

# **JOINT POWERS AGREEMENT**

## **by the towns of Braintree, Holbrook and Randolph for the formation of the Tri-Town Water District**

This Joint Powers Agreement (“Agreement”) is entered into pursuant to AN ACT ESTABLISHING THE TRI-TOWN WATER DISTRICT (C. 371 of the Acts of 2020, hereinafter, “the Act”) and Chapter 40 § 4A1/2 of the General Laws of Massachusetts by the towns of Braintree, Holbrook and Randolph, hereinafter sometimes referred to as “member towns” or the “parties,” for the formation of a body politic and corporate to be called the Tri-Town Water District (“the District”). This Agreement shall be binding upon the Towns of Braintree, Holbrook and Randolph upon the approving vote and execution hereof by the authorized officials of each of those towns pursuant to the terms of Chapter 40 §4A½(b).

The District shall be a body politic and corporate and political subdivision of the Commonwealth. The purpose of the District shall be to provide for the supply, treatment and distribution of water to member towns.

In consideration of the mutual promises herein contained, it is hereby agreed as follows:

### **SECTION I – THE WATER DISTRICT BOARD OF DIRECTORS**

#### **(A) Appointment**

The powers and duties of the District shall be vested in and exercised by a Water District Board of Directors, pursuant to Chapter 40 §4A½(e), hereinafter sometimes referred to as “the Board,” whose members shall be appointed by the appropriate legal authorities in the member towns.

Each of the member towns shall appoint one Board member. Each member of the Board shall be entitled to a vote. The Board shall coordinate the activities of the District and may establish any policies and procedures necessary to do so.

#### **(B) Term**

Initial appointments to the Board shall be for the following terms: Braintree-3 years; Randolph-2 years; Holbrook-1 year. All subsequent terms shall be for a 3 year period, subject to the resignation and removal provisions contained herein. Each member shall serve on the Board until her/his successor is appointed and sworn into office by the Town Clerk of the member town.

(C) Quorum and Quantum of Vote

A majority of all Board members shall constitute a quorum. A majority affirmative vote of Board members shall be required to carry non-financial motions and a unanimous affirmative vote of all Board members shall be required to carry motions establishing the annual budget, to borrow money or otherwise to incur debt, or to purchase, take by eminent domain under chapter 79 of the General Laws or otherwise acquire land (each such motion requiring a unanimous affirmative vote of all Board members shall be referred to herein as a “Unanimous Vote Item”). No vote on a Unanimous Vote Item shall be valid, effective and binding unless each Board member has participated therein (e.g., at a meeting attended by only two of three Board members, the Board lacks authority to vote on a Unanimous Vote Item).

(D) Resignation and Removal

A member of the Board may resign by filing with the Board a written notice of resignation with a copy thereof to the his/her respective appointing authority and the Town Clerk therein. A member of the Board may be removed from that office by vote of the appropriate town authority by whom the member was appointed, acting in their sole discretion. Such removal shall become effective upon written notice to the Board from the member town.

(E) Vacancy

In the event of a vacancy on the Board the member town from which the vacancy arises shall within thirty (30) days appoint a member in the manner of the previous appointment to that position for the duration of the existing term.

(F) Organization

Promptly upon the appointment and qualification of the members of the initial Board and annually thereafter the Board shall organize and choose by ballot a chairman from among its own membership.

At the same meeting or at any other meeting, and annually thereafter, the Board shall choose by ballot a vice-chairman, secretary, and such other officers as it deems advisable, and describe the powers and duties of any of its officers, fix the time for its regular meetings and provide for the calling of special meetings. At least one District officer shall be appointed from each of the member towns.

