

RESOLUTION OF THE CITY COUNCIL

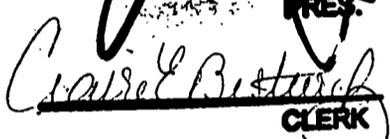
No. 10

Approved January 29, 2006

Resolution, Together with accompanying copy of the Employment Agreement between the Providence Water Supply Board and Pamela M. Marchand, P.E., as Chief Engineer of the Water Supply Board of the City of Providence effective January 30, 2006 to January 29, 2010.

IN CITY COUNCIL
JAN 29 2006
READ AND PASSED


PRES.


CLERK

APPROVED


1/29/06

MAYOR

IN CITY COUNCIL
AND BOARD OF
DIRECTORS

IN CITY COUNCIL
DEC 15 2005
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

CLERK

THE COMMITTEE ON
FINANCE
Approves Passage of
The Within Resolution

Ann M. Steyer

Clerk

1-12-06

Communication

ANDREW K. MOFFIT
Chairman

JOSEPH D. CATALDI
Vice Chairman

ALEXANDER D. PRIGNANO
Ex-Officio

CARISSA R. RICHARD
Secretary

FERNANDO S. CUNHA, ESQ.
Legal Advisor



DAVID N. CICILLINE
Mayor

BOYCE SPINELLI
Acting General Manager

JOSEPH DE LUCA
City Councilman

PATRICK K. BUTLER
City Councilman

ANNE T. QUINTERNO
Member

EVERETT BIANCO
Member

December 15, 2005

Council President Lombardi
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Dear President Lombardi:

Enclosed please find the employment agreement stating the terms and conditions for the hiring of the new Providence Water Chief Engineer and General Manager.

This employment agreement was approved at a special meeting of the City of Providence Water Supply Board, as held on December 15, 2005, by vote of the members of the Providence Water Supply Board present.

The Providence Water Supply Board is submitting this employment agreement for ratification by the Providence City Council.

ATTEST: A true attest.

A handwritten signature in cursive script that reads "Carissa R. Richard".

Carissa R. Richard
Board Secretary

WWW.PROVWATER.COM

IN CITY COUNCIL
DEC 15 2005
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

Craig Bestwick CLERK
Justin Roberts

Communication

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into on the 15th day of December 2005 by and between the Providence Water Supply Board, an enterprise department of the City of Providence ("PWSB") and Pamela M. Marchand, P.E.

WHEREAS, the PWSB has the authority under the Home Rule Charter of the City of Providence to hire a Chief Engineer, subject to the terms and conditions which it deems in the best interest of the City of Providence ("City") and the users of the Providence Water Supply, the PWSB desires to employ Pamela M. Marchand, P.E. as Chief Engineer of the Water Supply Board of the City of Providence through January 29, 2010, and to provide Pamela M. Marchand with a written employment contract to that effect; and

WHEREAS, PWSB desires to employ a Chief Engineer with the expertise and experience to address the current challenges presented to the PSWB; and

WHEREAS, Pamela M. Marchand is willing to accept such employment, upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, it is hereby mutually agreed as follows:

1. TERM

The PSWB employs the Chief Engineer and the Chief Engineer accepts employment as the Chief Engineer of Providence Water Supply Board (the "PWSB") for a term of four (4) years, commencing as of the 30th day of January, 2006 and ending on the 29th day of January, 2010. The PWSB shall have the option of extending the term of this Agreement for an additional year (i.e. from January 30, 2010 through January 29, 2011) in accordance with the provisions of Section 10 (Renewal).

2. RESIDENCY

Within six months of appointment and at all times during the term of this Agreement and/or any renewal term of the Agreement, the Chief Engineer shall be a resident of the City of Providence in accordance with City policy.

3. EMPLOYMENT

A. Duties

The Chief Engineer of the PWSB, as established by section 1101 of the Charter, shall have the responsibility to plan, organize, manage and control the operations and maintenance of the PWSB's facilities, resources and personnel; she will plan and implement the replacement of existing facilities to protect the plant. She will plan and develop suitable programs to insure adequate water supply and fire protection for the users of the PWSB and the land within the service area of the PWSB as it exists now or may be expanded from time to time. She shall perform such other tasks as required

by the PWSB, consistent with the Charter. Except as permitted in this agreement, the Chief Engineer shall devote substantially her full time and attention to the performance of her duties as Chief Engineer of the Providence Water Supply Board.

