

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 647



Approved November 28, 2012

RESOLVED, That the Members of the Providence City Council hereby Authorize Approval of the Agreement by and among the Town of Foster and the Providence Water Supply Board, an enterprise fund of the City of Providence, the Providence Public Buildings Authority and the City of Providence, relative to the Tax Agreement for the Town of Foster.


IN CITY COUNCIL

NOV 19 2012

READ AND PASSED


PRES.

CLERK

I HEREBY APPROVE.


Mayor
Date: 11/28/12

AGREEMENT

THIS AGREEMENT ("Agreement") made this _____ day of _____, 2012, by and among the TOWN OF FOSTER ("Foster"), the PROVIDENCE WATER SUPPLY BOARD, an enterprise fund of the City of Providence ("PWSB"), the PROVIDENCE PUBLIC BUILDINGS AUTHORITY ("PPBA"), and the CITY OF PROVIDENCE ("CITY"), hereafter the PWSB, the PPBA and the CITY are sometimes collectively referred to as the "PWSB".

WHEREAS, PWSB, PPBA, and CITY own certain real and personal property located in Foster;

WHEREAS, certain property owned by PWSB, PPBA and CITY in Foster is subject to taxation by Foster;

WHEREAS, PWSB, PPBA and CITY have challenged the tax classification and valuations of certain property owned by them in Foster; and

WHEREAS, the parties desire to settle the disputes of all matters by and among them, including any and all pending administrative appeals before the Foster Tax Assessor and/or the Foster Board of Assessment Review ("Appeals"); and

WHEREAS, this Agreement is entered into pursuant to R.I.G.L. § 45-2-2.1.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises and covenants herein made, each of the parties hereto agree as follows:

1. **Taxes assessed as of December 31, 2002 through and including December 31, 2011 (for the tax years 2003 – 2012).**

The parties acknowledge and agree that the PWSB has timely paid all of its real estate and personal property taxes to Foster assessed as of December 31, 2002 through and including as of December 31, 2011 (for the tax years 2003 – 2012). The parties agree to resolve all pending tax challenges by the PWSB for said tax years including, but not limited to, a final resolution of any and all administrative appeals and challenges to tax classification and valuation. In consideration of Foster recalculating and reducing the PWSB's real estate taxes for the tax years 2003 – 2012 inclusive, and Foster paying the refund set forth below, the PWSB agrees to dismiss, with prejudice, all pending tax challenges and appeals, once final approvals of this Agreement have been obtained. Foster agrees to recalculate the PWSB's real estate taxes for the years 2003 – 2012 by granting the PWSB a reduction from the real estate taxes actually paid each year. The parties agree that no interest shall be due or payable, or liability incurred for any adjustment to the recalculation of taxes for past tax years 2003-2012.

The parties acknowledge that the agreed reduction of taxes for tax years 2003-2012 inclusive yields a cumulative refund due to PWSB of \$1,459,707.00 (the "Refund Amount").

During the term of this Agreement, the parties agree that an annual interest rate of the "Prime Rate," currently set at 3.25 %, but adjusted with each change in the Prime Rate, shall be applied to the Refund Amount until paid in full.

For purposes of this Agreement, the "Prime Rate" shall mean, at any time, the rate of interest quoted in the *Wall Street Journal*, Money Rates Section as the "Prime Rate" (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty largest banks). In the event that the Wall Street Journal quotes more than one rate, or a range of rates as the Prime Rate, then the Prime Rate shall mean the average of the quoted rates. In the event that the Wall Street Journal ceases to publish the Prime Rate, then the Prime Rate shall be the average Prime Rate of the three largest U.S. money center commercial banks, as determined by the parties.

2. Ten (10) Year Tax Treaty.

The term of this Agreement shall be for a period of ten (10) years beginning with the real estate and personal property taxes to be assessed as of December 31, 2012 (for the tax year 2013) and continuing on and through the real estate and personal property taxes to be assessed as of December 31, 2021 (for the tax year 2022).

The parties agree that this Agreement may be extended for an additional period, not to exceed ten (10) years, under such terms and conditions as the parties shall mutually agree to in writing.

