

COMMUNITY SEPTIC MANAGEMENT PROGRAM BETTERMENT LOANS

HOMEOWNER PACKAGE

Included in packet:

- Summary of program
 - Betterment Application
 - List of Engineers
 - List of Septic Installer
 - Betterment Agreement (Sample)
 - Betterment Attachment
-

COMMUNITY SEPTIC MANAGEMENT PROGRAM

GENERAL INFORMATION

******TO QUALIFY YOU MUST HAVE FAILED SEPTIC SYSTEM******

This loan is provided through the town of Pembroke at a 5% interest rate for a period of 10 years or 20 years.

There is no credit check required, although all of your real estate taxes, water bill or any other municipal accounts must be paid and up to date. The loan application is reviewed for approval by the Program Administrator. Once approved, the applicant will be required to sign a Betterment Agreement with the Town of Pembroke. The Loan will be secured as a betterment assessment against your property and a Notice of Betterment will be recorded at the Registry of Deeds. The betterment assessment may be paid off at any time without penalty, loan payments are due as part of your property tax bill.

Should you, as a resident and homeowner of the Town of Pembroke qualify, then complete an application and submit to the program administrator. You will be notified of your eligibility. You should be aware that the Town may exhaust available monies made available by DEP. If so, then you may be placed on a waiting or priority list until monies become available.

APPLICATION PROCESS

- Submit application to Town of Pembroke Program administrator
 - Obtain engineer design
 - Obtain bids (3)
 - Sign betterment agreement
-



Town of Pembroke
Septic Betterment Program
Application Form

Residential Property Owner Information

Name: _____

Address: _____

Phone: (Work) _____

Phone: (Home) _____

General Information:

1. Has your Septic System been failed by a certified inspector?
(Documentation must be included)
2. Does your system need to be pumped more than four times a year?
(Documentation should be on record at the Board of Health Office)
3. Have you had a soil evaluation test and/or engineering plans drawn for you system completed (or in the process of)?
4. Have you received estimates for engineering work?
(Please submit when received)
5. Have you received the minimum of 3 estimates for the installation work?
(Please submit when received)
6. Have your property lines been determined, so that the proposed septic and soil absorption system can be located without infringing on your neighbor's property?
7. Are you in an environmentally sensitive area?

Check online: <https://www.mapsonline.net/pembrokema/index.html>

Name of area:

Plan Number:

8. Please list below all known type and costs of the repairs or replacement of system.

A. New soil absorption system

B. Entire new System

C. Repairs to be done to parts of existing system

Engineer soil evaluation and design \$ _____

Estimated cost of repair or replacement \$ _____

Total Estimated Loan Amount \$ _____

Contingency amount (%) \$ _____

I, we will agree to sign a betterment/loan agreement with the Town of Pembroke, to pay for the required cost associated with the septic repair, and am aware that these costs will be treated as a municipal lien on my property tax bill. This loan is contingent on the Town determining that my property lies within an environmentally sensitive area that is deemed to be fundable by the town for that year.

Signed: _____ Date: _____

Witness: _____ Date: _____

Signed: _____ Date: _____

Witness: _____ Date: _____

Note: In order to participate in the program, the following conditions must be met:

- 1. The septic system servicing the property must be deemed failed by a certified inspector.**
- 2. The applicant must be a residential property owner.**
- 3. All taxes, fees, trash and water charges must be paid and kept current by the applicant for the duration of the program.**

List of Engineers

This is a list of contractors who have worked with and are familiar with the Town of Pembroke Septic Betterment Program provided as a courtesy, you are not required to choose from this list.

