with approval of the Legislative Body of the member municipality within which the land is located.

In addition, the District may, in order to perform its functions:

- enter into any long-term lease; provided, however that the purpose and maximum period of such lease shall have been approved by the member municipalities in the manner provided with respect to bonds and notes by this agreement.
- enter into any service agreement under the provisions of subsection (g) of section twenty-one of chapter forty D of the General Laws with any party such that said party shall be obligated to provide a program for waste disposal services.
- establish a system of user fees based on actual, projected, approximate, or estimated use of the program or services provided by it or on such other basis as will equitably allocate the cost of the facilities or service among the users or categories of users. The collection of user fees shall be taken into account in the preparation of the annual District budget.
- create, and maintain from bond proceeds, and provide for the use and ultimate disposition of, such reserve, replacement, maintenance, and improvement funds in connection with each capital program funded by bonds as it may deem necessary and prudent to enable it to carry out the function of the program in an orderly fashion, provided, however, that the aggregate of such funds for any one project shall not exceed five per cent of the principal amount of bonds issued for such project.

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In addition, indebtedness incurred by the District for regional refuse disposal facilities shall be subject to such of the applicable provisions of Chapter forty-four of the General Laws as are not inconsistent herewith. The maturities of bonds or notes issued by the District either shall be arranged so that for each issue the annual combined payments of principal and interest payable in each year shall be as nearly equal as practicable in the opinion of the District Board of Representatives, or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal, provided that such annual payments need not commence earlier than one year after the date of commencing regular use of the facilities, as projected or determined by the District Board of Representatives. Project costs to be financed by the issuance of bonds or notes may include interest on such borrowing, including interest on notes issued in anticipation of federal or state aid, for a period of up to six months after the date so projected or determined for commencement of regular use of facilities financed by the bonds or notes.

#### IV. Description of Program

The District may own, operate, construct, contract for the use of or otherwise provide one or more programs for the use of the member municipalities. The District may purchase or take by eminent domain under chapter seventy-nine land within member municipalities only with approval of the Legislative Body of the member municipality within which the land is located. Any program which the District operates may be located within the District or in a non-member town. The District may lease land or buildings within a non-member town. All District owned, leased, and/or operated facilities shall be sited in accordance with all applicable laws and regulations.

In the case of any program the capital cost of which is allocated to less than all of the member municipalities under a capital budget adopted pursuant to Section V, those municipalities which are allocated responsibility for a portion of the costs of such program shall have a first claim on the handling or disposal capacity of such program proportional to the allocated cost share of each such municipality. To the extent that there is unused capacity in any program, the District Board of Representatives may make provision for the use thereof by other member municipalities, non-member municipalities and other persons on such terms and conditions as the District Board of Representatives may establish.

#### V. Capital Cost Allocation

Whenever the District Board of Representatives shall propose a capital expenditure the cost of which will be paid or repaid over more than one fiscal year through the use of indebtedness, lease transactions, installment purchase agreements or otherwise, the District Board of Representatives shall prepare a report. This report shall state the purpose of the expenditure, the amount to be expended, the method of financing such expenditure or otherwise delaying it so that payment or repayment occurs in more than one fiscal year, the estimated financing or carrying costs associated

therewith and an estimated cost allocation for the member municipalities intended or expected to benefit from the expenditure.

The District Board of Representatives shall notify the Executive Body of the member municipalities of its intent and enclose a copy of said report. The District Board of Representatives will request each member municipality to indicate interest in participating, and may set a deadline for reply.

Based upon those member municipalities which express interest in participating, the District Board of Representatives will draw up a formal budget that includes the cost allocated to each of the participating municipalities for the program. The capital budget for any particular program may show estimated receipts, such as user fees, from sources other than the member municipalities but such estimates shall not relieve any member municipality from responsibility for its full allocable share of costs if such receipts are not received.