B. Outside Professional Activities

The Chief Engineer shall devote substantially her entire time, attention and energy to the direction and supervision of the Providence Water System. Notwithstanding the foregoing, the Chief Engineer may, without additional compensation by the Board, participate in outside professional activities including but not limited to consulting, speaking, teaching, and writing, with or without compensation, provided they do not materially interfere with her full time duties as the Chief Engineer.

In the course of participating in such activities, the Chief Engineer may utilize whatever PWSB resources are reasonable and necessary for such undertakings, provided that the use of such resources does not materially interfere with the job duties of other employees of PWSB. In the event that the Chief Engineer desires to participate in an outside activity that would require the Chief Engineer to be absent for more than five (5) consecutive full working days, the Chief Engineer shall obtain the prior approval of the Board.

4. COMPENSATION

The Chief Engineer shall be paid an annual base salary of one hundred sixty thousand dollars and no cents (\$160,000) from January 30, 2006 through January 29, 2010. This salary shall take effect as of the first pay period after the formal appointment of Pamela M. Marchand as Chief Engineer.

For the second year, the third year, the fourth year, and fifth year (if applicable) of this Agreement, the Chief Engineer's annual base salary shall be increased by an amount no less than three (3) percent.

The Chief Engineer shall be paid on a weekly basis in an amount equal to 1/52 of the annual salary rate in effect for the term of this contract.

5. ADDITIONAL COMPENSATION AND BENEFITS

A. Health and Related Benefits

The Chief Engineer shall be entitled to the medical and dental insurance and other like benefits to which other administrative employees of the PWSB are entitled.

B. Retirement Benefits

The Chief Engineer will be entitled to receive any retirement benefits otherwise available to administrative employees of the PWSB. If the City joins the State Retirement system and the Chief Engineer can be made eligible, the PWSB shall seek to have the Chief Engineer transferred to the State Plan.

C. Sick Leave

During the term of this Agreement, the Chief Engineer shall be entitled to sick leave under the same terms and conditions as other administrative employees of the PWSB, except that she will have available fifteen (15) days upon signing this contract and will not accrue additional sick leave until the first day of the second year of this Agreement.

D. Personal Leave

During the term of this Agreement, the Chief Engineer shall be entitled to personal leave under the same terms and conditions as other administrative employees of the PWSB.

E. Vacation

During the term of this Agreement, the Chief Engineer shall be entitled to twenty (20) vacation days per year under the same terms and conditions as other administrative employees of the PWSB. The Chief Engineer may carry forward up to 15 days of unused vacation leave from each year of this Agreement. Unused vacation leave that is carried forward from different years may be accumulated. At termination of employment, the Chief Engineer shall be entitled to a cash payment for her accrued vacation leave for not more than a total of 60 days of unused vacation leave.

F. Automobile Allowance

The PWSB, at its expense, shall provide the Chief Engineer with an automobile for the business use of the Chief Engineer or a car allowance of \$350 per month at the option of the Chief Engineer.

G. Business Expenses

The PWSB will reimburse the Chief Engineer for all reasonable and usual expenses connected with the discharge of the Chief Engineer's job duties during the term of this Agreement or any renewal period. All requests for reimbursement of expenses must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

To further the Chief Engineer's development, the PWSB shall pay the cost of membership in such organizations that the Chief engineer deems reasonably necessary to maintain and improve her professional skills and benefit the Providence Water Supply Board; provided that such expenses are permitted by state law and approved by the PWSB in the annual budget.

Upon obtaining prior approval of the PWSB, the Chief Engineer may, to the extent permitted by state law, also attend professional meetings, programs, seminars and courses that she deems necessary for her professional development and which will benefit the PWSB. The PWSB shall reimburse the Chief Engineer for all reasonable and usual expenses connected with her attendance. All requests for reimbursement must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

H. Relocation Expenses

The PWSB shall reimburse the Chief Engineer for actual relocation and moving expense but not to exceed \$7,500. All requests for reimbursements of expenses must be accompanied by a receipt and/or written description/explanation of the nature and reason for the expense.

I. Life Insurance

PWSB shall provide life insurance in the amount of \$150,000 covering the life of the Chief engineer.

