

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is made as of the 30<sup>th</sup> day of August, 1999, by and among Wayland Business Center, LLC, a Massachusetts limited liability company ("WBC"), the Town of Wayland (the "Town"), acting by and through its Board of Selectmen, and the Wayland Wastewater Management District Commission (the "WMDC").

WHEREAS, WMDC was established by Chapter 461 of the Acts of 1996 in order to enable the Town to establish an economical and efficient wastewater management system, as needed, and where appropriate; and

WHEREAS, WBC owns the property located at 400-440 Boston Post Road in the Town of Wayland, formerly occupied by the Raytheon Company (the "Site"), upon which is located a wastewater treatment plant (the "Plant") used to serve the buildings located on the Site, and which discharges to a wetland leading to the Sudbury River; and

WHEREAS, on June 4, 1998, the Town voted at a Special Town Meeting to adopt Article 5 of the 1998 Special Town Meeting Warrant authorizing the Town's Board of Selectmen to acquire by purchase, eminent domain, gift or otherwise, the Plant and appurtenant easements for access and other purposes, as more fully set forth in Exhibit A attached hereto.

WHEREAS, on September 4, 1998, the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection issued to WBC NPDES Permit No. MA0039853 (the "Permit") for the Plant's discharge to the Sudbury River. The permit contemplates the possibility that the Plant would be acquired by the Town, in which event the Permit and all of its requirements would be transferred from WBC to the Town, as noted in EPA and DEP's response to public comments on the draft permit; and

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WHEREAS, the Town intends to take the Plant by eminent domain and appurtenant easements on or about October 1, 1999 and thereafter, operation of the Plant will be transferred from WBC to WMDC; and

WHEREAS, the Parties are entering into this MOA for the purpose of setting forth certain agreements occasioned by the Town's intention to take the Plant and appurtenant easements by eminent domain.

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. Although WBC opposes the Town's taking of the Plant by eminent domain, WBC agrees to accept such taking provided the provisions of this MOA are fully implemented.

2. The Town agrees to limit its taking to the following:

- (a) Fee simple title to the portion of the Site containing the Plant designated Parcel A on the Plan attached hereto as Exhibit B, together with all buildings and equipment located thereon, therein and thereunder;
- (b) Non-exclusive easements designated 23-52-P1, 23-52-P2 and 23-52-T1 on the plan attached hereto as Exhibit B, together with title to all sewer system pipes and equipment located thereon, therein, and thereunder; and
- (c) A non-exclusive easement for vehicular access and egress over and utilities under such paved portions of the site as WBC may from time to time designate in writing, solely for the purpose of access and egress and connecting utilities to the Plant.

The Town shall prepare all orders of taking and other documents required in order to implement this MOA, all of which shall be subject to all parties' approval as to form and substance (including without limitation all reservations and protective provisions) prior to execution. It is understood that any and all parties may disapprove such orders of taking and other documentation in its or their sole discretion, in which event this MOA shall become void *ab initio*. The orders of taking shall be recorded concurrently with the effectiveness of the transfer of the Approvals as provided in paragraphs 4 and 6 hereof.

The Town and WMDC hereby acknowledge that they have conducted all appropriate diligence and inspections with respect to said land, the Plant, said building, equipment, pipes and easement areas. The Town agrees to take by eminent domain and accept said land, the Plant, said building, equipment, pipes and easement areas in their present condition AS IS and ~~WHERE IS as of the date of the taking, with all faults, no representations or warranties~~ whatsoever, expressed or implied, having been given by WBC or its representatives. WBC shall make no substantial changes to the property to be taken without the Town's and WMDC's approval from the date of this MOA until the Town takes the same by eminent domain.

3. The parties acknowledge and agree that the fair market value of the property to be taken is more than \$250,000. WBC waives any right to an appraisal. WBC agrees to accept, in full satisfaction of the Town's statutory and constitutional obligation to compensate WBC for such taking, the amount of \$250,000 in cash, due and payable by wire transfer of federal funds upon recording of any orders of taking, pursuant to wiring instructions to be provided by WBC; provided, however, nothing herein shall excuse the Town or WMDC from

performance of their obligations under this MOA or waive any such obligations, except as provided in paragraph 10 hereof.

4. The Town and WMDC shall assume the Permit and all other permits, licenses and approvals for the Plant (collectively, "Approvals") and their respective requirements and shall ensure that all such requirements are fulfilled in accordance with the Approvals and applicable law. Promptly following the taking of the Plant by the Town, the Town shall cause to be returned to WBC, any bond which WBC is required to post with the Town's Board of Health with respect to the Plant. The parties shall cooperate in transfer of the Approvals and all of their respective requirements to the Town and WMDC in accordance with applicable law. Until transfer of each of the Approvals is completed, the parties shall cooperate in meeting all requirements of the untransferred Approvals.