3. Tax Classification.

For the entire term of this Agreement, Foster agrees to classify as forest land on its assessment list, all land owned by the PWSB that the Rhode Island Department of Environmental Management ("RIDEM") certifies now or in the future as forest land. Foster and the PWSB agree that the foregoing classification by Foster is for the purpose of settling a dispute among the parties, and is not an admission by Foster that the PWSB's land is forest land or is entitled to forest land classification under the laws of the State of Rhode Island.

The parties also agree that they will not use any of the terms, provisions or agreements contained in this Agreement against the other in any future proceedings concerning the assessment or collection of taxes by Foster.

4. Land Valuation Established; Foster Shall Not Split Its Tax Rate for PWSB Property for Term of Agreement.

The Parties agree that notwithstanding the classification of land owned by the PWSB, the assessed valuation of all PWSB property shall be set at \$8,400.00 per acre for the term of this Agreement.

Foster agrees that it will not split its tax rate for any property owned by the PWSB for the term of this Agreement. Furthermore, in the event that Foster does change its tax rate structure during the term of this Agreement, PWSB shall be assessed at the lower (presently residential) tax rate, and in any event, shall always have the benefit of the lower tax rate for the term of this Agreement, in the event that Foster changes its tax rate structure.

5. Assessment of Taxes on PWSB Property.

The parties agree that PWSB has 2183.11 acres of land in Foster subject to taxation, that the agreed value of each acre shall be fixed at \$8,400.00 per acre, and that PWSB's total assessment for all property taxation shall be set at \$18,338,124.00 for the term of this Agreement.

6. Possible Non-Cash Contributions.

The parties agree that the Refund Amount may be off-set and reduced by such non-cash contributions, including, but not limited to debt-for-nature swaps; changes to Foster's land use regulations; and, land acquisition programs; all as may be from time to time mutually agreed to by the parties. The parties further agree that flexibility shall be maintained and maximized in any such non-cash contributions and that the parties shall mutually agree on a fair and reasonable appraisal process for determining the value of any such mutually agreed non-cash contributions.

7. Refund Amount.

The Parties agree that the Refund Amount will be paid to PWSB in equal annual principal payments over the 10-year Term of this Agreement, together with accrued interest floating at the Prime Rate in effect from time to time.

[See: Exhibit A, *Refund Repayment Schedule*, attached hereto and incorporated herein by reference.]

Notwithstanding this agreement regarding payment of the Refund Amount, in the first or second year of this Agreement, Foster shall have maximum flexibility to pay the Refund Amount plus accrued interest as either a credit to the payment(s) owed by the PWSB for taxes due, or as a direct payment to the PWSB of principal and interest, principal only, interest only, or, at Foster's sole option, to make no payment to PWSB. However, in no case shall Foster's decision not to pay in either year one (1) or year two (2) of this Agreement, or to its decision to pay principal, or interest only, relieve it of any obligation to pay the full Refund Amount plus all accrued interest at the Prime Rate, by the end date of this Agreement.

8. Additional Property or Improvements.

The parties agree and understand that the agreed taxes established by this Agreement include any real and personal property which may be acquired by the PWSB, and any improvements to any property owned by the PWSB during the term of this Agreement, as well as

any property which may be acquired through the non-cash contribution program, and that the taxes to be paid by the PWSB during the term of this Agreement will not be increased as a result of any such acquisitions or improvements.

In the event that the parties agree to extend this Agreement as provided in paragraph 2, above, the parties may agree to maintain the current valuation set forth herein, or may enter into such new terms and conditions as the parties may judge to be in their respective best interests.

9. Termination; Acceleration of Payment of Refund Amount on Termination.

This Agreement shall terminate on December 31, 2022, if not otherwise extended as set forth herein. Notwithstanding the foregoing, Foster shall have the option to terminate this Agreement after receipt of actual notice that the PWSB has at any time during the term of this Agreement, sold, leased or otherwise alienated any of its water supply system property in Foster to a nonpublic entity by giving written notice to the PWSB within thirty (30) days of Foster's receipt of such actual notice.

This option to terminate shall only apply to the water supply system property actually sold, leased or otherwise alienated to a non-public entity and the Agreement shall remain in full force and effect for the balance of the PWSB's property. The effective date of the termination shall be December 31 of the calendar year following the calendar year in which Foster gives the written notice.

