

Tap Water Delivers

October 30, 2019

Council President Sabina Matos
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Re: Scituate Tax Agreement

Dear President Matos:

The Hon. Jorge O. Elorza
Mayor

Ricky Caruolo
General Manager

BOARD OF DIRECTORS

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The current ten year tax agreement between the Providence Water Supply Board (PWSB) and the Town of Scituate is set to expire on December 31, 2019. The PWSB owns approximately 15,000 acres of land in Scituate, along with our Treatment Plant, pipeline, pump stations and other infrastructure. PWSB had appealed the Scituate assessed value and taxes of PWSB property for the years 2001-2007. After a lengthy legal battle, PWSB and Scituate signed a tax agreement in 2009 which covered 17 tax years (2001-2007 retroactively and 2008-2017 prospectively). In 2017, a two-year interim tax agreement (2018-2019) was signed by PWSB and Scituate. Recent negotiations with Scituate have resulted in a proposed tax agreement with favorable terms:

- This is a ten year prospective tax treaty that begins with taxes assessed as of December 31, 2019 (calendar year 2020) and continues through taxes to be assessed as of December 31, 2028 (calendar year 2029).
- The payment schedule proposed in the new tax agreement builds upon the schedules negotiated in the 2009 and 2017 tax agreements.
- PWSB would pay a fixed rate (\$7 million - \$10 million) during the terms of the agreement.
- All property acquired by PWSB during the term of the agreement would not be taxed. No additional taxes would be paid on improvements to any property owned by PWSB or any property acquired during previous tax agreements with Scituate.
- The proposed payment schedule has been established based on the assumption that Scituate will raise taxes annually by the 4% maximum property tax levy allowed by law. PWSB agrees that the taxes would increase each year, but limits any tax increase to actual increases in the tax levy that year. If the tax levy increases above 4%, Providence Water agrees to pay the additional increase.
- Scituate agrees to continue to classify all of PWSB's certified forest land as such during the term of the agreement.
- The funds needed to pay taxes to Scituate are included in our rates per the RI Public Utilities Commission.

At the meeting of the Providence Water Supply Board held on October 21, 2019, all Board members present approved the agreement. We are requesting that this matter be placed on the November 7, 2019 City Council meeting docket for approval. This agreement has already been approved by the Scituate Town Council on September 12, 2019.

Respectfully,
PROVIDENCE WATER SUPPLY BOARD


Ricky Caruolo
General Manager

IN CITY COUNCIL
NOV 07 2019

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.

 CLERK

AGREEMENT

AGREEMENT made this _____ day of _____, 2019, by and among the TOWN OF SCITUATE ("Scituate"), the PROVIDENCE WATER SUPPLY BOARD, an enterprise fund of the City of Providence ("PWSB") and the PROVIDENCE PUBLIC BUILDINGS AUTHORITY ("PPBA"), hereafter PWSB and PPBA are sometimes collectively referred to as the "Water Supply Board".

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

WHEREAS, certain property owned by PWSB and PPBA in Scituate is subject to taxation by Scituate.

WHEREAS, PWSB, PPBA and Scituate agree that the method and approach to assess, for purposes of taxation, the several properties and improvements thereon, owned by PWSB and/or PPBA could result in unwanted litigation; and

WHEREAS, the parties determined that an agreement concerning the payment of taxes to Scituate by PWSB and/or PPBA is in the public's interest and avoids expensive and uncertain litigation which would be otherwise funded by ratepayers and taxpayers.

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. **Ten (10) Year Tax Treaty.**

For a period of ten (10) years beginning with the real estate and personal property taxes assessed as of December 31, 2019 (calendar year 2020) and continuing on and through the real estate and personal property taxes to be assessed as of December 31, 2028 (calendar year 2029), Scituate shall charge the Water Supply Board and the Water Supply Board shall pay annual real estate and personal property taxes, and the taxes will be due and payable as follows:

2020	\$7,067,179.62
2021	\$7,349,866.81
2022	\$7,643,861.48
2023	\$7,949,615.94
2024	\$8,267,600.57
2025	\$8,598,304.60
2026	\$8,942,236.78
2027	\$9,299,926.25
2028	\$9,671,923.30
2029	\$10,058,800.23

The above payment schedule is based on the assumption that Scituate will raise taxes annually to the maximum property tax levy of 4% allowed by law. The foregoing payments schedule will not change for the duration of this Agreement, except that (1) in the event that Scituate does not raise taxes by the assumed maximum property tax levy of 4% allowed by law in any given year, or (2) in the event that Scituate obtains permission under R.I.G.L. § 44-5-2 and increases taxes above the assumed maximum property tax levy of 4% allowed by law in any given

year, then the Water Supply Board's tax payments will be adjusted by the appropriate percentage by which taxes were either not raised to the 4% maximum or were raised in excess of the 4% maximum in the applicable years. For example, (1) if the maximum allowable increase in the levy is 4% and Scituate only raises its tax levy by 3%, then a 1% reduction will be made for that year, and the appropriate reduction will also apply in each remaining successive year of this Agreement, or (2) if the maximum allowable increase in the levy is 5% and Scituate raises its tax levy by 5%, then a 1% increase will be made for that year, and the appropriate increase will also apply in each remaining successive year of this Agreement.