5. WMDC shall ensure that its construction activities in the easement areas and land taken are conducted at such times and in such locations as to minimize disruption to WBC's activities at the Site and in any event, to maintain sufficient access at all times for WBC, its tenants, employees, independent contractors, visitors and invitees. WMDC shall take such measures as are necessary to avoid unsafe conditions in connection with such construction to the extent feasible, and to the extent that safety hazards exist, shall employ such safeguards as shall be necessary to minimize the risk of bodily injury or property damage. WMDC shall coordinate its construction activities with WBC so as to avoid conflicts with WBC's contemplated construction activities at the Site. It is acknowledged that wastewater from WBC's buildings will be accepted at existing points of connection, and WMDC shall, at its own expense, install and maintain such equipment, if any, as is necessary to assure continued flow from, and avoid backflows into, WBC's buildings.

6. WBC shall retain the right to operate the Plant, or cause it to be operated, for the benefit of the Site until such time as transfer of the Approvals is completed, the orders of taking are recorded, and the WMDC assumes such operation, which the parties anticipate will be on October 1, 1999. From and after WMDC's takeover of operation of the Plant, WMDC shall operate the Plant in accordance with generally accepted industry practices consistent with the design of the Plant and its equipment and so as to avoid excessive odor, sound or other nuisance, shall properly maintain and operate all equipment so as to avoid increased sound and odor, and shall operate the Plant in accordance with all state, federal, and local laws and regulations applicable thereto. WMDC shall contractually require any third party operator of the Plant to employ best industry practices consistent with the design of the Plant and its equipment, and shall reasonably enforce that contractual requirement for the benefit of WBC and its tenants and occupants. WMDC shall provide 45,000 GPD of sewage treatment capacity to WBC at a pro-rated cost of operation and amortized acquisition costs, but excluding all costs in any way related to installations made for service to others and services provided to others. WMDC and WBC shall reach mutually acceptable arrangements for the provision of electricity for the Plant and WBC's trash compactor.

7. The Plant may not be expanded unless expansion is required by federal or state authorities or by the Town, provided that the Town shall have first explored all available alternatives. In the event of such expansion, the expanded Plant must use best available technology to assure no additional adverse impact upon the Sudbury River, or any adverse impact upon WBC, its tenants, employees and other users of the Site.

8. The parties acknowledge that there may exist obligations of WBC to Wayland Meadows Limited Partnership under the contract provisions attached as Exhibit C (the "Existing Sewer Obligations"). The Town's taking of the Plant shall be expressly subject to the Existing Sewer Obligations, if any, it being intended that no provision of this MOA, and no action of any party hereto, violate the Existing Sewer Obligations, if any. Effective upon the Town's acquisition of title to the Plant, the Town and WMDC expressly assume all obligations of WBC under such contract provisions.

9. The Town and WMDC agree to provide, within ten (10) days after request, an estoppel certificate with respect to this MOA in favor of WBC, its current and prospective lenders, tenants, and investors and any purchaser of WBC's land or any interest therein, certifying in such form as WBC may request that this MOA is in full force and effect, whether there are any defaults hereunder or any events which with the passage of time or the giving of notice, or both, would constitute a default hereunder, and if so, specifying the same, and such other information as WBC may request regarding payments and charges, the performance of obligations and compliance with Approvals.

10. The Town's and WMDC's obligations under this MOA are subject to appropriation. The Town and WMDC represent that there are currently sufficient funds appropriated to meet their obligations hereunder. In the event that the Town and WMDC are excused from their obligations hereunder due to a lack of sufficient appropriation, this MOA shall be null and void *ab initio*.

11. WBC's agreement to this MOA is subject to the consent of its mortgagees and investors to this MOA and the takings contemplated herein. WBC agrees to diligently seek such consent, in written form, promptly following the preparation of documentation as provided in Paragraph 2 of this MOA.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the date and year first set forth above.

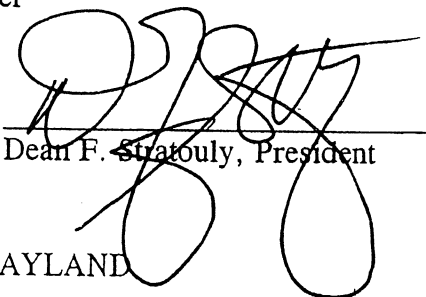
Address:

WAYLAND BUSINESS CENTER, LLC

c/o Congress Group Ventures, Inc.  
One Memorial Drive  
Cambridge, MA 02141

By: Wayland Business Center, Inc.,  
Manager

By:

  
Dean F. Stratouly, President

Address:

TOWN OF WAYLAND

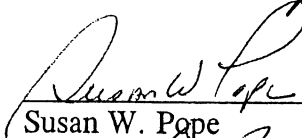
c/o Wayland Town Building  
41 Cochituate Road  
Wayland, MA 01778

By:

