

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

*Rescinded by
Resolution No. 42
Approved: Jan. 21, 1986* ^{RAF}

RESOLUTION OF THE CITY COUNCIL

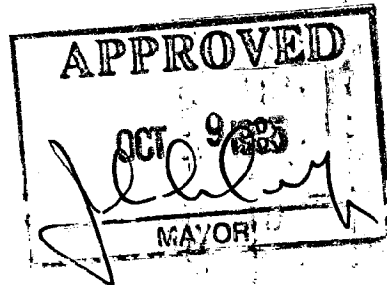
No. 551

Approved October 9, 1985

RESOLVED, THAT His Honor, the Mayor, be and he hereby is authorized to execute an Agreement between the CITY OF PROVIDENCE, WATER SUPPLY BOARD and NARRAGANSETT BAY WATER QUALITY MANAGEMENT DISTRICT COMMISSION relative to the operation and maintenance of the Fields Point Wastewater Treatment Facility, in accordance with the accompanying draft Agreement.

IN CITY COUNCIL
OCT 3 1985
READ AND PASSED

Michael W. E. Lora PRES.
Rozanne Mendonca CLERK



RESOLUTION AUTHORIZING HIS HONOR,
THE MAYOR, TO ENTER INTO AN
AGREEMENT WITH THE NARRAGANSETT
BAY WATER QUALITY MANAGEMENT
DISTRICT COMMISSION FOR THE OPERA-
TION AND MAINTENANCE OF THE FIELDS
POINT WASTEWATER TREATMENT
FACILITY.

IN CITY COUNCIL

SEP 19 1985

FIRST READING

REFERRED TO COMMITTEE ON

FINANCE

Rose M. Mendonca

THE COMMITTEE ON

Approves Passage of
The Within Resolution

Rose M. Mendonca
Clerk Chairman
Sept. 24, 1985

*Councilman Slavin, Councilman Dillon
and Councilwoman Fagnoli (By Request)*

FILED
SEP 13 2 16 PM '85
DEPT. OF CLERK
PROVIDENCE, R.I.

AGREEMENT

THIS AGREEMENT is made and entered into this day of July, 1985, by and between THE CITY OF PROVIDENCE, RHODE ISLAND, acting for itself and the Providence Water Supply Board, a municipality organized and existing under the laws of the State of Rhode Island (the "City"), and the NARRAGANSETT BAY WATER QUALITY MANAGEMENT DISTRICT COMMISSION, a public corporation, authorized, created and established under the laws of the State of Rhode Island (the "Commission").

W I T N E S S E T H:

WHEREAS, Chapter 342 of Public Laws of 1980 (the "Act") requires the Commission to operate and maintain the Field's Point Wastewater Treatment Facility, incinerators, and related facilities, and with these facilities, to serve the City, the Towns of Johnston, North Providence and Lincoln and portions of the City of Cranston (the "District");

WHEREAS, the Act provides that in the performance of its duties, "the Commission shall be entitled to ask for and to receive from the Providence Water Supply Board such information, cooperation, assistance and advice as shall be reasonable and proper in view of the nature of said functions;

WHEREAS, certain portions of the Act were amended by Chapter 235 of Public Laws of 1983 (the "Amendment") which become effective July 1, 1985;

WHEREAS, the Amendment provides that the Commission shall be authorized to assess the individual users within each municipality reasonable and just fees which shall be subject to the approval of the Public Utilities Commission of the State of Rhode Island (the "PUC") and in accordance with United States Environmental Protection Agency ("EPA") regulations;

WHEREAS, the Amendment further provides that "each municipality within the district shall make available to the Commission the names and addresses of the users of sewage services within the municipality and shall assist the Commission in providing Administrative Support for the billing of users at a reasonable cost to the Commission;"

WHEREAS, the City, through its Water Supply Board, possesses such records of individual users and such administrative capabilities to monitor and measure actual services to users within the District; and

WHEREAS, the City and the Commission are desirous of reducing to writing their agreement with regard to records, data, documents, and other information to be transferred, assigned and conveyed to the Commission and Administrative Support to be provided by the City to the Commission; and to set forth the compensation to be paid by the Commission to the City;

NOW, THEREFORE, in consideration of the promises, representations, warranties and agreements herein contained, the parties hereto agree as follows:

SECTION I

TRANSFER OF CUSTOMER RECORDS

1.1 Transfer of Customer Records. Subject to the terms and conditions of this Agreement, the City shall deliver, transfer, assign and convey to the Commission on or before the _____ day of August, 1985, those records, data, documents, and other information (the "Records") relating to the Commission's establishment of a direct user fee billing system.