The District Board of Representatives shall send a copy of the capital budget to the Executive Body of those member municipalities that have expressed an interest in participating in the program. The District Board of Representatives reserves the right to specify a timeframe of no less than forty-five days within which the Legislative Body of each such member municipality must take a vote to approve or disapprove the capital budget. If any of the participating municipalities do not vote within the time frame or votes to disapprove the capital budget, the District Board of Representatives may draw up a new capital budget and submit this new capital budget to Legislative Body approval by the remaining participating municipalities.

If the capital budget provides for the incurrence of indebtedness to finance the costs provided therein, such indebtedness shall be authorized as provided in the Enabling Act, which authorization may be made simultaneously with the adoption of the capital budget or at any other time.

Allocation of responsibility for the costs of a capital expenditure among the member municipalities intended or expected to benefit from the expenditure shall, for purpose of any capital budget, be made in proportion to the most recent final equalized valuations of such municipalities as established pursuant to Chapter 58, section 10C, of the General Laws as of the time such capital budget is proposed by the District Board of Representatives.

When all capital expenditures for a project which is the subject of a capital budget have been made and financing or other carrying arrangements for the cost thereof have been completed, the capital budget relating thereto may be revised to reflect the actual costs allocated to the participating municipalities and to include a schedule of annual or other payments (not more frequently than quarterly) pursuant to each such municipality's allocable share shall be paid; provided however that the total capital expenditure shall not be increased nor any municipality's allocable share increased without adoption of a new capital budget pursuant to this section. Thereafter, payment

by each municipality shall be made to the District in accordance with such budget, allocation and schedule without requirement of notice, annual budget approval, or other action by the District.

Each such member municipality's apportioned share of principal and interest on bonds, notes or certificates of indebtedness issued by the District shall be exempt from the provisions of section twenty-one C of chapter fifty-nine.

## VI. Procedure for Setting Annual Budget

The fiscal year of the District shall commence on July 1 and end on the following June 30.

Schedule for Annual Budget. The District Board of Representatives shall prepare a proposed annual budget for each fiscal year by the regularly scheduled November meeting of the preceding year. The District Board of Representatives shall hold at least one public hearing on the proposed annual budget after such notice to the member municipalities and the public as it shall determine and shall adopt such proposed annual budget, with or without amendment, after the public hearing but not later than the first Thursday in December. Within one week of its adoption, the District Board of Representatives shall cause the proposed annual budget as adopted to be mailed to the Executive Body and Finance Committee (or other body having the function of a finance committee) in each member municipality.

The District Board of Representatives shall receive comments from the member municipalities until the following January 31st. After the final day for the municipal comment and prior to March 1, the District Board of Representatives shall, by majority vote, adopt an annual budget, with or without amendment, and shall notify the member municipalities of the same by mail as aforesaid in the case of the proposed annual budget.

The annual budget must be approved by 2/3 of the member municipalities, each by a majority vote of its Legislative Body at an annual, regular or special meeting held prior to the commencement of the fiscal year to which the budget pertains. The annual budget shall then become final and effective for the following fiscal year. If the annual budget is not approved, the District Board of Representatives may from time to time resubmit it or may submit a revised annual budget for municipal consideration in the manner described above, but without need for a proposed annual budget or public hearing, and if no annual budget has been adopted prior to the commencement of the fiscal year to which it pertains, the District shall operate with the budget for the previous year on a month to month basis until a new annual budget becomes effective.

When an annual budget has been approved, each member municipality shall pay its allocable share thereof on a quarterly basis by the tenth day of each July, October, January, and April. If the District is operating on the previous year's budget because no new annual budget has become effective, each member municipality shall pay its allocable share thereof on a monthly basis on the first day of each month commencing with July until a new annual budget becomes effective.

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Thereupon, the balance of what would have been each member municipality's quarterly payments shall be due and payments for the remainder of the fiscal year shall be made quarterly as aforesaid. If any member municipality shall not pay its allocable share when due, such overdue payment shall bear interest at a rate equal to the District's borrowing cost as estimated for the same period

Contents of Annual Budget. The annual budget shall include estimates of all costs and expenses of the year to which it pertains, including capital, operating and maintenance costs, and of all revenues, including grants, user fees and proceeds from the sale of any recycled materials and any other receipts. If the District utilizes more than one program, the capital and operating costs of each shall be separately identified. General administrative expenses and expenses attributable to District-wide operations may be separately identified or allocated to individual programs as the District Board of Representatives may determine. In preparation of the annual budget, the District Board of Representatives shall take into account any variations between the actual weight of refuse received and the estimated weight of such refuse from member municipalities during previous fiscal years.