Stenbeck & Taylor, Inc.
(781) 834-8591
Web: <http://stenbeckandtaylor.com/>
Email: btaylor@stenbeckandtaylor.com

Brian J. Taylor, President
844 Webster St, Suite 3
Marshfield, MA 02050
9 Steeple St
P.O. Box 630
Mashpee, MA 02649

Webby Engineering
(781) 585-1164
Email: webbyengineering@aol.com

Joseph E. Webby, Jr. PLS, SE. SI
180 County Road
Plympton, MA 02367

McGlone Enterprises Inc.
(781) 585-8527
Web: <http://mcgloneseptic.com/>
Email: shaynem3@yahoo.com

Shayne P. McGlone R.S.
211 Pembroke Street
Kingston, MA 02364

Grady Consulting, L.L.C.
(781) 585-2300
Web: <http://www.gradyconsulting.com/>
Email: kevin@gradyconsulting.com

Kevin Grady, P.E.
71 Evergreen Street
Kingston, MA 02364

List of Septic Installers

This is a list of contractors who have worked with and are familiar with the Town of Pembroke Septic Betterment Program provided as a courtesy, you are not required to choose from this list.

On Grade Excavating
(781) 293-2040
Email: ongradeexcavating@aol.com

Bob Morrisette
PO Box 164
Bryantville, MA 02327-0164

Smith and Sons
(781) 294-1230
Web: <http://smithexcavating.com/>

Dan Smith
43 Mattakeesett Street
Pembroke, MA 02359

All-Town, Inc.
(781) 630-0385
Web: <http://alltowninc.com/>
Email: jim@alltowninc.com

James K. Rorke
43 Lone Street
Marshfield, MA 02050

K & W Construction, Inc.
(508) 866-6957

Kevin Thompson
123 High Street
Carver, MA 02330

J. McPhee Construction
(781) 424-8531
Email: jaymcphee333@gmail.com

Jay McPhee
P.O. Box 1462
Pembroke, MA 02359

T.F. Smith Construction Corp
(781) 706-0613
Web: <http://www.tfsmithconstruction.com>
Email: TFSmith504@gmail.com

Steven T. Smith
Hanson, MA 02341

Steve's Bulldozer Service
(781) 294-1251 (781) 844-2432

Steve Madden

A.E. Wood Corp.
(781) 293-8600
Web: <https://www.aewoodcorp.com/>

261 Franklin Street
Hanson, MA Email: info@aewoodcorp.com

**COMMUNITY SEPTIC MANAGEMENT PROGRAM
BETTERMENT AGREEMENT**

This Agreement is entered into by and between **The Town of Pembroke** (the "City/Town"), by its **Board of Selectmen and Treasurer**, and _____ (the "Owner") as of the ____ day of _____ 20__.

WHEREAS, the owner owns residential property, including improvements thereon, known as and numbered _____ (Assessors Map _____, Parcel _____), and described in a deed dated _____ and recorded with the Registry of Deeds in Certificate _____ or in Book _____ Page _____, (the "property"); and

WHEREAS, the Owner has petitioned the City/Town to make findings pursuant to M.G.L.c. 111; and

WHEREAS, the Board of Health has made findings, pursuant to M.G.L.c. 111, that the on-site subsurface sewage disposal system serving the Property (the "Failed System"), exhibits one or more of the failure criteria set forth in Title 5 of the State Environmental Code, 310 CMR 15.000 ("Title 5"), such findings being made by the Board of Health prior to, or during the course of proceedings conducted pursuant to M.G.L. c. 111, s.127B; and

WHEREAS, the Board of Health has adopted an order requiring the Owner to repair, replace or upgrade the Failed System to comply with the requirements of said Title 5; and

WHEREAS, the Owner has, pursuant to M.G.L.c. 111, s.127B ½, applied to the Town for financial assistance to repair, replace and/or upgrade the Failed System; and

WHEREAS, the Department of Environmental Protection ("DEP") has approved the City/Town's proposed program of offering betterments pursuant to M.G.L.c. 111, s.127B ½ to homeowners to repair, replace, and/or upgrade their Failed System for financing under the Local Septic Management Program, and the City/Town has received a State Revolving Fund ("SRF") loan from the Water Pollution Abatement Trust (the "Trust") to finance said betterment program, and