The Records shall include, but not be limited to, that schedule of meter reading cycles followed by the City, and those account numbers, names, addresses, service locations, and billing histories of all users within the District for whom the City keeps such records, as they exist as of the above transfer date.

(i) The Records, once turned over to the Commission, as well as all other records relative to sewer users within the City shall be accessible to the City at all reasonable times for the purpose of inspection and transcription.

(ii) The items which shall be turned over to the Commission by the City, as well as the compensation to be paid for the delivery of said items, which compensation shall in no

case exceed the City's actual expense to retrieve, copy, transmit and otherwise deliver such Records, shall be set forth in Section II herein and Exhibit "A" which is attached hereto, and made a part hereof.

SECTION II

Administrative Support

2.1 Provision of Administrative Support. Subject to the terms and conditions of this Agreement the City shall provide to the Commission that Administrative Support, more particularly described in Exhibit A hereto, consisting of such services currently performed by the Providence Water Supply Board as will enable the Commission to operate its sewer user billing system in a timely and efficient manner after the initial records are turned over by the City to the Commission. The services comprising such Administrative Support include, but are not limited to: operating, installing, maintaining and regulating devices (meters) for measuring the water consumption of sewer users within the District; systematically reading and recording measurements registered by such devices; and transmitting such measurements to the Commission on a timely basis.

(i) The frequency of such reading and transmissions of measurements, and the form and manner of these transmissions shall be as provided in Exhibit A.

(ii) The City shall maintain the same level of frequency in providing the Administrative Support as has been its

custom and practice while performing those same services in support of its own billing system.

(iii) In consideration for the Administrative Support to be provided hereunder, the Commission agrees to pay compensation in the amount and manner as herein set forth:

Commencing from and after the effective date of this Agreement, the Commission will render and collect all bills for sewer usage by users with the District serviced by the Commission. Upon receipt of monies from such billings, the Commission shall remit to the City all sums due the City for sewer services rendered on or before June 30, 1985 and shall retain sums due the Commission for sewer services rendered from and after July 1, 1985. Thus, for example, if sewer bills are sent based on water usage for the period May 1, 1985 through July 31, 1985, the Commission, while taking into account different sewer rates for the periods before and after July 1, 1985, will remit approximately two-thirds of such collections to the City and retain approximately one-third for itself. The cost of such billing and collection will be at the sole expense of the Commission but the City will bear the risk of uncollected funds for the period up to and including June 30, 1985 for sewer services rendered during such period and the Commission will bear the risk of uncollected funds for the period

from and after July 1, 1985 for sewer services rendered during such period.

In consideration for the Records and Administrative Support to be provided by the City under this Agreement, the Commission will pay to the City annually the following sums:

Meter Reading and Maintenance
Consumption Data, Bill
Adjudication, Information transfer

Total for year	\$50,000
----------------	----------

Bills will be rendered monthly for said sum, each month's billing to be one-twelfth of the annual total, and bills are due and payable with thirty (30) days of receipt by the Commission. In addition thereto, the Commission will pay for the actual cost for the data to be transferred to the Commission from Diversified Data Services Incorporated ("Diversified") or any other source utilized by the City, which sum has been estimated to be in the approximate range of \$1,000 to \$1,500 annually. The City will make available to the Commission any written contract between the Providence Water Supply Board and Diversified relating to such data.

The Parties mutually recognize that the Records and Administrative Support herein provided pertain primarily to commercial water users and accounts. If the Commission wishes to receive water consumption data of Residential users, the

Parties agree to negotiate in good faith additional fees for such service.

In connection with the Commission's undertaking to bill all accounts from and after July 1, 1985 based on water usage both before and after said date, the City hereby assigns all of such unbilled accounts and monies to the Commission, expressly reserving to the City, however, entitlement to transfer by the Commission to the City of monies received for sewer services rendered to customers on or prior to June 30, 1985.