J. Disability Insurance

PWSB shall provide a disability plan for the Chief Engineer, which will be mutually agreeable.

6. PROFESSIONAL LIABILITY

The PWSB shall defend, hold harmless, and indemnify the Chief Engineer from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, or suit for actions resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property, or any other acts, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not criminal, wanton, reckless, malicious, or grossly negligent, as determined by a court of competent jurisdiction, provided the Chief Engineer, at the time of the acts resulting in the injury, death, damages, or destruction, was acting in the discharge of his duties or within the scope of his employment.

The Chief Engineer hereby agrees to cooperate with the City/PWSB and its authorized representatives in the handling and defense of such demands, claims, suits, actions and/or legal proceedings, both during and after the term of employment herein, as may be required by the City/PWSB. In the event that the Chief Engineer's cooperation is required or requested after leaving office, the PWSB shall reimburse, upon presentation of written receipts, the Chief Engineer for the costs and expenses reasonably connected to such cooperation. In the event that the Chief Engineer is required to travel to Rhode Island to render such cooperation, the PWSB shall, upon being provided with written assurance that she used vacation and/or personal leave for the time spent in Rhode Island, also pay the Chief Engineer a reasonable per diem; provided, however, that the Chief Engineer shall not be entitled to a per diem if a claim has been made against him in his individual capacity.

In such case, the PWSB has agreed to defend, hold harmless and indemnify the Chief Engineer, counsel for the City shall serve as counsel for the Chief Engineer; provided, however, that in the event of a conflict of interest, as determined by said counsel with input from the Chief Engineer, the Chief Engineer may engage counsel, who maintains

his or her principal place of business within the State of Rhode Island, of his choice, in which event, the PWSB shall indemnify the Chief Engineer for the reasonable and necessary costs of a legal defense.

7. EVALUATION

The Chief Engineer shall be evaluated on an annual basis in accordance with generally recognized and accepted guidelines and policies applicable to chief engineers and agreed to by the parties.

8. TERMINATION

This Agreement and the Chief Engineer's employment thereunder may be terminated on the grounds and conditions as provided below:

A. Unilateral Termination by Board

The PWSB may, at its option, unilaterally terminate this Agreement by giving the Chief Engineer written notice that it is invoking this Section 8-A and that the Agreement will terminate sixty (60) days from the date of said notice. In the event of such unilateral termination, the Board shall pay to the Chief Engineer, as severance pay, an amount equal to one year of her then-current annual base salary. This severance payment shall be paid in equal monthly payments for twelve (12) months. The Board shall also pay, if applicable, the Chief Engineer terminal benefits in accordance with paragraph I of this Section 8.

B. Termination for Cause by PWSB

The PWSB may terminate this Agreement for cause. For purposes of this provision, "cause" shall mean: (1) conviction of a felony or other crime involving moral turpitude; (2) repeated, willful violations of established Board policies; and (3) willful neglect of duties. For purposes of this section, an act, or failure to act, shall be considered "willful" if it is done, or not done, by the Chief Engineer in bad faith or without reasonable belief that her act or omission was done in the best interest of the PWSB; provided, however, that the initial determination of whether the act or omission was "willful" shall be made by the PWSB. The PWSB shall provide the Chief Engineer a written notice of "cause" and allow the Chief Engineer thirty (30) days from receipt of the written notice to cure any described failures.

In the event that the PWSB discharges the Chief Engineer for cause, it shall be done in accordance with the procedures set forth in Section 9. All obligations of the PWSB under this Agreement shall cease as of the date of the termination; provided, however, that the Board shall pay, if applicable, the Chief Engineer terminal benefits in accordance with paragraph I of this Section 8.

C. Termination for Cause by Chief Engineer

The Chief Engineer may at her option terminate this Agreement by written notice to the Board if: (i) the Board unreasonably fails to perform or observe any of the material terms or provisions of this Agreement and such failure is not cured within thirty (30) days after the Board receives written notice thereof from the Chief Engineer; or (ii) there is a material reduction in the scope of the Chief Engineer's duties or authority for

a period exceeding three (3) months without her written consent, unless such reduction is authorized by state law or necessitated by the Chief Engineer's health, and such reduction is not withdrawn within thirty (30) days after the PWSB receives written notice thereof from the Chief Engineer. In the event that the Chief Engineer terminates the contract pursuant to this Section 8-D, the PWSB shall pay the cost of the Chief Engineer's health insurance coverage for a period of twelve (12) months; provided, however, that this obligation shall end if and when the Chief Engineer becomes eligible for health insurance from a subsequent employer. The PWSB shall also pay the Chief Engineer a sum equal to twelve (12) months of her then current salary, such sum to be paid over a twelve-month period, and, if applicable, terminal benefits in accordance with paragraph I of this Section 8, shall cease.