WHEREAS, the City/Town intends to provide financial assistance to the Owner in the form of a Betterment Agreement made pursuant to said M.G.L. c. 111, 127B ½, ; and funded from the SRF loan received by the City/Town under the Local Septic Management Program, and

WHEREAS, the parties intend by this Betterment Agreement to cause the repair, replacement and/or upgrade the Failed System to comply with Title 5 and other applicable public health and environmental laws and to complete other work directly or indirectly related thereto (the "Project as described in Paragraph 4 hereof); and

WHEREAS, the parties intend to have the Project performed by one or more person under contract to complete the Project (the "Contractor(s)"); and

WHEREAS, the public purpose of the Project is to protect the public health, safety, welfare and the environment by the repair, replacement and/or upgrade of the Failed System.

NOW THEREFORE, the parties, for and in consideration of mutual covenants and other good and valuable consideration, do hereby agree to the terms of this Agreement, as set forth below.

The Agreement

*This agreement is to be signed prior to any funds being disbursed. Final loan amount to be determined and initialed by Owner and witnessed after job is completed and final disbursement has been made.

The City/Town hereby agrees to provide financial assistance in an amount up to \$ _____*to be advanced from time to time by the City/Town to the Owner pursuant to the terms of this Agreement. The Owner promises to repay, with interest as set forth herein, all sums provided to Owner by the City/Town. Following notice to the Owner by the Treasurer/Collector of the amount of the betterment assessment an amortization schedule shall be developed and incorporated as an attachment to this agreement.

Final Amount Agreed _____ Owner's initials
_____ Witness Signature

Interest on the amounts advanced by the City/Town to Owner shall be computed annually as follows:

The rate 5 percent (5%) per annum on the outstanding principal balance, accruing from the 30th day after the City/Town Assessor commits the betterment assessment to the City/Town Collector of Taxes. The amount to be repaid shall be included on and paid with the quarterly municipal tax bill. Interest amounts due prior to the inclusion of amounts due hereunder on the tax bill shall be paid pursuant to an interim bill for a loan term of twenty years.

OR

The rate 5 percent (5%) per annum on the outstanding principal balance, accruing from the 30th day after the City/Town Assessor commits the betterment assessment to the City/Town Collector of Taxes. The amount to be repaid shall be included on and paid with the quarterly municipal tax bill. Interest amounts due prior to the inclusion of amounts due hereunder on the tax bill shall be paid pursuant to an interim bill for a loan term of ten years.

The Owner without penalty may make prepayment in full or in part of all amounts advanced hereunder.

The Owner will be responsible for costs of recording such betterment loan. All such recording costs shall be borne by the property Owner and shall be paid by the Owner with a \$112.00 check payable to the Town of Pembroke, and shall not be included in the loan amount. Final payments will not be released until such payment is made and betterment loan is signed.

This agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may only be amended or modified by a written modification.

Installment Payments

The City/Town shall make advances of funds to Owner and Contractor, pursuant to the Terms of this Agreement, from time to time to pay for the Project. Such advances shall be made solely for the purposes set forth in this Agreement.

The obligation of the City/Town to advance all or any part of the financial assistance for repair, replacement and/or upgrade of the Failed System is subject to the following:

- (A) Inspection of the Failed System by a representative of Board of Health or by a DEP Certified Septic System Inspector, as deemed necessary by the Board of Health.

