

# City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

## CHAPTER 2009-21

**No. 92**

### **AN ORDINANCE AUTHORIZING SUPPLEMENTAL INDENTURE PROVIDING FOR THE ESTABLISHMENT OF SCITUATE PROPERTY TAX SETTLEMENT ACCOUNT**

*Approved March 11, 2009*

***Be it ordained by the City of Providence:***

WHEREAS, The City of Providence (the "City") and the Providence Public Buildings Authority (the "PPBA") own certain real and personal property located in The Town of Scituate ("Scituate") which is used for public water supply purposes; and

WHEREAS, Certain property owned by the City and the PPBA in Scituate is subject to taxation by Scituate; and

WHEREAS, The City and the PPBA have challenged the tax classification and valuations of certain property owned by them in Scituate; and

WHEREAS, The parties desire to settle the disputes of all matters by and among them, including the final settlement of all pending civil actions in the Providence County Superior Court and all pending administrative appeals before the Scituate Tax Assessor and/or the Scituate Board of Assessment Review; and

WHEREAS, The parties are contemplating a settlement which provides for Scituate to refund approximately \$5,000,000 to the City to be deposited in a restricted fund to be used for watershed acquisition purposes; and

WHEREAS, The City's water funds are subject to the terms and provisions of a Trust Indenture dated June 5, 2008 (the "Trust Indenture") by and between the City and U.S. Bank National Association, as trustee (the "Trustee"), as amended and supplemented by a First Supplemental Indenture dated June 5, 2008 (as supplemented, the "Indenture"); and

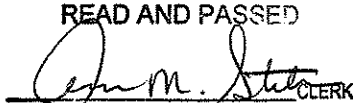
WHEREAS, Section 502 of the Indenture contemplates that the additional funds and accounts may be established under the Indenture pursuant to an order of the Public Utilities Commission; and

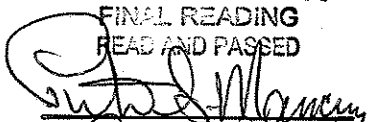
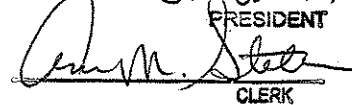
WHEREAS, The City proposes to establish a Scituate Property Tax Settlement Account within the Project Fund established by the Indenture to be applied to watershed acquisition or, if not so used, to such other purposes benefiting rate payers as may be directed by the Public Utilities Commission.


NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PROVIDENCE:

Section 1. Supplemental Indenture Authorized. Subject to the consent of bondholders as required by the Indenture, the City hereby authorizes and approves a Supplemental Indenture amending the Indenture in substantially the form presented to this meeting, and the Chairman and the Chief Engineer are hereby authorized and shall have full powers, each signing singly, to execute and deliver the same and all other documents and instruments necessary or convenient in connection therewith, with such changes, omissions, insertions and revisions as shall be determined advisable by the officer executing the same, and such execution thereof shall be conclusive as to such determination and their due authorization hereunder.

Section 2. Effectiveness. The foregoing ordinance shall take effect immediately.

IN CITY COUNCIL  
FEB 19 2009  
FIRST READING  
READ AND PASSED  
 CLERK

IN CITY  
COUNCIL  
MAR 5 2009  
FINAL READING  
READ AND PASSED  
 PRESIDENT  
 CLERK

APPROVED  
  
MAYOR 3/11/09

SECOND SUPPLEMENTAL INDENTURE

among

CITY OF PROVIDENCE, RHODE ISLAND

and

PROVIDENCE WATER SUPPLY BOARD

and

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

To Effect an Amendment of the Trust Indenture  
Pursuant to Section 903 of the Trust Indenture

Dated January \_\_\_, 2009

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## SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (the "Indenture") dated January \_\_, 2009 is made by and among the CITY OF PROVIDENCE, RHODE ISLAND, a municipal corporation organized and existing under the laws of the State of Rhode Island (the "Issuer" or the "City"), the PROVIDENCE WATER SUPPLY BOARD, an instrumentality of the City (the "Board"), and U.S. BANK NATIONAL ASSOCIATION, a trust company duly organized and validly existing under the laws of the United States of America authorized to exercise corporate trust powers (the "Trustee"):

### W I T N E S S E T H :

WHEREAS, the Issuer, the Board and the Trustee have entered into a Trust Indenture dated June 5, 2008, as amended by a First Supplemental Indenture dated as of June 5, 2008 (as amended, the "Indenture"); and

WHEREAS, pursuant to Section 502 of the Indenture, the Issuer and the Board have determined herein to amend the Indenture to provide for the establishment of a 2009 Scituate property tax settlement account (the "2009 Scituate Property Tax Settlement Account") within the Project Fund pursuant to an order of the PUC to be held for the benefit of one or more Series of Bonds or Subordinated Bonds; and

WHEREAS, within the limitations of and in compliance with Sections 903, 1002, 1003 and 1004 of the Indenture, the Issuer, the Board and the Trustee may, with the consent of Bondholders, execute and deliver a Supplemental Indenture amending or supplementing the Indenture; and

WHEREAS, such amendment is being effected pursuant to this Second Supplemental Indenture.

NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE FURTHER WITNESSETH: That the Issuer and the Board do hereby covenant and agree with the Trustee and for the benefit of the Bondholders and others under the terms of the Indenture, as follows:

### ARTICLE I DEFINITIONS

Section 101. Definitions. Unless otherwise defined herein, all capitalized terms used herein shall have the identical meanings assigned to such terms in the Indenture.

### ARTICLE II AMENDMENTS TO INDENTURE

Section 201. Amendment to Section 101. Definitions. Section 101 is hereby amended by inserting the following definition in proper alphabetical order:

"'2009 Scituate Property Tax Settlement Account' shall mean an account in the Project Fund established pursuant to Section 502;"

Section 202. Amendment to Section 502. Establishment of Funds and Accounts. Section 502 is hereby amended by deleting the first sentence of the last paragraph and inserting the following in lieu thereof:

“There shall be established within the Project Fund one or more Infrastructure Replacement Accounts, Capital Improvements Accounts, Meter Replacement Accounts, Equipment Replacement Accounts, a Western Cranston Account and a 2009 Scituate Property Tax Settlement Account.”

Section 203. Amendment to Section 503. Project Fund. Section 503 is hereby amended by inserting the following immediately following paragraph (10) thereof:

“(11) There shall be deposited in the 2009 Scituate Property Tax Settlement Account (i) any amounts received by the City or the Board from the Town of Scituate representing the property tax refund provided for in an Agreement by and among the Town of Scituate, the Board and the Providence Public Buildings Authority (the “PPBA”) dated \_\_\_\_\_, 2009, and (ii) any amounts required to be deposited therein by order of the Public Utilities Commission. Amounts in the 2009 Scituate Property Tax Settlement Account shall be disbursed to or upon order of the Board to be applied to the purchase of land (together with any buildings thereon) located in the Town of Scituate for watershed protection for the water supply distribution systems of the PWSB pursuant to generally recognized proper watershed management practices, including but not limited to, reasonable professional fees associated with investigating and completing potential purchases of such land, reasonable appraisal fees, survey fees, engineering fees, legal fees, and environmental investigation fees, upon receipt by the Trustee of one or more requisitions in form as attached or annexed to the Indenture and incorporated therein by reference, signed by the Board Director of Finance and another Authorized Officer (who for purposes of this Section 503 shall be the Chief Engineer or Deputy Chief Engineer of the Providence Water Supply Board). Upon completion of such land acquisitions, or upon a determination by the Board that no further amounts or significantly reduced amounts are required therefore from the 2009 Scituate Property Tax Settlement Account, or upon the redirection of all or a portion of the funds in such account by the PUC as contemplated by the 2009 Tax Refund Agreement, the Board may transfer or direct the Trustee in writing to transfer amounts then on deposit in the 2009 Scituate Property Tax Settlement Account (i) to another Capital Improvements Account, (ii) to another fund or account to be expended for the purpose or purposes directed by the PUC, or (iii) to the Revenue Fund. Notwithstanding the foregoing, if at any time the amount on deposit and available therefore in the Debt Service Fund, including the Debt Service Assistance Account, the Redemption Fund and Debt Service Reserve Fund, is insufficient to pay the Principal Installments and Redemption Price of and interest on the Bonds then due, the Trustee or the City, as applicable, shall transfer from any unencumbered moneys on deposit in the 2009 Scituate Property Tax Settlement Account (in such order of priority as the City by certificate of an

Authorized Officer shall direct) to the Trustee for deposit in the Debt Service Fund, the amount necessary to meet the deficiency.”