D. Termination upon Disability

In the event that the Chief Engineer is, or will be, unable to perform her duties for a period of at least one year due to illness, physical incapacity and/or mental incapacity, this Agreement shall, effective upon a majority vote of a quorum of the PWSB, terminate all obligations of the PWSB, except that the PWSB shall pay: (1) all unpaid salary through the date of said vote; (2) the cost of the Chief Engineer's health insurance coverage for a period of six months and a sum equal to three months of her then current salary, such sum to be paid over a six month period; and (3) terminal benefits, if applicable, in accordance with paragraph I of Section 8 of this Agreement. Notwithstanding the foregoing, no such termination shall occur unless and until such incapacity, and its cause, is established by competent medical documentation provided by two (2) physicians specializing in the area of medicine that resulted in the incapacitation.

In the event that the Chief Engineer is, or will be, unable to perform her duties for a period of more than six, but less than twelve, months due to illness, physical incapacity and/or mental incapacity, the PWSB may, effective upon a majority vote of a quorum of the PWSB, and after the exhaustion of sick leave, make an appropriate deduction from the Chief Engineer's salary, including deferred compensation, for the period of incapacitation.

E. Non-Compliance with State Law or Residency Provision

This Agreement shall terminate, and all obligations of the PWSB shall cease, in the event of the Chief Engineer's non-compliance with any provisions of state law that relate to the Chief Engineer's qualifications for holding the position of Chief Engineer or the failure of the Chief Engineer to be a resident of the City of Providence in accordance with Section 2; provided however, that the PWSB shall pay, if applicable, the Chief Engineer terminal benefits in accordance with paragraph I of this Section 8.

F. Retirement of the Chief Engineer

In the event of retirement of the Chief Engineer, the Chief Engineer shall notify the PWSB at least sixty (60) days prior to the date of retirement or within such other time period as may be mutually agreeable to the parties. All obligations and agreements of the parties as contained in this Agreement shall cease as of the date of the retirement. Notwithstanding the foregoing, the PWSB shall pay the Chief Engineer unpaid salary

earned through the effective date of her retirement and, if applicable, terminal benefits in accordance with paragraph I of this Section 8.

G. Death of the Chief Engineer

This Agreement shall terminate upon the death of the Chief Engineer at which point all obligations of the PWSB shall cease. Notwithstanding the foregoing, the PWSB shall pay to the estate of the Chief Engineer unpaid salary earned through the date of her death and, if applicable, terminal benefits in accordance with paragraph I of this Section 8.

H. Mutual Agreement of the Parties

This Agreement may be terminated by written agreement of the parties, at which point all obligations and duties of the parties shall cease. Notwithstanding the foregoing, the PWSB shall pay the Chief Engineer unpaid salary earned through the effective date of this Agreement and, if applicable, terminal benefits in accordance with paragraph I of this Section 9.

I. Terminal Benefits

In the event of any termination of this Agreement, the Chief Engineer shall in addition to the pay and benefits referenced in this Section 8, be entitled to receive all accrued pay and benefits under paragraph E of Section 6 (Vacation) of this Agreement (e.g., payment for accrued leave), under applicable benefit plans, and wider applicable law.

9. PROCEDURE UPON TERMINATION OF CHIEF ENGINEER FOR CAUSE

In the event the PWSB proposes to discharge Chief Engineer for cause, it shall notify the Chief Engineer, in writing, of the proposed action and shall provide the Chief Engineer with a complete and detailed statement of the reasons therefor. The Chief Engineer shall be placed on administrative leave with pay as of the date of this notification. The Chief Engineer shall notify the PWSB in writing not later than fifteen (15) days from the date of her receipt of written notice of the PWSB's proposed action of her desire contest her termination. If no such demand is timely made, the Chief Engineer shall be terminated as of the sixteenth (16th) day after the date of her receipt of written notice of the PWSB's action and all obligations of the PWSB under this Agreement shall cease as of that date; provided, however, that the PWSB shall pay, if applicable, the Chief Engineer terminal benefits in accordance with paragraph I of Section 8.