- (B)** Submission by Owner or Contractor on behalf of the Owner of plans approved by the Board of Health for the project. In the event Owner seeks an installment payment to pay for field work and preparation of plans for the Project, Owner shall (1) solicit a bid or bids for the necessary field work and plan preparation from registered professional engineers or registered sanitarians, (2) shall submit documentation of these bids to the program administrator and (3) specify Owner's choice of an engineer or sanitarian. The Program Administrator may approve an installment payment not to exceed the amount of the selected bid. An installment payment for field work and plan preparation shall be made by check payable jointly to Owner and the engineer or sanitarian and shall be payable upon presentation and approval of the selected bid.
- (C)** Submission to Program Administrator by Owner of three (3) bids for the Project in accordance with the plans from licensed (including, but not limited to, a Disposal System Installer's Permit), insured, septic system contractors, which bids shall contain detailed breakdowns of the cost of the Project by tasks;
- (D)** Confirmation by Board of Health that the contractor for the construction of the Project (the "Contractor") selected by Owner has a valid Disposal System Installer's Permit in effect for the time period covering the System Upgrade financed under this Betterment Agreement;
- (E)** Review by Program Administrator of a Project Budget based on the bid submitted by the Contractor;
- (F)** Execution of a construction contract between the Owner and the Contractor Pursuant to the plans and specifications which have been previously approved by the Board of Health;
- (G)** Issuance by the Board of Health of a Disposal System Construction Permit with respect to the Project.

Conditions for Payment

Installment payments of the financial assistance are to be made by the City/Town under the following conditions:

- (A)** An installment payment for field work and preparation of plans shall be made to the Owner and engineer of sanitarian in accordance with Subsection (B) of Section 2.
 - (B)** A reasonable time before the date on which any other installment payment is requested to be made, the Contractor shall give notice to Owner and Program Administrator specifying the total installment payment requested. Such notice shall consist of detailed request describing the value of the completed items of work. The amount of the request shall equal the amount of the requested installment. The request shall be accompanied by a sworn certificate of the Contractor that all material men, subcontractors and employees have been paid for prior work on the Project. The Program administrator may request the owner to provide further documentation in support of a request for installment payment. Upon approval of any requested installment payment, the Program Administrator shall issue a check payable jointly to Owner and Contractor, which check shall be forwarded by Program Administrator to Owner.
 - (C)** City/Town may require as condition of any installment that there are sufficient remaining funds within the Septic Betterment Program to pay for the completion of the Project in accordance with approved plans.
 - (D)** Prior to making an installment payment, the Board of Health may cause the Project to be inspected to verify that the work items described in the request have been actually completed. In any case, the Contractor shall provide verification that the work referred to in the installment request has been completed in accordance with the approved plans.
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- (E) Prior to paying the final installment, the Contractor shall provide verification that all work has been completed in accordance with the approved plans, a sworn certificate that all material men, subcontractors and employees have been paid for work on or materials supplied for the Project and the Board of Health shall have issued a Certificate of Compliance for the Project.

Scope of Work for Project

The Owner and the Contractor, pursuant the Disposal System Construction Permit issued by the Board of Health, shall determine the Scope of the Work necessary to bring the Failed System into compliance with Title 5. Such Scope of Work may include, but not be limited to:

- (A) Performing soil and percolation tests and other necessary site analyses;
- (B) Specification of the Failed System components to be repaired, replaced and/or upgraded;
- (C) Design of the System or components thereof to be repaired, replaced and/or upgraded;
- (D) Obtaining all applicable federal, state and local permits and approvals required to completed the work;
- (E) Seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements;
- (F) Minimizing any disruption of utility service, and reasonably restoring the property to as near its original condition as practicable, and
- (G) Engaging such other services and procuring such other materials as shall be reasonably necessary to complete the project in a good and workmanlike manner

All such work shall be performed pursuant to written contracts and agreements, copies of which shall be incorporated by reference into this agreement.

City/town's Right to Inspect

The Owner agrees to allow the City/Town, including its Board of Health, Health Agent and other officials, Employees and agents to enter onto the Property, as is reasonably necessary and upon reasonable notice, to test, examine and inspect the Project to verify the completion and adequacy of the Work.