The District Board of Representatives may provide for a stabilization fund to be funded as part of the annual budget or otherwise. Amounts in the stabilization fund may be used for any legal purpose of the District but only pursuant to a capital budget, annual budget, or supplemental budget that provides for withdrawals therefrom.

The annual budget shall show the capital costs allocated to and payable by each member municipality as provided in the capital budgets pertaining to each program and the estimated weight of refuse to be received from each member municipality during the year. The annual budget shall show the adjustments and allocation of cost to each member municipality and the quarterly payments due from each, calculated as provided below.

During the course of the fiscal year, the District Board of Representatives may reallocate available funds or expense items within the annual budget and may expend any gifts or grants received for the purpose for which they were given or made but it shall not increase the payments due from the member municipalities without first adopting a supplemental budget which shall be submitted to the member municipalities for approval or disapproval as in the case of an annual budget, but without need for a proposed supplemental budget or public hearing. Any unencumbered and uncommitted surplus remaining at the end of a fiscal year may be applied to the following year's budget or may be accumulated in the stabilization fund, as the District Board of Representatives may determine.

Allocation of Annual Budget. The amount to be raised pursuant to each annual budget by allocation to and payments by each member municipality shall be determined as follows:

1. Until such time as user fees with respect to a District facility or facilities available to each member municipality shall be sufficient to totally offset the District's general operating and administrative costs for a complete fiscal year, all member municipalities will be assessed to fund that portion of the District's general administrative and operating budget which is not so offset, as follows:

Assessments to member municipalities during the period shall be based on a formula of fifty percent population (using the most recent federal census) and fifty percent equalized valuation. Payments by each member municipality based upon this formula shall be made quarterly.

2. At such time as user fees with respect to a District facility or facilities available to each member municipality shall be sufficient to totally offset the District's general and operating costs:

(a) For each member municipality, the total budgeted amount to be raised by allocation, including capital and operating costs, shall be divided by the total estimated weight of refuse expected to be received from all member municipalities and multiplied by the estimated weight of refuse expected to be received from the member municipality;

(b) Any payments to be made during the year by the member municipality pursuant to approved capital budgets shall be deducted from the result of the operation described in (a);

(c) If the result of the operation in subparagraph b is zero, the municipality shall pay its capital budget allocation and nothing more; if the result is positive, the municipality shall pay its capital budget allocation and the resulting amount, as scheduled; if the result is negative, the municipality shall pay its full capital budget allocation without reduction and any resulting surplus on a District-wide basis may be deposited in the stabilization fund at the discretion of the District Board of Representatives.

The District Board of Representatives shall establish reasonable procedures for determining each municipality's tonnage.

If the District utilizes more than one program, the operation specified in subparagraph (a) above shall be carried out using only the total budgeted amount to be raised by allocation on account of District-wide expenses and expenses of the program or programs actually used by the municipality in question and using only the total estimated weight of refuse expected to be received from all member municipalities at such program.



## VII. Process of Amending Agreement

No amendment of this Agreement may impair the rights of holders of bonds, notes or other evidence of outstanding District indebtedness; amendments for member municipality admission are provided for by separate amendment process.

An amendment to the District Agreement may be initiated by one of the following:

- a) a majority vote by the entire District Board of Representatives or
- b) a petition of at least 10% of the registered voters of any member municipality.
- c) majority vote of town meeting or the Legislative Body of a member municipality.

Upon initiation of an amendment proposal, the District Board of Representatives may cause one or more public hearings to be held thereon and may solicit such municipal comment as it may deem proper and shall cause an amendment to this Agreement to be prepared incorporating the substance of such proposal in such form as the District Board of Representatives shall approve, with or without modification. Within forty-five days of the initiation of an amendment proposal, the District Board of Representatives shall deliver to the Executive Body of each member municipality an amendment prepared as aforesaid, together with its recommendation as to whether such amendment should be adopted.