The Board shall establish and manage a fund to which all monies contributed by the participating governmental units, and all grants and gifts from the federal or state government or any other source shall be deposited. The Board shall appoint a

treasurer who may be a treasurer of one of the participating governmental units. No member of the Board or other employee of the District shall be eligible to serve concurrently as treasurer. The treasurer, subject to the direction and approval of the Board, shall be authorized to receive, invest and disburse all funds of the District without further appropriation. The treasurer may, by vote of said Board, be compensated for her/his services. The treasurer shall give bond for the faithful performance of her/his duties in a form and amount as fixed by the Board. The treasurer may make appropriate investments of the funds of the entity consistent with [section 55B of chapter 44](#). The treasurer of the District shall be subject to sections 35, 52 and 109A of chapter 41 of the General Laws, to the extent applicable

The Board shall appoint a business officer who may be a city auditor, town accountant or officer with similar duties, of one of the participating governmental units. The business officer shall have the duties and responsibilities of an auditor or accountant pursuant to [sections 52](#) and [56 of chapter 41](#) and shall not be eligible to hold the office of treasurer.

The District shall be subject to an annual audit and a copy of such audit shall be provided to the member towns and to the division of local services of the department of revenue. The Board may contract with an auditor to provide independent auditing services to the District.

(G) Powers and Duties

The Board shall have all the powers and duties conferred and imposed upon such boards by Chapter 40 § 4A½(d), by Chapter 371 of the Acts of 2020 and by this Agreement, and as may be provided in any other applicable general or special law hereinafter enacted. The Board shall have the authority to enact, and to amend from time to time, such regulations as it deems necessary to provide the services and to operate and maintain the facilities contemplated by this Agreement, which regulations may include management of the water sources and related facilities in the member towns, and restrictions on the withdrawal of water within the Great Pond Reservoir System, including Great Pond, Richardi Reservoir, Farm River, Narrowway Brook and the Cochato River as it deems necessary to protect the natural resources.

(H) Dispute Resolution

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the member towns agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. Any costs associated with mediation shall be split evenly between the member towns.

(I) Department of Public Works

For the purpose of maintaining a consistent and routine dialogue among the parties with respect to technical and operational issues associated with the operation of the DTP and District facilities, there shall be a monthly meeting between the Directors, or their designee, of the Department of Public Works for the towns of Braintree, Randolph and Holbrook relative to such issues.

SECTION II – LOCATION OF DISTRICT FACILITIES

(A) Facilities

The parties intend that the District's facilities shall include a 12.5 MGD dissolved air filtration water treatment plant (the "District Treatment Plant" or "DTP"), the exact features and design of which remain pending as of the parties' execution of this Agreement. The DTP shall be located in Braintree, at \_\_\_ Parcel Nos. 2051-02 and 1035-01, with a subaqueous pipeline connecting the DTP to the Randolph transmission main for service to Randolph and Holbrook. The District shall enter into a lease for use of the land, for the duration of the agreement for the cost of one dollar, located exclusively in Braintree, for the DTP

For purposes of this Agreement, the "Operational Date" shall be the date on which the DTP, having secured all required governmental approvals to authorize its operation, first discharges potable treated drinking water for consumption within the member towns.

SECTION III – APPORTIONMENT AND PAYMENT OF COSTS

(A) Classification of Costs

For the purpose of apportioning assessments levied by the District against member towns, costs shall be divided into two categories: Capital costs and operating costs.

(B) Capital Costs

Capital costs shall include all expenses in the nature of capital outlay, such as the cost of acquiring land, the cost of construction, reconstructing or adding to buildings, roads, water lines and utility lines, the cost of consulting services, the cost of any necessary equipment and any other related costs incidental thereto. Capital costs shall also include payment of principal and interest on bonds and notes or other obligations issued by the District to finance capital costs.

(C) Operating Costs

Operating costs shall include all costs incurred by the District not included in capital costs as defined in Section III (B), including but not limited to, those relating to personnel, benefits and management of the District. Operating costs shall also include a cash reserve determined by multiplying operating cost expenditures by the cash reserve percentage.