Upon receipt of timely written notification of the Chief Engineer's desire to contest her termination for cause, the PWSB shall notify the Chief Engineer of the date and place of a hearing to be conducted as set forth below. The Chief Engineer shall, unless otherwise agreed to in writing by the parties, be entitled to have this bearing not less than forty (40) days and no more than fifty (50) days from the date of her request for such a hearing. Unless otherwise agreed to in writing between the parties, the hearing shall be conducted as contained in Appendix number 1. During this period, the Chief Engineer shall continue on Administrative Leave.

10. RENEWAL

Renewal of the Chief Engineer's employment as Chief Engineer of the Providence Water Supply Board shall be considered by the PWSB in the last year of the Chief Engineer's employment contract. Not later than six (6) months prior to the end of the last year of the Chief Engineer's employment contract, the PWSB shall notify the Chief Engineer in writing whether the PWSB elects to renew or not renew her employment contract or offer the Chief Engineer a new employment contract. The PWSB's failure to give the required notice of nonrenewal herein described within the time specified shall constitute an election to employ the Chief Engineer for the following year under the same terms and conditions as are contained in the last year of this contract, unless otherwise agreed to in writing by the parties.

The Chief Engineer shall have thirty (30) days from the date of such election to notify the PWSB of Chief Engineer's acceptance of such employment. Failure of Chief Engineer to provide the PWSB with such notice of acceptance on or before the thirtieth (30th) day aforesaid shall be considered as nonacceptance. Notice by the Chief Engineer to the PWSB under this provision shall be deemed sufficient by notifying the PWSB Chairman in writing of the Chief Engineer's decision, unless otherwise agreed to in writing by the parties.

Nothing herein contained shall prohibit the PWSB and the Chief Engineer, as the parties may agree in writing, from entering into other time lines and procedures as the parties may find desirable.

Upon providing the Chief Engineer with proper notice of nonrenewal, the PWSB shall provide the Chief Engineer reasonable paid leave time from her duties in order for the Chief Engineer to seek and obtain other employment, which leave time shall be over and above the leave accumulated and the leave to which she would otherwise be entitled under this Agreement and/or PWSB policy.

11. MODIFICATION

The construction and operation of this Agreement will be in accordance with the laws of the State of Rhode Island, and will not be modified except by written consent of the parties hereto.

12. NOTICES

All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be, in writing and shall be hand delivered, sent by overnight courier or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or, addressed as follows:

(i) If to the PWSB:

(a) Chairman's business address

Chairman
Providence PWSB
552 Academy Avenue
Providence, RI 02908-2792

(b)

PERSONAL AND CONFIDENTIAL

with a copy (which shall not constitute notice) to:

Joseph Fernandez
City Solicitor
Providence, RI 02903
Fax: (401) 351-7596

(ii) To Chief Engineer:

Pamela M. Marchand
Address

with a copy (which shall not constitute notice) to:

Name
Address
Address

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be hand delivered, sent, mailed, in the manner described above, shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee with the return receipt, the delivery receipt, or at such time as delivery is refused by the addressee upon presentation.

13. SEVERABILITY

The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect.

14. ASSIGNMENT

The rights and obligations of the parties to this Agreement shall not be assignable or delegable. Notwithstanding the foregoing, in the event of the death of the Chief Engineer, the PWSB shall pay to the estate of the Chief Engineer any unpaid salary earned through the date of her death and if applicable, terminal benefits in accordance with paragraph I of Section 8.

15. MEDICAL EXAMINATION

The Chief Engineer agrees to submit to a comprehensive medical examination by a registered physician not less than once every contract year, at the expense of the PWSB. The results of such examination, certifying the medical competency of the Chief Engineer to perform her duties, shall be submitted to the Chairperson of the PWSB prior to the end of year of this agreement.

16. BINDING EFFECT

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon the parties hereto upon ratification by the PWSB in accordance with the provisions of state law and PWSB policy and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, legal representatives, successors and assigns.