Section 204. Amendment to Section 504. Revenue Fund. Subsection (2)(ix) of Section 504 is hereby deleted in its entirety and replaced with the following:

“(ix) To one or more Infrastructure Replacement Accounts, Capital Improvements Accounts, Meter Replacement Accounts, Equipment Replacement Accounts, the Western Cranston Account and the 2009 Scituate Property Tax Settlement Account, such amounts as are required by order of the Public Utilities Commission or, such amounts as requested by the Board but only upon receipt by the Trustee of (a) a copy of the resolution of the City Council or Providence Water Supply Board approving the funding of Capital Improvements in whole or in part from such Accounts, certified by an Authorized Officer and (b) a certificate of an Authorized Officer stating that such deposit will not impair the ability of the City to either (A) meet the requirements of the Revenue Fund in the succeeding months of such Fiscal Year based on the then current Annual Budget prepared in accordance with Section 608 or (B) satisfy the requirements of Section 603 in the current or next succeeding Fiscal Year;”

Section 205. Amendment to Section 510. Operation and Maintenance Reserve Fund. Subsection (b) of Section 510 is hereby deleted in its entirety and replaced with the following:

“(b) If any time the amount on deposit and available therefor in the Debt Service Fund, Redemption Fund, Debt Service Reserve Fund, and one or more Infrastructure Replacement Accounts, Capital Improvements Accounts, Meter Replacement Accounts, Equipment Replacement Accounts, the Western Cranston Account and the 2009 Scituate Property Tax Settlement Account is insufficient to pay the Principal Installments and Redemption Price of and interest on the Bonds then due, the Trustee or the City, as applicable, shall transfer from the Operation and Maintenance Reserve Fund to the Debt Service Fund the amount necessary to meet the deficiency; provided, however, that the Board shall obtain approval of the Public Utilities Commission prior to transferring any amounts in the PUC Restricted Operating Reserve Account.”

Section 206. Amendment to Section 606. Insurance and Condemnation. The first sentence of paragraph (4) of Section 606 is hereby deleted in its entirety and replaced with the following:

“If at any time the amounts on deposit and available therefor in the Debt Service Fund, Redemption Fund, Debt Service Reserve Fund, one or more Infrastructure Replacement Accounts, Capital Improvements Accounts, Equipment Replacement Accounts, the Western Cranston Account, the 2009 Scituate Property Tax Settlement Account and the Operation and Maintenance Reserve Fund, are insufficient to pay the Principal Installments and Redemption Price of and interest on the Bonds then due, the City shall withdraw from the Insurance Reserve Fund and

pay to the Trustee for deposit in the Debt Service Fund the amount necessary to meet the deficiency.”

### ARTICLE III MISCELLANEOUS

Section 301. Severability. In the event that any provision of this Second Supplemental Indenture shall be held to be invalid under any circumstances, such invalidity shall not affect any other provisions or circumstances.

Section 302. Captions. The captions and table of contents, if any, of this Second Supplemental Indenture are for convenience only and shall not affect the construction hereof.

Section 303. Successors and Assigns. The rights and obligations of the parties to this Second Supplemental Indenture shall inure to their respective successors and assigns.

Section 304. Second Supplemental Indenture Not for the Benefit of Other Parties. This Second Supplemental Indenture is not intended for the benefit of and shall not be construed to create rights in parties other than the Issuer, the Board, the Trustee and the Bondholders.

Section 305. Reaffirmation. The Indenture, as amended by this Second Supplemental Indenture, is, in all respects, ratified and confirmed, so that all of the rights, terms, conditions, covenants, and agreements thereof and therein shall apply and remain in full force and effect.

Section 306. Severability. In the event that any provision of this Second Supplemental Indenture shall be held to be invalid under any circumstances, such invalidity shall not affect any other provisions or circumstances.

Section 307. Counterparts. This Second Supplemental Indenture may be executed in any number of counterparts, each of which when so executed shall be an original; but such counterparts shall together constitute but one and the same instrument.

Section 308. Governing Law. This Second Supplemental Indenture shall be governed by, and construed in accordance with, that laws of the State of Rhode Island and Providence Plantations.

Section 309. Effectiveness. Pursuant to Section 1003 of the Indenture, this Second Supplemental Indenture shall take effect upon (a) its execution and delivery by the parties, (b) the filing by the City or the Board with the Trustee of the written consent of the Rhode Island Clean Water Finance Agency as Holder of the outstanding 2008 Series A Bonds, (c) delivery of notice to the Bondholders that the Second Supplemental Indenture has been consented to by the Holders of the required percentages of Bonds and will be effective pursuant to Section 1003 of the Indenture, (d) the filing by the City or the Board with the Trustee of proof of mailing such notice, and (e) the expiration of sixty (60) days from the date of filing with the Trustee proof of mailing such notice, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding commenced for such purpose within such sixty day period.

**\*Signatures on Next Page\***



IN WITNESS WHEREOF, the Issuer, the Board and the Trustee have caused this First Supplemental Indenture to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

CITY OF PROVIDENCE, RHODE ISLAND

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Treasurer

PROVIDENCE WATER SUPPLY BOARD

By: \_\_\_\_\_  
Chief Engineer

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Vice President

[Second Supplemental Indenture]