Covenant Not To Sue

The Owner covenants and agrees not to sue the City/Town for any claims of damage to or loss of property of the Owner of other, or for breach of warranty regarding the performance or condition of the Project, or for injury, illness or death arising out of the performance of any contractors or agents engaged to perform work. This Covenant Not To Sue provision shall have no application of action, which may have arisen prior to the execution of this Agreement, or to causes of action that are unrelated to this Agreement, or to causes of action against any person or entity other than the City/Town.

The Owner shall indemnify, defend, and hold the City/Town harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the Owner's breach of this Agreement or the negligence or misconduct of the Owner, or the Owner's agents or employees.

Owner's Representations and Warranties to the City/Town

The Owner represents and warrants to the City/Town that:

- (A) **Title:** The Owner has good record title to the Property, subject only to the Encumbrances of Record;
- (B) **Permits and Compliance with Law:** The Owner has obtained or will obtain all necessary Governmental permits for the Project. The on-site sewage disposal system for the dwelling on the property, after completion of the Project, will comply with all applicable laws, regulations, codes and ordinances, including but not limited to Title 5; and
- (C) **Insurance:** The Owner and Contractor have procured or will procure insurance in such forms and in such amounts as shall be satisfactory to the City/Town. Certificates of Insurance shall be attached as Exhibits to this Agreement.
- (D) All obligations/taxes to the town are paid

Each of the foregoing representations and warranties in this section shall remain in force until the financial assistance is repaid in full. The Owner shall indemnify and hold harmless the City/Town from and against loss, expense or liability (including costs of defending any claim), directly or indirectly from the falsity, inaccuracy or breach of any of the above representations and warranties.

Owner's Obligations

During the term of this Betterment Agreement, the Owner agrees that the Owner shall comply with all of the terms and conditions of this and any related agreement and that the Owner shall:

- (A) **Completion of Project:** Cause the Project to be promptly completed in a manner in accordance with the approved plans and with the Project Budget and in compliance with all applicable laws, regulations, codes and ordinances and notify City Town when the Project is complete.
 - (B) **Records and Cooperation with City/Town:** Keep complete records relating to the Project, which records shall be available for inspections and copying by the City/Town, and cooperate fully with and audit of the Project if so requested by City/Town.
 - (C) **Performance of Other Obligations:** Perform all the Owner's obligations and agreements under any present or future Mortgage or other Covenant or Agreement, which encumbers the Property.
 - (D) **Use of Financial Assistance:** The financial assistance is provided for the public purpose of protecting the public health, safety, welfare and the environment. The owner shall use the proceeds of the financial assistance solely for costs included in the Project Budget and ensure that the proceeds are not used for any other purpose.
 - (E) **Maintenance:** Maintain the System in proper working order for the period of the loan provided hereunder, including undertaking any and all necessary repairs in a good and workmanlike manner using appropriately licensed contractors.
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Events of Default

The Owner shall be in default under this Agreement upon the occurrence of any one or more of the following events.

- (A) **Sale, Transfer or Assignment without Approval:** The Owner assigns or transfers any money advanced, or to be advanced here under to any person, or entity not approved by Program Administrator.
- (B) **Cessation of Construction:** The Owner or Contractor ceases construction of the Project for more than 30 consecutive calendar days. The Board of Health may waive this event of default upon application of the Owner and a demonstration that such cessation occurred because of an Act of God, governmental order or restriction, fire or other casualty, or other caused beyond Owner's reasonable control.
- (C) **False Representations or Warranties:** Any representation or warranty made herein shall prove to be false or inaccurate in any material respect.
- (D) **Breach of an Obligation:** The Owner defaults in the performance of any of Owner's obligations contained herein.
- (E) **Property is transferred:** Betterment loans are non-transferrable and must be paid in full prior to the sale/transfer of the property.

City/Town's Rights on Default

Upon Owner's default, the City/Town shall have no further obligation to make any further installment payments and all amounts advanced by City/town to Owner shall become immediately due and payable.

