

RESOLUTION OF THE CITY COUNCIL

No. 241

Approved June 2, 2017

WHEREAS, The Providence Water Supply Board of the City of Providence ("PWSB") operates and maintains portions of the Scituate watershed region ("Watershed") in conjunction with the operations of the City's reservoir and water distribution system; and

WHEREAS, The City of Providence, through its police department, established a firing range ("Range") in the Watershed, used by department personnel for firearms training, which the City is obligated to maintain; and

WHEREAS, The Range has certain deferred maintenance ("Maintenance") which requires prompt remediation but which the City does not presently have sufficient funds to cover; and

WHEREAS, The Maintenance would serve the purposes of PWSB by contributing to the deterrence of potential storm water runoff and other prospective issues in the Watershed; and

WHEREAS, PWSB has offered to direct and oversee the Maintenance, and Providence has accepted such offer, all upon the terms and conditions of a certain Memorandum of Understanding ("Memorandum"); and

WHEREAS, The Council has reviewed and given due consideration to said Memorandum, and is desirous of authorizing the City to enter into said Memorandum.

NOW, THEREFORE, BE IT RESOLVED, That, to the extent Council authorization is required, PWSB's General Manager is hereby authorized to execute said Memorandum and, thereby, to bind PWSB to the terms of the same; and

BE IT FURTHER RESOLVED, that His Honor the Mayor, is hereby authorized to execute said Memorandum and, thereby, to bind the City of Providence to the terms of said Memorandum.

IN CITY COUNCIL

MAY 24 2017

READ AND PASSED

ACTING PRES.

CLERK

I HEREBY APPROVE.

Mayor
Date: 6/2/17

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum") is made and entered into on this the 5th of May, 2017 by and between the City of Providence ("Providence") and the Providence Water Supply Board ("PWSB"). Providence and PWSB are sometimes individually referred to herein as a "Party" and, collectively, as "Parties."

RECITALS

WHEREAS, PWSB operates and maintains portions of the Scituate watershed region ("Watershed") in conjunction with the operations of its reservoir and water distribution system; and

WHEREAS, Providence's police department established a firing range ("Range") in the Watershed used by department personnel for firearms training, and which Providence is obligated to maintain; and

WHEREAS, the Range has certain deferred maintenance ("Maintenance") which requires prompt completion but which Providence does not presently have sufficient funds to cover; and

WHEREAS, the Maintenance would serve the purposes of PWSB by contributing to the deterrence of potential storm water runoff and other issues in the Watershed; and

WHEREAS, PWSB has offered to direct and oversee the Maintenance, and Providence has accepted such offer, all upon the terms and conditions set forth in this Memorandum.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the covenants and agreements set forth herein, the Parties, intending to be bound, hereby agree as follows:

1. Maintenance. PWSB shall incur the cost of the Maintenance in an amount not-to-exceed Three Million and 00/100 (\$3,000,000.00) Dollars. The work to be completed is described in Exhibit 1. The Parties anticipate the Maintenance will commence in June of 2017 and will take fourteen (14) weeks to complete, subject to extensions for unforeseen and/or uncontrollable circumstances. PWSB shall oversee and direct the completion of the Maintenance and decisions related to the work shall be made by PWSB in its sole, but reasonable discretion.

2. Maintenance Reimbursement. Providence hereby agrees that it shall reimburse PWSB for all costs and expenses incurred by PWSB in relation to the Maintenance. A statement of costs and expenses by PWSB shall be provided to Providence following the completion of the Maintenance and, absent manifest error, shall be conclusive as to the amount to be reimbursed by Providence to PWSB. Reimbursement for the Maintenance shall be made by in two (2) equal payments: (i) June 30, 2018; and (ii) June 30, 2019. The City agrees it shall incorporate into its next two annual budgets, sufficient funds budgeted explicitly for reimbursement of the Maintenance costs and expenses contemplated herein, and such funds shall be restricted and usable only in relation to repayment to PWSB as contemplated herein. In the event Providence

fails to make timely payment as contemplated herein, interest will accrue at four (4%) percent per annum, until such default is cured.

3. **Right to Offset.** PWSB shall have the right to offset any payments due and owing from PWSB to Providence in the event that Providence does not make full and timely reimbursement payments for the costs and expenses of the Maintenance as outlined herein. Such right to offset shall include, but by no means be limited to, the right of PWSB to withhold payment to Providence for "City Services." In the event of such an offset, Providence agrees to continue to provide the City Services.

4. **Miscellaneous.**

4.01 **Entire Agreement; Amendment.** This Memorandum contains the entire understanding between and among the Parties and supersedes all other prior understandings and agreements among them, both written and oral, with respect to the transactions contemplated hereby and the subject matter hereof. No provision of this Memorandum may be modified, altered or amended except in a writing executed by all Parties hereto. This Agreement has been approved by the City Council as reflected on the Council Resolution attached hereto as Exhibit A.

4.02 **Waiver.** The waiver by any Party hereto of a breach of any provision of this Memorandum shall not operate or be construed as a waiver of any subsequent breach by any Party.

4.03 **Severability.** The provisions of this Memorandum are severable and, in the event that any provision hereof shall be found by any court to be unenforceable, in whole or in part, the remainder of this Memorandum shall remain enforceable and binding upon the Parties hereto.

4.04 **Governing Law.** This Memorandum shall be governed by and construed in accordance with the laws of the State of Rhode Island, without regard to any conflicts of law provisions.

4.05 **Jurisdiction and Venue.** Any action, suit or proceeding arising out of, under or in connection with this Agreement not otherwise submitted to arbitration shall be brought and determined in the appropriate state court in the State of Rhode Island and in no other forum. Each Party hereby waives, to the extent permitted by law, its right to a trial by jury for any such suit, action or proceeding arising out of or related to this Memorandum.

4.06 **Agreement Binding.** This Memorandum shall be binding upon the successors and assigns of the Parties hereto.


4.07 **Further Action.** The Parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Memorandum.

4.08 Counterparts. This Memorandum may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

(The Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Parties, intending to be bound, have executed this Memorandum as of the date first above written.

Providence Water Supply Board:


By: Ricky Caruolo
Its: General Manager

City of Providence:


By: Lawrence Mancini
Its: Finance Director

Approved as to form and correctness:



Jeffrey Dana, City Solicitor