17. AMENDMENT; WAIVER

This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto. Neither the waiver by either of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

18. HEADINGS

Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

19. GOVERNING LAW

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall, be governed by and construed in accordance with the laws of Rhode Island (but not including any choice of law rule thereof that would cause the laws of another jurisdiction to apply).

20. FORUM SELECTION CLAUSE

The Chief Engineer and the PWSB agree that any dispute or claims relating to the rights and obligations of the parties to this Agreement shall be brought in the

Providence County Superior Court and the Chief Engineer expressly consents to the jurisdiction and venue of said court.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties respecting the employment of the Chief Engineer, there being no representations, warranties or commitments except as set forth herein.

22. COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be an original and all of which shall be deemed to constitute one and the same instrument.

23. MAINTENANCE OF PROFESSIONAL ENGINEER

The chief engineer shall retain the professional certification of professional engineer as required by the City Charter during the term of this agreement. The chief engineer shall forfeit their employment if such certification is not maintained.

IN WITNESS WHEREOF, the PWSB has caused this employment Agreement to be approved by vote of the PWSB at a public meeting duly held on the 15th day of December 2005. For her part, the Chief Engineer has approved this Employment Agreement by signing the same to be effective as of the day and date noted above.



Chairman,
Providence Water Supply Board



Pamela M. Marchand, P.E.

12-15-05
Date Signed

12-15-05
Date Signed

Appendix number 1 Termination for Cause process

- (a) The PWSB shall, within fourteen (14) days of the scheduled hearing, provide to the Chief Engineer, or her designee: (1) a copy of each document intended to be used in support of each alleged reason for discharge; (2) a list of witnesses who may be called to testify at the hearing, including their names, official titles or other identifying information, and a brief description about which each such witness is expected to testify;
- (b) The Chief Engineer shall, within seven (7) days of the scheduled hearing, provide to the PWSB, or its designee: (1) a copy of each document intended to be used in her defense; and (2) a list of witnesses who may be called to testify at the hearing, including their names, official titles or other identifying information, and a brief description about which each such witness is expected to testify;
- (c) The hearing will be held before a quorum of members of the PWSB then serving. The Chief Engineer may elect to have this hearing conducted in open or closed session pursuant to the Rhode Island Open Meetings Act. The Chief Engineer shall be entitled to legal counsel and shall have the right to cross examine any adverse witnesses and present any witness or documentary evidence on her behalf;
- (d) The PWSB and the Chief Engineer shall each have: fifteen (15) minutes in which make an opening statement; three (3) hours in which to present evidence to the PWSB, inclusive of cross-examination; and (3) fifteen (15) minutes in which make a closing statement. The PWSB may, but is not required to, extend the evidentiary portion of the hearing upon request of either party. In no event, however, shall the Chief Engineer be required to accept less time to present her case than that given to the PWSB;
- (e) The PWSB shall have the burden of proof, by the preponderance of the evidence, to establish cause for the proposed termination, and, if applicable, a "willful" act or omission on the part of the Chief Engineer;
- (f) The Rhode Island Rules of Civil Procedure and Rules of Evidence shall not apply to the hearing, but shall serve as guidelines. All evidentiary issues shall be resolved by the Chair of the PWSB.
- (f) Upon the conclusion of the hearing, the PWSB shall discuss whether the Chief Engineer should be terminated, retained, or given some less punishment. The Chief Engineer may elect to have this discussion conducted in closed or open session pursuant to the Rhode Island Open Meetings Act;
- (h) After the discussions are concluded, the PWSB shall take a vote to determine whether the Chief Engineer shall be terminated, retained, or given some lesser punishment;
- (i) The employment status of the Chief Engineer shall be determined by a simple majority of the members of the PWSB then serving.

- (j) Should the PWSB vote to terminate the Chief Engineer for cause, such termination will be effective immediately and all obligations of the PWSB under this Agreement shall cease; provided, however, that the PWSB shall pay, if applicable, the Chief Engineer terminal benefits in accordance with paragraph I of Section 8.
- (k) If the PWSB votes to terminate the employment of the Chief Engineer, the PWSB shall provide her with a reasonably detailed statement of the reasons therefor.
- (l) The Chief Engineer shall retain the right to appeal a decision to terminate her employment in accordance with state law.
- (m) A stenographic record of the proceeding shall be kept and made available to the Chief Engineer.