(D) Apportionment of Capital Costs

Capital costs shall be charged annually and apportioned among the member towns in the following proportions:

Braintree:	50%
Randolph:	34%
Holbrook:	16%

(E) Apportionment of Operating Costs

Operating costs shall be apportioned to each member town on a flow-proportionate basis, based upon the average daily usage as measured at the District flow meters. On December 31 next following the commencement of operations, and annually thereafter, the District shall reapportion the operating costs to be assessed to the member towns in the next fiscal year based upon the actual average daily flow out of the District facility to each of the member towns in the last full year. By way of illustration, if in calendar year 2024 Braintree accounts for 55% of the flow, Randolph accounts for 35% of the flow and Holbrook accounts for 10% of the flow, then for the fiscal year 2026 Braintree will pay 55% of the District's operating costs, Randolph will pay 35% of the District's operating costs, and Holbrook will pay 10% of the District's operating costs.

(F) Public Safety Personnel Costs

In consideration of the increased burden imposed on the Braintree Police and Fire Departments resulting from the location of the DTP in Braintree, no later than the Operational Date the District shall pay to Braintree \$225,000 (the "Public Safety Charge," which for as long as the DTP remains in operation shall be due annually no later than the same such date and subject to annual adjustment in the manner described below in this paragraph), representing the salaries of one new police officer position and two new fire fighter positions, exclusive of any costs associated with health insurance and retirement benefits. The District shall continue to pay the Public Safety Charge on an annual basis for the duration of the DTP's operation, with an annual increase of no more than 2.5% relative to the amount of the Public Safety Charge in the immediately preceding year (such that for the second year of the DTP's operation, the Public Safety Charge shall be no greater than \$230,625). These costs shall be apportioned to each member town in a manner consistent with the apportionment of operating costs. The parties acknowledge and agree that the

employees who serve in such positions shall at all times remain Braintree employees exclusively, and the District's payment of the Public Safety Charge shall confer upon the neither the District, Randolph or Holbrook any employer status, obligations or liability whatsoever relative to such positions.

(G) Times of Payment of Apportioned Costs

Except as otherwise provided in subsection IV (A) or in subsection IX, the annual share of each member town shall be paid in quarterly installments on or before the last day of the month in which payment is due.

SECTION IV – BUDGET

(A) Initial Budget

After the original Board is organized, it shall prepare a reasonably detailed operating and maintenance budget covering expenses, if any, for the balance of the then-fiscal year. Copies of such proposed budget shall be submitted to the Chairman of the finance or advisory committee of each member town and to the Chairman of the Board of Selectmen, Mayor or Town Council of such town for its review. The Board shall, as a Unanimous Vote Item, adopt a budget not earlier than fourteen days, but within thirty days after the initial budget has been so submitted. The amount of the said budget shall be apportioned among the member towns according to the provisions of Section III hereof. The District treasurer shall certify to the treasurer of each member town its respective shares of said budget. The sums thus certified shall be payable by each member town to the District.

(B) Tentative Budget

Thereafter the District shall annually prepare a tentative maintenance and operating budget for the ensuing fiscal year, attaching thereto provisions for any installment of principal or interest to become due in such fiscal year on any bonds or other evidence of indebtedness of the District and any other capital costs to be apportioned to the member towns. The Board shall mail a copy thereof to the Chairman of the finance or advisory committee of each member town and to the Chairman of the Board of Selectmen, Mayor, Town Manager or Town Council of such town for its consideration on or before December 15<sup>th</sup> in such detail as the Board may deem advisable.