Foster's obligation to pay the Refund Amount shall survive the termination of this Agreement and if Foster elects to terminate as provided herein, any outstanding amount of the Refund Amount due hereunder plus all accrued interest, shall be accelerated, with payment due to PWSB within ninety (90) days of the effective date of termination.

10. Agreement to Cooperate

Foster agrees to cooperate with reasonable requests by the PWSB for assistance in connection with its efforts to secure any necessary approvals of this Agreement. The parties acknowledge and agree that all necessary approvals of this Agreement *in toto* are a contingency and a condition precedent to this Agreement.

11. Miscellaneous.

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island.
- B. This Agreement constitutes the entire agreement among the parties and supersedes any prior communications, written and oral, with respect to all matters pertaining thereto. This Agreement shall not be modified or amended except by an instrument in writing signed by the parties hereto.

- C. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if hand delivered or if sent by prepaid registered or certified mail or by a recognized overnight delivery service to the parties hereto at the following addresses:

For PWSB: (1) General Manager, Providence Water Supply Board, 552 Academy Avenue, Providence, RI 02908, (2) Finance Director, Providence Water Supply Board, 552 Academy Avenue, Providence, RI 02908, and (3) Michael R. McElroy, Esq. Schacht & McElroy, 21 Dryden Lane, P.O. Box 6721, Providence, RI 02940-6721.

For Foster: (1) President, Foster Town Council, 181 Howard Hill Road, Foster, RI 02825; (2) Town Clerk, Town of Foster, 181 Howard Hill Road, Foster, RI 02825; (3), Tax Assessor, Town of Foster, 181 Howard Hill Road, Foster, RI 02825; and (4) Gorham & Gorham, Inc., Attorneys at Law, 25 Danielson Pike, North Scituate, RI 02857.

Any party hereto may change its address for notice purposes by providing notice in accordance with this provision. Any notice, demand, or other communication shall be deemed given and effective as of the date of delivery by hand, or upon the fifth day following mailing.

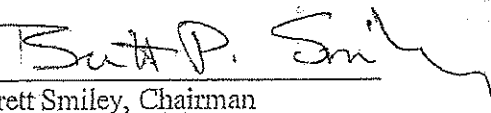
- D. This Agreement constitutes a valid and binding agreement of the parties hereto, enforceable in accordance with its terms. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns.
- E. The parties agree that they shall meet not later than one hundred and eighty (180) days prior to the termination of this Agreement for the purpose of discussing a possible extension of this Agreement or a new similar agreement.
- F. The parties agree that, during the term of this Agreement, it shall not be necessary for the PWSB to file any notices of intention to bring in an account, any accounts, or any appeals of any kind, and this Agreement shall control all obligations of the PWSB to pay all taxes to Foster during the entire term of this Agreement. This Agreement may be enforced as a contract directly in the Superior Court of the State of Rhode Island, without the necessity of the filing of any administrative appeals or the exercise of any other administrative remedies by the PWSB or Foster.
- G. This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto cause these presents to be executed
on this _____ day of _____, 2012, by their duly authorized representatives.

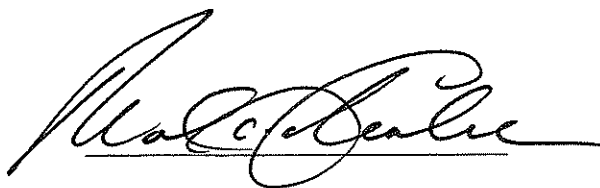
Executed in presence of:


PROVIDENCE WATER SUPPLY
BOARD OF THE
CITY OF PROVIDENCE



By: 
Brett Smiley, Chairman

PROVIDENCE PUBLIC BUILDINGS
AUTHORITY OF THE
CITY OF PROVIDENCE



By: 
Stanley Weiss, Chairman

TOWN OF FOSTER

By: _____
Gordon Rogers, Town Council President

THE CITY OF PROVIDENCE

By: _____
Angel Taveras, Mayor

By: _____
Michael A. Solomon
City Council President

Approved as to form and correctness:

Jeffrey M. Padwa
City Solicitor

Date: _____

Refund Repayment Schedule

EXHIBIT A

Enter values	
Loan amount	\$ 1,459,707.00
Annual interest rate	3.25 %
Loan period in years	10
Number of payments per year	1
Start date of loan	7/1/2012
Optional extra payments	\$ -