Notice of Betterment Agreement

Upon execution of this Agreement by the Owner and the City/Town a Notice of this Agreement shall be recorded as a betterment and shall be subject to the provisions of M.G.L.c. 80 relative to apportionment, division, reassessment and collection of assessment, abatement and collection of assets, provided however, that the lien, which shall arise pursuant to M.G.L.c. 111, s. 127B ½ shall take effect by operation of law on the immediately following the due date of such assessment or apportioned part of such assessment. The betterment Lien, if any, shall be deemed to secure all amounts advanced hereunder, together with interest thereon, and shall include costs of collection and reasonable attorney's fees.

Improvements to the Property

Any alterations or improvements to the Property resulting from the Project are the property of Owner, and the City/Town shall bear no responsibility for the condition of the improvement or its maintenance.

Cancellation of the Agreement by the Owner

The owner may by written notice to the Board of Health and Treasurer of the City/Town cancel Owner's further obligations for repayment under this Agreement at any time prior to the end of ten (10) calendar days following notice in writing to the City/Town of the Owner's proposed successful construction bid based on the owner's evaluation of the proposed scope and cost estimate of System upgrade derived from the field work, project design and the successful construction bid. However, in the event of such cancellation, the Owner shall remain liable for repayment of all sums advanced by the City/Town to

owner pursuant to this Agreement. All sums advanced by the City/town to owner shall be repaid with interest and with the term set forth in paragraph 1 hereof. Upon application of the Owner, the Board of Health may revoke the Order for improvements, provided however, that Owner shall remain liable to comply with the provisions of Title 5.

Personal Obligation of the Owner

In addition to those remedies available to the City/Town regarding the assessment and collection of betterments, the owner shall be personally liable for the repayment of the amounts advanced, plus interest thereon and the total direct and indirect costs incurred by the City/Town in the contemplation and the performance of this Agreement of the project.

Notice

Any notice required to be given under this Agreement shall be made in writing and shall be delivered by either in-hand delivery or by certified return receipt mail.

If notice is made to the Town it shall be made to:

Town of Pembroke – Treasurer/Collector
100 Center Street
Pembroke, MA 02359

If notice is made to Owner, It shall be made to:

Owner’s Name
Owner’s Street
Owner’s city, state. Zip Code

Notice shall be deemed given on the day it is hand delivered or three (3) days after the date of posting of certified mailing.

Funding for the Agreement

The obligations of the City/Town are expressly contingent upon funding. In the event that funding for the City/Town’s obligation is unavailable, upon notice to the Owner, this Agreement may be cancelled by the City/Town and all obligations of the City/Town shall be null and void.

Enforcement of Laws

Nothing in this Agreement shall be deemed to stop or effect a waiver, or otherwise act as a bar or defense, to any legal proceeding by the City/Town relating to the System or the Property.

Severability

In the event that one or more provisions of this Agreement is deemed unenforceable by a court of competent jurisdiction, the Agreement, except as deemed unenforceable, shall remain in full force and effect.

BETTERMENT AGREEMENT

Governing Law

This Agreement shall be governed by Massachusetts Law.

IN WITNESS WHEREOF, the undersigned parties have signed this Agreement as an instrument under seal this _____ day of, _____ 20_____.

City/Town:
By its Board of Selectmen
Program Administrator

As to interest rate:
City/Town
By its Treasurer

Owner:

SAMPLE

BETTERMENT ATTACHMENT
COMMUNITY SEPTIC MANAGEMENT PROGRAM
TOWN OF PEMBROKE
INITIAL SEPTIC REPAIR COSTS

HOMEOWNER _____

ADDRESS _____

Based upon the best estimate for repairs, replacement or upgrade to the septic system located at the above address, the following costs are initially authorized as a commitment for the betterment loan.

Engineering \$ _____

General Construction \$ _____

Contingency \$ _____

Total Initial Loan \$ _____

Signed _____

Signed _____

Date _____

Date _____

Attach to Betterment Agreement