(C) Final Budget

The Board shall, as a Unanimous Vote Item, annually determine the amounts necessary to be raised to maintain and operate the District during the ensuing fiscal year, plus a reserve fund not to exceed 15 per cent of the maintenance

and operating budget, and the amounts required for payment of debt and interest incurred by, or on behalf of, the District that will be due in said year and the said Board shall apportion the amounts necessary to be raised in order to meet the said budget in accordance with the provisions of Section III. The amount so apportioned to each member town shall, prior to February 1st of each year preceding the fiscal year to which said budget relates, be certified by the District treasurer to the treasurer of such towns, and such towns shall appropriate the amounts so certified. In the event that the Board fails to adopt an annual budget on or before such January 15<sup>th</sup> date, the District shall, until the date on which the Board adopts an annual budget, assess the Towns on a monthly basis in an amount constituting one-twelfth (1/12) of the amount assessed for the then-current fiscal year.

Except to the extent provided for from water system revenues and other sources, the obligation of each member town to pay apportionments pursuant to the Act shall be included in the amounts to be assessed annually in each town under [section 23 of chapter 59](#) of the General Laws, and, with or without an appropriation therefor, the town treasurer shall pay to the District the amounts so apportioned at the times specified in this Agreement. The amounts apportioned or to be apportioned pursuant to this Agreement shall not be included in the statutory limit of indebtedness of any town. Each of said towns shall transfer all or any portion of the amounts appropriated for capital costs to the District only upon receipt by the treasurer of the town from the District of copies of invoices or other evidence satisfactory to the treasurer, in her/his reasonable judgment, that the project costs for which said amounts are being transferred have been incurred by the District and are due and payable.

## SECTION V – WATER SUPPLY SERVICES AND LIMITATIONS ON SALES

### (A) Services

The District, under the daily supervision of the Town of Braintree, shall provide water supply and treatment services to the member towns.

The Town of Braintree shall oversee the daily operations of the DTP, including the hiring, discipline and lay off of personnel, administration of benefits and payroll and supervision of employees providing these services. The operating costs associated with the provision of said services, including administrative costs associated with the financial and human resources oversight, and limited to the actual costs of all such services with no mark-up or profit by or to Braintree, shall be assessed to each member town as detailed in Section III(E) above.

The Board shall have the authority to approve, on an annual basis, the operating and staffing plans for the DTP. The Board shall also have the authority to approve

operating policies and procedures that govern the operations of the DTP in accordance with applicable standards.

The District may provide additional water related services to its member towns. All water related services not provided to any member town by the District shall be the responsibility of the individual towns.

(B) Limitations on Sales of Water

No sales shall be allowed by a member town to a non-member town except for short term sales made necessary due to an emergency or circumstances beyond the reasonable control of the non-member community, but in any event not to exceed 25,000 gallons per day and for no longer than 30 days. The District may enter into agreements for the sale of water to non-member communities in its discretion.

(C) Any new development project requiring new or increased withdrawal of water greater than an additional 50,000 gpd within the Great Pond Reservoir System shall be subject to prior approval by the District following written application for such approval. The District may establish regulations setting forth the form of such application, the fee to be charged for such application, which fee may include the professional fees and other costs incurred by the District in reviewing the application, and the procedure to be followed for consideration of such application.

SECTION VI - AMENDMENTS

(A) Limitation

This Agreement may be amended from time to time in the manner hereinafter provided, but no such amendment shall be made which shall substantially impair the rights of the holders of any bonds or other notes or other evidence of indebtedness of the District then outstanding, or the rights of the District to procure the means for payment thereof.

(B) Procedure

Any proposal for amendment, except a proposal for amendment providing for the withdrawal of a member town (which shall be acted upon as provided in Section VII) may be initiated by a vote of a majority of all members of the Board. The secretary of the Board shall mail or deliver a notice in writing to the Board of Selectmen, Mayor or Town Council of each of the member towns that a proposal to amend this Agreement has been made and shall enclose a copy of such proposal. Such amendment shall take effect upon its acceptance by all the member towns, acceptance by each town to be by a majority vote by the Board of Selectmen, Mayor or Town Council.