Lender name: _____

Loan summary	
Scheduled payment	\$ 173,312.58
Scheduled number of payments	10
Actual number of payments	10
Total early payments	\$ -
Total interest	\$ 273,418.77

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	7/1/2013	\$ 1,459,707.00	\$ 173,312.58	\$ -	\$ 173,312.58	\$ 125,872.10	\$ 47,440.48	\$ 1,333,834.90	\$ 47,440.48
2	7/1/2014	1,333,834.90	173,312.58	-	173,312.58	129,962.94	43,349.63	1,203,871.96	90,790.11
3	7/1/2015	1,203,871.96	173,312.58	-	173,312.58	134,186.74	39,125.84	1,069,685.22	129,915.95
4	7/1/2016	1,069,685.22	173,312.58	-	173,312.58	138,547.81	34,784.77	931,137.41	164,680.72
5	7/1/2017	931,137.41	173,312.58	-	173,312.58	143,050.61	30,261.97	788,086.80	194,942.69
6	7/1/2018	788,086.80	173,312.58	-	173,312.58	147,699.76	25,612.82	640,387.04	220,555.51
7	7/1/2019	640,387.04	173,312.58	-	173,312.58	152,500.00	20,812.58	487,887.04	241,368.09
8	7/1/2020	487,887.04	173,312.58	-	173,312.58	157,456.25	15,856.33	330,430.79	257,224.41
9	7/1/2021	330,430.79	173,312.58	-	173,312.58	162,573.58	10,739.00	167,857.22	267,963.42
10	7/1/2022	167,857.22	173,312.58	-	173,312.58	167,857.22	5,456.36	0.00	273,418.77

This Refund Repayment Schedule is illustrative only and will require adjustment in the event of changes in the prime rate and/or the election of any repayment options available to the Town in the first or second year. Notwithstanding anything to the contrary in the Agreement, it is the intention of the parties to have the floating rate adjust to prime on an annual basis with each annual payment due date.



552 Academy Avenue
Providence, RI 02908

401-521-6300
www.provwater.com

October 24, 2012

Council President Michael Solomon
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Re: Foster Tax Agreement

Dear President Solomon:

Since July 2003, Providence Water has appealed the tax classification and valuations of our property located in the Town of Foster. Recent negotiations with the Town have resulted in a proposed tax agreement with the following terms:

- Ten year prospective tax treaty, which also resolves ten years of past disputes.
- During tax year 2003 through 2012, the average value per acre was \$13,045. The settled upon value is \$8,400. per acre. This results in a reduction of \$1,460,000. to be refunded going forward.
- During tax year 2013 through 2022, assuming that the current tax bill is increased by the statutory cap each year, the potential savings is at least \$886,000.
- The agreement may be extended for an additional ten years.
- The refund will be paid in ten equal installments with interest at the prime interest rate (currently 3.25%) on the outstanding balance.
- Foster can propose certain non-cash contributions such as land acquisitions, changes in land-use regulations, etc.
- All DEM certified forest land will be classified as such by the Town.
- During the period of the agreement, any additional land acquisitions will not be subject to taxation.

At the meeting of the Providence Water Supply Board held on October 17, 2012, all Board members present voted to approve the Foster Tax Agreement. We are requesting that this matter be placed on the November 1, 2012 City Council meeting docket for approval. A copy of the Foster Tax Agreement is attached.

Please contact me at 521-6300 ext. 7121 if you have any questions.

Respectfully,
PROVIDENCE WATER SUPPLY BOARD


Boyce Spinelli, General Manager

The Hon. Angel Taveras
Mayor

Boyce Spinelli
General Manager

BOARD OF DIRECTORS

Brett P. Smiley
Chairman

Joseph D. Cataldi
Vice Chairman

Michael L. Pearis
Ex-Officio

Michael A. Solomon
City Council President

Michael J. Correia
City Councilman

Andy M. Andujar
Member

Joan S. Badway
Member

Carissa R. Richard
Secretary

William E. O'Gara, Esq.
Legal Advisor

Member

Rhode Island Water Works Assn.
Jew England Water Works Assn.
American Water Works Assn.
Water Research Foundation

An EPA WaterSense Partner

Only Tap Water Delivers