Amendments require approval by 2/3 of the member municipalities each by a majority vote of its Legislative Body; provided, however, that any amendments changing the allocated costs or its voting rights on the Board of Representatives of any member municipality shall require the approval of that municipality.

Each member municipality shall within sixty days of the receipt of an amendment from the District Board of Representatives cause the amendment to be submitted to its Legislative Body for approval or disapproval. If the required 2/3 vote approval is not obtained within the sixty day period, the amendment process shall lapse and thereafter the amendment may be adopted only upon a new initiation.

## VIII. Admission of New Member Municipalities

The admission of new member municipalities may be effected by an amendment to this agreement adopted as provided in Section VII. The District Board of Representatives may authorize the inclusion of additional member municipalities in the District by proposing an amendment to this agreement. The District Board of Representatives' amendment shall include such terms and conditions as it in its sole discretion shall deem to be fair, reasonable and in the best interests of the District.

The Executive Body of any non-member municipality which desires to be admitted to the District shall make application for admission to the District Board of Representatives. The District Board

of Representatives shall determine the effects and impacts which are likely to occur if such municipality is admitted and shall thereafter initiate the amendment process for admission or deny admission of the petitioning municipality. If the Board of Representatives proposes an amendment to admit the petitioning municipality, it shall also specify any terms and conditions upon which such admission is predicated. The terms and conditions may include but not be limited to financial obligations, and provide that any lease or agreement to which the District may be a party would not be violated or voided. The petitioning municipality shall thereafter comply with the approval procedures specified in the appropriate Massachusetts General Law. If a majority of the voters of the petitioning municipality present and voting at a meeting of such municipality duly warned for such purpose shall vote to approve the Agreement with the amendment and the terms and conditions for admission, the vote shall be certified by the Clerk of that municipality to the District Board of Representatives. The amendment which specifies terms of admission shall not take effect until it has been approved by all member municipalities as provided in Section VII.

Thereafter, upon satisfactory performance of the terms and conditions of admission, said petitioning municipality shall by resolution of the District Board of Representatives become and thereafter be a member municipality of the District.

#### IX. Procedures for Withdrawal

The withdrawal of a member municipality shall be effected by an amendment to this agreement adopted as provided in this Section IX. The provisions of Sections VII and VIII, relating to all other amendments and to the admission of new member municipalities shall not apply to an amendment under this Section IX.

Any member municipality may seek to withdraw from the District by adopting a majority vote to that effect at a meeting of its Legislative Body. After such a vote the Executive Body of said municipality shall notify the District Board of Representatives and request that the District Board of Representatives prepare an amendment providing for its withdrawal. The request shall be accompanied by a certified copy of the vote of the Legislative Body and shall include an agreement by said municipality to pay all of the District's expenses in preparing the requested amendment, whether or not it is finally adopted.

Municipalities may request to withdraw from the District at any time. However, notification of withdrawal effective in the next fiscal year must be received by the District no later than the second week of January of the current fiscal year. Requests for withdrawal received after this date shall result in the District requiring full payment of the withdrawing municipality's assessment for the next fiscal year.

Thereupon, and within ninety days from the receipt of the notice and request, the District Board of Representatives shall prepare an amendment providing for the withdrawal of the requesting municipality setting forth such terms as the District Board of Representatives shall deem

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advisable. In all cases the terms of withdrawal shall provide that the withdrawing municipality shall continue to be obligated to pay its allocable share of debt service on all short and long-term indebtedness, lease payments and payments under long-term contracts or service agreements. In addition, the amendment may provide for payments by the withdrawing municipality of planning and development costs related to programs which that municipality had accepted if such costs have been incurred but not financed at the time of withdrawal, and may provide for payment of all or a portion of the municipality's budget allocation for the fiscal year in which the withdrawal is effective, and finally may provide for payment of any amounts owing to any retirement system in which the District participates. The amendment may also make provision for the disposition of any assets of the District located in the withdrawing municipality and of any assets of the municipality used by the District.