(iv) Except as specifically set forth in Exhibit A, the Commission will not be responsible for and will not have control or charge of means, methods, techniques, sequences or procedures in connection with the metering and other functions which comprise the Administrative Support to be provided under this Agreement. The Commission will not be responsible for or have control or charge over the acts or omissions of the City or any of the City's officers, employees or agents or any other persons providing any of the Administrative Support hereunder. Neither the City nor any of the City's officers, employees or agents shall be the agents of the Commission, nor shall they represent themselves to others as the agents of the Commission. The City will not be responsible for or have control or charge over the acts or omissions of the Commission or any of

the Commission's officers, employees or agents; neither the Commission nor any of the Commission's officers, employees or agents shall be the agent of the City, nor shall they represent themselves to others as the agents of the City.

2.2 Contract Period. The City shall commence to perform the Administrative Support hereunder on July 1, 1985, unless the parties otherwise agree in writing to an earlier date. The performance period will extend through June 30, 1990.

(i) Unless either party notifies the other in writing on or before April 1, 1990 of its intention to terminate the Agreement the period of this Agreement shall automatically be extended through January 1, 1995 under the terms and conditions contained herein, except as to reimbursement of costs by the Commission to the City which shall be determined at the time of such renewal.

(ii) Even after the expiration of the Contract period, so long as the City shall provide the Administrative Support described hereunder, and so long as the Commission shall accept such Administrative Support, and the terms and conditions of this Agreement shall remain in full force and be effective during such period until the City ceases to provide such Administrative Support, or the Commission notifies the City it will no longer accept such Administrative Support, or

the parties execute a new agreement pertaining to the matters contained herein.

2.3 Liabilities Not Assumed. Unless specifically excepted herein or by other documents signed by both parties, neither party herein shall be responsible for any liabilities of the other party.

2.4 A Cooperative Agreement Concerning Customer Disputes. The Commission shall be responsible for the settlement of all disputes relating to sewer use fees incurred for consumption subsequent to July 1, 1985. The City, however, shall provide the necessary information and data to assist the Commission in the settling of its disputes. However, the City's role shall be limited to the providing of records and data in those areas relating to water consumption, measurements and measuring devices, or on the determination of service start and termination dates, and the City shall not be liable to the Commission or of the users for any other matters. On or before December 31, 1985, the parties shall execute an agreement setting forth cooperative procedures for settling customer disputes which are based on either the accuracy of water consumption measurements and measuring devices or on the determination of service start and termination dates. Such procedures shall be consistent with any applicable laws, regulations and orders to which the parties may be subject. The officers,

employees, and agents of each party shall, as necessary, and at no cost to the other party, provide such information and documentation and attend and testify at such hearings, meetings, and court appearances as are provided for under such procedures or as arise out of such procedures.

2.5 Amendment of Ordinance. In order to effect the efficient transfer of direct billing responsibilities from the City to the Commission and the orderly implementation of this Agreement, the parties hereto acknowledge that this Agreement should be consistent with all applicable laws.

Accordingly, the City shall if necessary, and when it shall deem it appropriate, make its best efforts to cause an amendment to its user fee ordinance (Chapter 1982-20) to be enacted as soon as practicable after the execution of this Agreement, said amendment to be effective as of July 1, 1985. Such ordinance amendment shall relate to the City's measurement of water consumption by sewer users; the installation and maintenance of measuring devices; the determination and appointment of measurement periods; special provisions for measuring water consumption when meters fail to register or have been removed for repairs or testing during a measurement period; and the limitations of the City's functions in determining user fees after July 1, 1985, consistent with this Agreement. This ordinance amendment shall in no way be in conflict with state

or federal law or with the duties and obligations of the parties under this Agreement.

SECTION III

ACCESS TO RECORDS AND FACILITIES

3.1 Access to Records. From the date hereof through the final delivery date, the City shall, consistent with Federal or State Privacy Acts, give to the Commission's authorized officers, employees, attorneys and agents full access (during normal business hours and upon reasonable prior notice) to the records, data, documents and other information comprising the Records to be transferred; and the City shall furnish to the Commission during such period all information concerning these Records as the Commission may reasonably request, in a format that is acceptable to the parties.

3.2 Maintenance of Records Prior to Transfer. From the date hereof through the final delivery date, the City shall:

(i) preserve the Records intact and keep the Records in as good an order and condition as they presently are kept;

(ii) maintain normal and customary clerical procedures in accordance as they are presently done in connection with the Records.