2. **Tax Classification:**

For the entire term of this Agreement, Scituate agrees to classify as forest land on its assessment list, all land owned by the Water Supply Board that the Rhode Island Department of Environmental Management ("RIDEM") certifies now or in the future as forest land. Scituate and the Water Supply Board agree that the foregoing classification by Scituate is for the purpose of settling a dispute among the parties, which dispute was the subject of prior litigation (including appeals thereof) and is not an admission by Scituate that the Water Supply Board's land is forest land or is entitled to forest land classification under the laws of the State of Rhode Island. Upon the termination of this Agreement, Scituate shall be entitled to take any actions with respect to the forest land classification of the Water Supply Board's land as if this Agreement and the aforementioned litigation

never occurred including, but not limited to, removing all of the Water Supply Board's land from the Scituate list of classified forest land, denying any application by the Water Supply Board to the Scituate Tax Assessor for classification of land as forest land and issuing a use valuation assessment for the Water Supply Board's land by the Scituate Tax Assessor. The Water Supply Board also expressly reserves and will be entitled to exercise any and all rights and remedies, whether appellate or otherwise with respect to Scituate taking any of the foregoing actions.

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 Scituate. The parties further agree that they will not raise as an issue that anything which transpired in the aforementioned litigation or any administrative appeals which were filed by the Water Supply Board prior to the date of this Agreement establishes, under the doctrines of res judicata, collateral estoppel, administrative finality, or any other theory or ground, that the land owned by the Water Supply Board is or is not entitled to be classified and/or valued as forest land. After the termination of this Agreement, all parties shall be entitled to present their positions concerning the issue of forest land classification and valuation just as if the aforementioned litigation and any administrative appeals and this Agreement never occurred.

Notwithstanding the forgoing, in the event that the Water Supply Board finds it necessary to commence administrative appeals or civil actions with regard to the forest land classification and/or forest land valuation of any of its acreage after the expiration of this Agreement, Scituate agrees that the Water Supply Board may introduce the Judge Vogel decision of February 3, 2006 (as amended) into the proceedings and may argue that the reasoning of that decision should be followed, but the Water Supply Board agrees that it will not raise the issue that said decision must be followed under the doctrines of res judicata, collateral estoppel, or administrative finality, or any other theory or ground. The foregoing provisions contained in this Paragraph 2 shall survive the termination of the Agreement.

3. **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 Water Supply Board, and any improvements to any property owned by the Water Supply Board, during the term of this Agreement, and that the taxes to be paid by the Water Supply Board during the term of this Agreement will not be increased as a result of any such acquisitions or improvements.

4. **Termination.**

This Agreement shall terminate on December 31, 2029. Notwithstanding the foregoing, effective as of December 31, 2019, and after, (but not before), Scituate shall have the option to terminate this Agreement after receipt of actual

notice that the Water Supply Board has, on December 31, 2019 or after, sold, leased or otherwise alienated any of its water supply system property to a non-public entity by giving written notice to the Water Supply Board within thirty (30) days of Scituate'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 Water Supply Board's property. The effective date of the termination shall be December 31 of the calendar year following the calendar year in which Scituate gives the written notice.

5. **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, 125 Dupont Drive, Providence, RI 02907, (2) Senior Manager of Finance, Providence

Water Supply Board, 125 Dupont Drive, Providence, RI 02907, and (3) Michael R. McElroy, Esq. Schacht & McElroy, 21 Dryden Lane, P.O. Box 6721, Providence, RI 02940-6721.

For Scituate: (1) President, Scituate Town Council, 195 Danielson Pike, North Scituate, RI 02857; (2) Town Clerk, Town of Scituate, 195 Danielson Pike, North Scituate, RI 02857; and (3) Peter D. Ruggiero, Esq., Ruggiero Brochu & Petrarca, 20 Centerville Road, Warwick, RI 02886.

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 Water Supply Board 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 Water Supply Board to pay all taxes to the Town

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 Water Supply Board or the Town.

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 26 day of October 2019, by their duly authorized representatives.

Executed in presence of:

Levi Dawson

PROVIDENCE WATER SUPPLY
BOARD OF THE
CITY OF PROVIDENCE

By:

Xaykham Khamsyvoravong, Chairman

PROVIDENCE PUBLIC BUILDINGS
AUTHORITY OF THE
CITY OF PROVIDENCE

By: _____
Stanley Weiss, Chairman

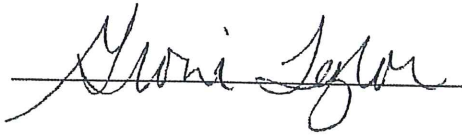
THE CITY OF PROVIDENCE

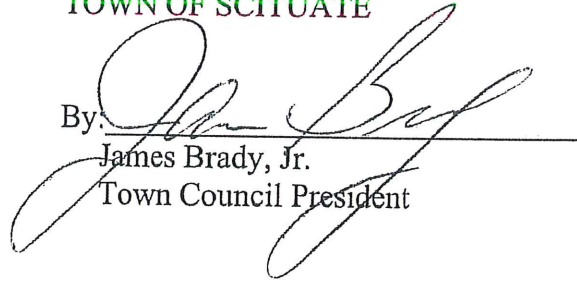
By: _____
Jorge Elorza, Mayor

THE CITY OF PROVIDENCE

By: _____
Sabina Matos
City Council President

TOWN OF SCITUATE



By: 

James Brady, Jr.
Town Council President