The District Board of Representatives shall transmit the withdrawal amendment to the Executive Body of the municipality in question. If the amendment is approved by a majority vote of the Legislative Body of such municipality at a meeting duly called and held within forty-five days of such transmittal (unless a longer period is stated in the amendment itself), the withdrawal shall be effective upon the effective date of such vote and at that time the term of office of each representative from the municipality to the District Board of Representatives shall terminate and the municipality shall cease to be a member of the District. The municipal clerk shall provide the District Board of Representatives with notification stating the effective date of withdrawal and enclosing a certified copy of the vote.

Until an amendment has been approved as aforesaid and withdrawal has become effective, any municipality requesting withdrawal shall remain a full, participating member of the District and its representatives shall remain full, voting members of the District Board of Representatives.

#### X. Initial Budget

For the first full fiscal year, and for any partial year prior to such first full fiscal year, after the organization of the District, the budget shall be an annual budget for administrative and initial operating expenses only (except that one or more capital budgets may be proposed during such period by the District Board of Representatives as provided in this Agreement) and shall be the budget proposed by the Planning Board created pursuant to Chapter 40, section 44B of the General Laws with respect to the District and filed with each municipality comprising such Planning Board. When any municipality votes to accept the provisions of this Agreement it shall also vote to appropriate the sum allocated to it in such budget and a no vote to accept this Agreement shall be effective unless such an appropriation is made. Payment by each member municipality to the District shall be made monthly during any partial fiscal year prior to the first full fiscal year and shall be made quarterly thereafter in accordance with such budget.

## XI. Definitions

Alternate - A person appointed by the Executive Body of any member municipality to serve on the District Board of Representatives as an alternate to a Representative for that member municipality. Alternates may only vote on matters which arise at District Board of Representatives meetings which they attend, if they are replacing a Representative, as set out in the By-laws. Alternates may vote on matters which arise at subcommittee meetings, if they are in attendance and have been appointed to that subcommittee.

Costs - In the context of capital expenditures, costs shall include all expenses in the nature of capital outlay such as the costs of acquiring land, the cost of construction, reconstructing or adding to facilities, the cost of constructing roads, the cost of consulting services, the cost of any equipment necessary for the operation of a refuse disposal program, and any other costs incidental to the preparation of such a program. Capital costs shall also include payment of principal of and interest on bonds, notes, or other obligations issued by the District to finance capital costs. In the context of annual Operation and Maintenance expenditures, costs shall include all costs not included in capital costs as defined above that are incurred directly or indirectly by the District.

District Solid Waste Program - any incinerator, landfill, resource recovery facility, transfer station, composting plant, sorting or processing machine or plant, recycling plant or other sanitary means of recycling or composting solid waste that has the approval of the Department of Environmental Protection that is owned and operated by the District or any contract or services administered by the District.

Enabling Act - shall mean sections 44A through 44L, inclusive, of Chapter 40 of the Massachusetts General Laws, as amended from time to time.

Executive Body - means the Board of Selectmen of any municipality having such a board and the officer or body exercising the functions of a Board of Selectmen in any other municipality.

Hazardous Waste - shall mean material regulated as such by state and federal statutes.

Legislative Body - means the town meeting in a municipality having a town meeting form of government and the body exercising the functions of a town meeting in any other municipality.

Operates - includes the operation of any program for which the District has financial responsibility.

Program - any service or facility that the District operates or provides including the District Solid Waste Program.

Representative - A person appointed by the Executive Body of any member municipality to serve on the District Board of Representatives. Representatives may vote on matters which arise at

District Board of Representatives meetings which they attend. Representatives may vote on matters which arise at subcommittee meetings, if they are in attendance and have been appointed to that subcommittee. The number of voting representatives for each member municipality is established in Article II.

Solid Waste - shall mean any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control program and other discarded material, including, liquid, semi-solid, or contained gaseous materials resulting from residential, industrial, commercial, mining, or agricultural operations and from community activities.

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