3.3 Maintenance of Records During Contract Period. During the performance of the contract, the City shall maintain in accordance with generally accepted accounting procedures,

appropriate books and records concerning the matters contained herein. The Commission shall have access to any books and records concerning the matters contained herein. The Commission shall have access to any books and records which are pertinent to the agreement for the purpose of inspection and transcription at all reasonable times. The City shall also have access to all other records pertinent to sewer users in the City maintained by the Commission for the purpose of inspection and transcription at all reasonable times.

3.4 Access to Facilities. The City shall make all measuring devices and appurtenances thereto which relate to the Administrative support, available to the Commission and its authorized representatives for the purpose of monitoring, observation and inspection. Such monitoring activities shall be restricted only insofar as they may unreasonably interfere with the City's performance of its duties or insofar as the City's activities are restricted. The Commission shall indemnify and hold the City harmless from any and all damage to person or property arising solely out of the performance by the Commission and its authorized representative of any monitoring activities. All monitoring activities undertaken by the Commission shall relate directly to the performance of the services to be provided hereunder.

3.5 Notice to Commission Concerning Administrative Support. From and after the date hereof and throughout the contract period, the City shall maintain sufficient processes, procedures, schedules or equipment to provide the Administrative Support provided for in this Agreement or any amendments thereto. Notices of any changes in the methods, procedures or processes shall be given to the Commission within a reasonable time of their implementation. It shall not be necessary to give written notice to the Commission of any alteration in the processes, procedures, schedules or equipment used by the City to provide the Administrative Support as long as there is no effect on the Administrative Support provided. Prior written notice must be given to the Commission for any alterations which affect the Administrative Support so given.

SECTION IV

Representations and Warranties of the City

4.1 Representations and Warranties. The City represents and warrants to and with the Commission that:

(i) The City is a municipality, duly created by the General Assembly and validly existing under the laws of the State of Rhode Island;

(ii) The City has full power and authority to enter into this Agreement and has complete and unrestricted power to transfer, assign, convey and deliver the Records to the Commis-

sion in the manner contemplated by this Agreement, subject to the approvals and consents referred to herein;

(iii) The execution and delivery of this Agreement does not, and the performance by the City of its obligations under this Agreement will not violate, conflict with, or breach:

- (a) The City Charter or any ordinance or regulation of the City, any applicable law or statute of the United States, the State of Rhode Island or any other governmental authority applicable to the City, or any regulation thereunder presently in effect to which the City may be subject;
- (b) Any injunction, award, order, judgment or decree of any governmental agency, authority or court; or
- (c) Any provision of any agreement or other document to which the City is a party or by which the City is bound.

(iv) There is no suit, action or proceeding pending before any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator, or threatened against or affecting the City which, if adversely determined, would affect the performance by the City of its obligations under this Agreement; except as to pending litigation as of the date of this Agreement involving the charging by the City of sewer fees to its residents, nor is there any judgment, decree, injunction, rule or order of any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator outstanding against the City which would have such affect and the City has not been notified

of any violation of any law, regulation or order arising out of City's past performance of the services and Administrative Support to be provided herein, except as may be pending as of the date of this Agreement.

(v) The City has no intermunicipal agreements or contracts with the Towns of Johnston, North Providence and Lincoln or the City of Cranston, or with any other user within the District with respect to those matters contained herein, which would be in violation or adversely affect this Agreement.

(vi) This Agreement has been duly and validly authorized, executed and delivered by the City and constitutes a legal, valid and binding agreement of the City in accordance with its terms.

(vii) Each of these representations and warranties of the City shall survive the execution date of this Agreement.

(viii) No representation or warranty given herein or in any exhibit hereto and no document or statement furnished pursuant hereto contains any false or misleading statement or omits any fact or information necessary to prevent any such representation, warranty or information from being false or misleading.