SECTION VII – WITHDRAWAL



(A) Limitations

A member town may withdraw from the District by an amendment to this Agreement in the manner hereinafter provided by this Section. Any member town seeking to withdraw shall, by vote Board of Selectmen or Town Council , request the Board to draw up an amendment to this Agreement setting forth the terms by which such town may withdraw from the District, provided that the said town shall remain liable to the District for its share of the indebtedness of the District outstanding at the time of such withdrawal, and for interest thereon, to the same extent and in the same manner as though the town had not withdrawn from the District.

(B) Procedure

The Clerk of the town seeking to withdraw shall notify the Board in writing that such town has voted to request the Board to draw up an amendment to the Agreement (enclosing a certified copy of such vote). Thereupon, the Board shall draw up an amendment to the Agreement setting forth such terms of withdrawal as it deems advisable, subject to the limitation contained in subsection VI (A). The terms of withdrawal shall ensure that the withdrawing town will pay its share of any temporary borrowing in anticipation of revenue which may be outstanding at the time of withdrawal. The secretary of the Board shall mail or deliver a notice in writing to the Board of Selectmen/Town Council/Mayor of the withdrawing town that the Board has drawn up an amendment to the Agreement providing for the town's withdrawal (enclosing a copy of such amendment). In the event that Holbrook is the withdrawing town, the Holbrook Board of Selectmen shall include in the Warrant for the next Annual or Special Town Meeting called for the purpose, an Article stating the amendment or the substance thereof. In the event that Braintree or Randolph is the withdrawing town, the Town Council of such town shall vote on the proposed amendment. Such amendment shall take effect upon its acceptance by the withdrawing town, acceptance to be by a majority vote by the town's Town Council or at a Town Meeting, as aforesaid.

(C) Cessation of Terms of Office of Withdrawing Town's Members

Upon the effective date of withdrawal, the terms of office of the members serving on the Board from the withdrawing town shall terminate and the total membership of the Board shall be decreased accordingly.

(D) Apportionment of Costs After Withdrawal

The withdrawing town's annual share of any future installment of principal and interest on obligations outstanding on the effective date of its withdrawal shall be computed and assessed in the same manner as in Sections III (D) and IV until the impending obligations are satisfied. Any future installment or portion thereof shall continue to be assessed to such town until the impending obligations are satisfied. Due dates of payment shall be as specified in Section III (F).

Charges which would otherwise have been made to a withdrawing town for the then-current fiscal year pursuant to a determination under Section III (D) or (E), shall be assessed to such town notwithstanding the effective date of its withdrawal and shall be paid in equal installments totaling the amount of such charge on the dates provided in Section III (F) for the then-current fiscal year. Credits which would otherwise have been made to a withdrawing town shall be made to such town notwithstanding the effective date of its withdrawal and shall be paid in equal installments totaling the amount of such credit no later than thirty days following the dates for payment provided in Section III (F) for the then-current fiscal year.

#### SECTION VIII – FISCAL YEAR

Except as may otherwise be provided by law, the fiscal year of the District shall be July 1<sup>st</sup> to June 30<sup>th</sup>.

#### SECTION IX – INCURRING OF DEBT

The District has the authority to incur debt or, in the alternative, the Board may vote to authorize a member town to incur debt on behalf of the District based on factors including the individual member town bond ratings at the time the authorization to incur debt is sought. The amount of debt, including any costs associated with the incurring of debt by, or on behalf of, the District, shall be assessed to the member towns in accordance with the procedures detailed in Section III herein.

Within seven days after the date on which the Board authorizes the incurring of debt, either by the District or an individual member town, other than temporary debt in anticipation of revenue to be received from member towns, the said Board shall cause written notice of the date of said authorization, the sum authorized and the general purpose or purposes for authorizing such debt, to be given to the Board of Selectmen/Town Council of each member town. The notice for which provision is herein made shall be deemed to have been duly given to a Board of Selectmen or Town Council of a member town if delivered to the Chairman of said Board or Town Council or, if mailed, by registered or certified mail within the time specified, postage prepaid and addressed to the Chairman of said Board or Town Council at such Board's or Town Council's office.