  
Mary M. Antes, Chair

  
Patricia Abramson

  
Brian O'Herlihy

  
Susan W. Pope

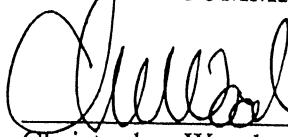
  
Susan Weinstein

Its Board of Selectmen

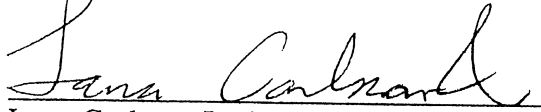
Address:

c/o Wayland Town Building  
41 Cochituate Road  
Wayland, MA 01178

WAYLAND WASTEWATER MANAGEMENT  
DISTRICT COMMISSION



Christopher Woodcock, Chair



Lana Carlsson Irwin, Commissioner



Eugene Roberts, Commissioner

## SUPPLEMENTAL AGREEMENT

Reference is made to the Memorandum of Agreement (the "MOA") dated August 30, 1999, among Wayland Business Center, LLC ("WBC"), the Wayland Wastewater Management District Commission ("WMDC"), and the Town of Wayland (the "Town"). In furtherance of the purposes of the Memorandum of Agreement and in order to enable the NPDES permit referenced in the MOA to be transferred from WBC to WMDC and/or the Town, the parties hereby supplement the MOA with the following understandings and agreements regarding the implementation of the MOA. As used herein, capitalized terms defined in the MOA shall have the meanings set forth in the MOA.

1. Transfer of the Permit will be sought pursuant to 40 CFR 122.61(b).
2. Subject to approvals as contemplated in the MOA and referenced in Paragraph 6 below, Permit responsibility, coverage and liability shall be transferred from the existing permittee, WBC, to the new permittee, the Town, acting through the WMDC, on October 25, 1999.
3. WMDC will engage Applied Environmental Systems, Inc. as operator of the Plant pursuant to a written contract in accordance with the requirements of the MOA, effective beginning on the date of transfer referenced in Paragraph 2 above. It is understood that such contract will be entered into a provisional basis pending the completion of the required public bidding for a long-term contract. WMDC shall ensure that until the long-term contract is in place, the Plant is operated pursuant to the temporary contract with Applied Environmental Systems, Inc., or such temporary contract with Applied Environmental Systems, Inc. or other qualified operator, on a continuous basis so as to avoid interruption until the long-term contract is in place.
4. The order(s) of taking, which are referenced in the MOA and are subject to all of its provisions, shall be recorded so as to transfer title to the Plant and the easement areas contemplated in the MOA concurrently with the transfer of the Permit on the date specified in Paragraph 2 above. Payment of the entire \$250,000 to which WBC is entitled under the MOA shall be made concurrently with recording of such order(s) of taking, and it is understood and acknowledged that WBC's agreement to accept such amount is conditioned upon the order(s) of taking contemplated in the MOA being simultaneous with such payment and that such entire amount is due and payable upon the recording of the first order of taking. WBC has not agreed to accept any takings other than those contemplated in the MOA, subject to and in accordance with the understanding herein set forth.
5. The parties acknowledge that WMDC's contractor, R.M. Pacella, has begun work off of WBC's site, and that no work is authorized to proceed on WBC's site until the order(s) of taking contemplated in Paragraph 4 above has been recorded and the \$250,000 paid

as required above and in the MOA.

6. The parties shall use diligent efforts to conclude the process of preparation and approval of the order(s) of taking as contemplated in Paragraph 2 of the MOA on an expeditious basis so that consent thereto and to the MOA can be sought from WBC's mortgagees and investors as contemplated in Paragraph 11 of the MOA on a timely basis to allow transfer of the Plant as contemplated herein by the date set forth in Paragraph 2 above.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of September 24, 1999.

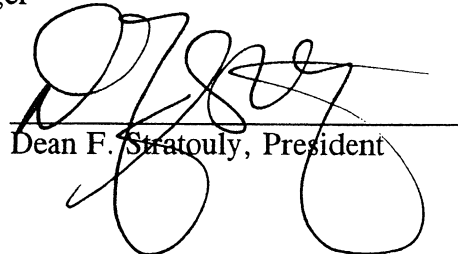
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c/o Congress Group Ventures, Inc.  
One Memorial Drive  
Cambridge, MA 02141

By: Wayland Business Center, Inc.,  
Manager

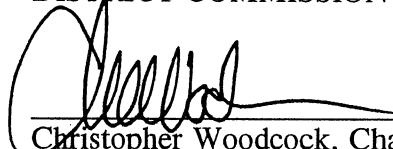
By:

  
Dean F. Stratouly, President

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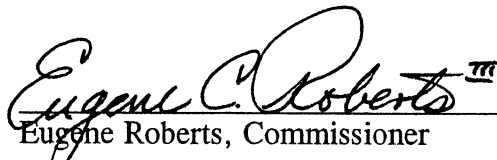
WAYLAND WASTEWATER MANAGEMENT  
DISTRICT COMMISSION

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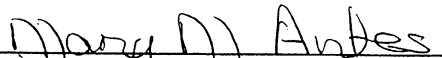



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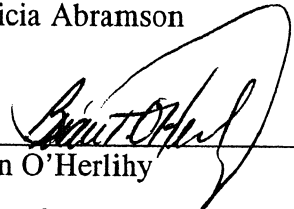
TOWN OF WAYLAND

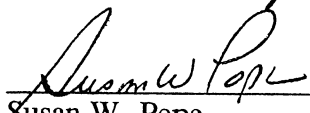
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By:

  
Mary M. Antes, Chair

  
Patricia Abramson

  
Brian O'Herlihy

  
Susan W. Pope

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Susan Weinstein

Its Board of Selectmen