SECTION V

Representations and Warranties of the Commission

5.1 Representations and Warranties. The Commission represents and warrants to and with the City that:

(i) It is a public corporation, authorized, created and established under the laws of the State of Rhode Island;

(ii) The Commission has full power and authority to enter into this Agreement;

(iii) The execution and delivery of this Agreement does not, and the performance by the Commission of its obligations under this Agreement will not violate, conflict with, or breach:

- (a) any applicable law or statute of the United States, the State of Rhode Island or any other governmental authority applicable to the Commission or any regulation thereunder presently in effect to which the Commission may be subject;
- (b) Any injunction, award, order, judgment or decree of any governmental agency, authority or court; or
- (c) Any provision of any agreement or other document to which the Commission is a party or by which the Commission is bound.

(iv) There is no suit, action or proceeding pending before any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator, or threatened against or affecting the Commission which, if adversely determined, would affect the performance by the Commission of its obligations under this Agreement; nor is there any judgment, decree, injunction, rule or order of any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator outstanding against the

Commission which would have such effect and the Commission has not been notified of any violation of any law.

(v) Each of these representations and warranties of the Commission shall survive the execution date of this Agreement.

(vi) No representation or warranty given herein or in any Exhibit hereto and no document or statement furnished pursuant hereto contains any false or misleading statement or omits any fact or information necessary to prevent any such representation, warranty or information from being false or misleading.

SECTION VI

General Provisions

6.1 Entire Agreement. This Agreement and exhibits and other referenced documents represent the entire understanding of the Commission and the City to those matters contained herein and supersedes all other agreements, whether written or oral, that may have been made or entered into by the City and the Commission relating to the matters contained herein. This Agreement may not be modified or altered except in writing signed by both parties.

6.2 Sub-Contracts. The City warrants that it will not sub-contract any portion of the Administrative Support it is obliged to provide under this Agreement without prior

written notice to the Commission.

6.3 Notices. Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing and delivered personally or be registered or certified mail, postage prepaid, return receipt requested.

(i) If to the City of Providence, to:

Providence City Hall
Providence, Rhode Island 02903
Attention: Mayor Joseph R. Paolino, Jr.

with copies to:

City Solicitor's Office
44 Washington Street
Providence, Rhode Island 02903

Chief Engineer
Providence Water Supply Board
552 Academy Avenue
Providence, Rhode Island 02903

(ii) If to the Commission, to:

Eric R. Jankel, Executive Director
Narragansett Bay Water Quality
Management District Commission
44 Washington Street
Providence, Rhode Island 02903

with copy to:

Joseph F. Turco, Chairman
Narragansett Bay Water Quality
Management District Commission
44 Washington Street
Providence, Rhode Island 02903

6.4 Remedies. The City acknowledges that the Records and the Administrative Support that are the subject of this Agreement are both vital and necessary to the Commission's accomplishing its duties under the law and the Commission would suffer irreparable harm if the City did not provide under the terms of this Agreement the Records and Administrative Support. The City and the Commission preserve hereunder all remedies available under applicable Rhode Island law for breach of contract by either party. Both parties recognize that the Commission and the Providence Water Supply Board are regulated by the Rhode Island Public Utilities Commission.

6.5 Extent of Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Commission and the City.

6.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and this Agreement shall become effective when the counterparts have been executed and delivered by the City and the Commission.

6.7 Exhibits. All exhibits attached to this Agree-

ment are incorporated in this Agreement and constitute part of this Agreement.

6.8 Captions. Captions and section headings are for reference only and shall not limit or otherwise affect the meaning of the sections hereof.

6.9 Amendment. At any time during the term of the Agreement, any provision of this Agreement may be amended, modified or waived by written agreement of the parties hereto.

6.10 Applicable Law. This Agreement shall be construed and interpreted under the laws of the State of Rhode Island applicable to agreements made and entirely to be performed within such state. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect.

6.11 Binding Effect. This Agreement shall be binding upon an inure to the benefit of the parties hereto and the successors and assigns of the Commission and the City and neither party hereto shall have the right to assign any interest in this Agreement without the prior consent of the other party hereto, and any purported assignment without such consent shall be null and void.

IN WITNESS WHEREOF, the parties hereto have caused
this Agreement to be duly executed by their respective officers
thereunto duly authorized on the date first above written.

CITY OF PROVIDENCE, RHODE
ISLAND for itself and its WATER
SUPPLY BOARD

By: _____
Mayor

NARRAGANSETT BAY WATER QUALITY
MANAGEMENT DISTRICT COMMISSION

By: _____
Executive Director

By: _____
Chairman