If the Board authorizes a member town to incur debt on behalf of the District, and the authorized amount is two million dollars (\$2,000,000.00) or less, the borrowing

member town shall proceed with the borrowing without requiring any further authorizations from the non-borrowing member towns.

If the Board authorizes the District or a member town to incur debt in an amount greater than two million dollars (\$2,000,000.00), each member town shall hold a Town Meeting (or Special Town Meeting) or Town Council meeting within ninety (90) days after the date which the Board authorized the incurring of said debt for the purpose of expressing approval or disapproval of the amount of said debt. This time period may be extended by a majority vote of the Board. If at such Town Meeting (or Special Town Meeting) or Town Council meeting a majority of the voters (or, in the case of a Town Council, members of such Town Council) present and voting thereon express disapproval of the amount authorized by the Board said debt shall not be incurred and the Board shall thereupon prepare another proposal which may be the same as any prior proposal and an authorization to incur debt. Notwithstanding, a member town shall not be required to hold a vote within said ninety (90) day period and the failure of a member town to hold a vote shall constitute such town's constructive approval of the amount of the debt authorized by the Board.

#### SECTION X – DURATION

This Agreement shall be effective as of the date of execution by all parties and shall remain in effect for a term of fifty (50) years. The Agreement may be renewed for a second fifty (50) year term with the written consent of all parties.

#### SECTION XI – REPEAL OF PRIOR ACTS

The three member towns' collective execution of this Agreement, as authorized by each such members towns' vote approving the same, shall fully repeal, in their entirety, Chapter 217 of the Acts of 1885 and Chapter 269 of the Acts of 1886 (together, the "Prior Acts"), except that: 1) until the occurrence of the Operational Date as defined above, and for any period thereafter that reasonably is required to complete the winding down of their operations, the Braintree Water Department (the "BWD") and the Randolph/Holbrook Joint Water Board (the "JWB") shall continue in existence and wield all authority conferred upon them under the Prior Acts. All actions heretofore taken by the BWD and the JWB, are hereby validated, ratified, and confirmed in all respects, and 2) the Agreement between Randolph and Holbrook, related to winding down of operations and cost sharing during such time and thereafter, included hereto as an attachment ("the Randolph/Holbrook Agreement"), shall become effective upon approval of this Agreement and shall not be subject to terms of this Agreement.

IN WITNESS WHEREOF, THIS Agreement has been executed by the Selectmen of the Town of Holbrook as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF SELECTMEN,  
for the Town of Holbrook

By \_\_\_\_\_  
Daniel Lee, Chair

\_\_\_\_\_  
Pamela E. Campanella, Vice Chair

\_\_\_\_\_  
Lindsay Vayda, Clerk

\_\_\_\_\_  
William Watkins

\_\_\_\_\_  
David Reilly

IN WITNESS WHEREOF, THIS Agreement has been executed by the \_\_\_\_\_ of the  
Town of Braintree as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

For the Town of Braintree,

\_\_\_\_\_  
Charles C. Kokoros, Mayor

IN WITNESS WHEREOF, THIS Agreement has been executed by the \_\_\_\_\_ of  
the Town of Randolph as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
William Alexopoulos  
President & At-Large

\_\_\_\_\_  
Ken Clifton  
Vice Pres. & District One (Prec. 1,2,3)

\_\_\_\_\_  
Richard Brewer, Jr.  
At- Large

\_\_\_\_\_  
James F. Burgess, Jr.  
At-Large

\_\_\_\_\_  
Natacha Clerger  
At-Large

\_\_\_\_\_  
Ryan Egan  
At-Large

\_\_\_\_\_  
Jesse Gordon  
District Two (Prec. 7,8,9)

\_\_\_\_\_  
Katrina Huff-Larmond  
District Three (Prec. 4,5,6)

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Christos Alexopoulos  
District Four (Prec.10,11,12)