

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the “Agreement”), dated as of January 1, 2014, is made by and between Manchester Water Works, a department of the City of Manchester, New Hampshire, with a mailing address of 281 Lincoln Street, Manchester, New Hampshire 03103, (“MWW”) and the Town of Auburn, a New Hampshire municipality, with a mailing address of P.O. Box 309, Auburn, New Hampshire 03032 (the “Town”). (MWW and the Town are at times referred to as the “Parties” and individually as a “Party”.)

WHEREAS, MWW provides drinking water and fire protection to approximately 160,000 people living in the City of Manchester and portions of the Town, Bedford, Derry, Goffstown, Hooksett and Londonderry;

WHEREAS, the water treated and distributed by MWW comes from Lake Massabesic. MWW owns much of the land surrounding Lake Massabesic including approximately 3,827 acres within the Town, which is subject to payment in lieu of property tax pursuant to NH RSA 72:11 I (the “MWW Land”);

WHEREAS, pursuant to recently enacted RSA 72:11, II, MWW and the Town are permitted to negotiate an agreement to establish MWW’s payments in lieu of taxes to the Town.

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

1. COMMENCEMENT, TERM, AND RENEWAL TERMS. This Agreement shall govern MWW’s payments in lieu of taxes pursuant to NH RSA chp. 72 for a period of five tax years, beginning January 1, 2014 through December 31, 2018 (the “Initial Term”) and for all subsequent periods during which the Agreement is renewed. This Agreement shall automatically be extended for subsequent 5-year terms at the end of the Initial Term and each renewal term thereafter (the “Renewal Terms”) unless MWW or the Town provides written notice to the other at least six months prior to the end of the then current term (i) of its intention to terminate the Agreement at the end of the then current term or (ii) of its intention to negotiate the terms of a replacement agreement.

2. PAYMENTS IN LIEU OF TAXES.

2.1 Initial Term PILOT. For each of the following calendar years, MWW shall make the following annual payment in lieu of taxes to the Town:

2014	\$515,000
2015	\$435,000
2016	\$400,000
2017	\$350,000
2018	\$300,000

Each annual payment amount shall be billed by the Town and paid by MWW to the Town on or before July 1 and December 1 in two equal, semiannual payments (crediting any amount previously paid with respect to 2014 to the July 1, 2014 payment).

2.2 Renewal Term PILOT. Beginning with the year commencing January 1, 2019 and continuing thereafter through all Renewal Terms, MWW’s annual payment in lieu of taxes to the Town shall be increased from the immediately prior tax year in an amount equal to any increase in the “Consumer Price Index for All Urban Consumers (CPI-U) Northeast - All Items - 1982-84=100 Percent Change from 12 Months Ago” (“Northeast Region CPI”) as

published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau") in the prior calendar year. If the Northeast Region CPI is unavailable, MWW's annual payment in lieu of taxes to the Town shall be increased to reflect any increase in an equivalent index, as determined by the Bureau. In no event shall MWW's annual payment in lieu of taxes increase by more than 3% in any one year.

2.3 Adjustments to the PILOT. In the event that (i) MWW conveys, without restriction, land to non-governmental persons or entities, other than conveyances to not-for-profit organizations described in Section 3.5 and (ii) the area of such conveyances, in the aggregate, represents 20% or more of the total area of the MWW Land, the annual payments required pursuant to Sections 2.1 and 2.2 shall be adjusted downward to reflect the reduction in MWW Land based on the assessed valuation of the conveyed parcels as a percentage of the total assessed valuation of the MWW Land. Following such adjustment, the term "MWW Land" shall mean the remaining MWW Land, and further adjustments shall apply to each aggregate 20% reduction from the total MWW Land area remaining at the time of the preceding reduction in the payment.

In the event that (i) MWW acquires additional land contiguous to the MWW Land and (ii) such acquisitions, in the aggregate, is equivalent to 20% or more of the total area of the MWW Land, the annual payments required pursuant to Sections 2.1 and 2.2 shall be adjusted upward to reflect the increase in MWW's land in Auburn based on the assessed valuation of the acquired parcels as a percentage of the total assessed valuation of the MWW Land. Following such adjustment, the term "MWW Land" shall include such aggregate acquisitions, and further adjustments shall apply to each aggregate 20% increase in the total MWW Land area from the time of the preceding increase in the payment.

3. Fee Upon Sale of MWW Land.

3.1 Land Sale Fee. MWW shall pay a fee to the Town whenever it sells or transfers any portion of the MWW Land to a third party (the "Land Sale Fee").

3.2 Notice of Sale. If MWW sells or transfers any portion of the MWW Land to a third party, MWW shall send to the Town written notice of the conveyance and the purchase price, consisting of cash and any other form of consideration, (the "Sales Price") no later than 30 days following the sale or transfer. The Town shall have 60 days from the date of MWW's notice to send to MWW a written objection if it determines that the Sales Price does not represent fair market value to the Sales Price.

3.3 Amount of Fee. If the Town does not object to the Sales Price as required in Section 3.2, the Land Sale Fee shall equal 15% of the Sales Price. MWW shall pay the Land Sale Fee to the Town within 15 days following the expiration of the Section 3.2 objection period.

3.4 Sales Price Dispute. If the Town objects to the Sales Price, the Town and MWW shall have 90 days following the date of the Town's objection (the "Fee Negotiation Period") to negotiate a different value to use in determining the Land Sale Fee. If the Fee Negotiation Period lapses without an agreement between the Parties and the Parties do not elect to extend the Fee Negotiation Period, the Town and MWW shall select a mutually acceptable, qualified independent appraiser to determine the fair market value of the transferred parcel. If the report of the independent appraiser indicates that the Sales Price and the appraised fair market value differ by 20% or more, the Land Sale Fee will equal 15% of the appraised value, not 15% of the Sales Price. If the appraisal report indicates a differential between the Sales Price and the appraised value of less than 20%, the Land Sale Fee shall be

based on the Sales Price. MWW shall pay for the appraisal in the event that appraised value exceeds the Sales Price by 20% or more; the Town shall pay for the appraisal in the event that the appraised value does not exceed the Sales Price by 20% or more. MWW shall pay the Land Sale Fee to the Town within 15 days of the date of the appraisal.

3.5 Exception to Land Sale Fee. The Land Sale Fee payment requirements of this Section 3 shall not apply to any conveyance of MWW Land to a bona fide not-for-profit organization that (i) is an arms-length transaction with a purchaser that does not control and is not controlled by MWW and (ii) is subject to a binding agreement that requires that the sold or transferred MWW Land remain in its natural, undeveloped condition, provided MWW does not retain any rights to conduct its business, control, financially benefit from, or utilize the sold or transferred MWW Land. Requirements that a buyer or transferee maintain the sold or transferred land in its undeveloped condition or MWW's continuation of watershed protection activities or land and forest management practices on the sold or transferred MWW Land shall not be considered rights retained by MWW for the purposes of this provision.

4. Sand and Gravel Removal; Reduction of PILOT.

4.1 Sand and Gravel Removal. MWW will permit the Town to remove up to 100,000 cubic yards of sand and gravel from the portion of the MWW Land described as the Midway Pit, known as Auburn Tax Map #8, Lot #39, (the "Gravel Property") in accordance with plans developed by the Town, subject to the prior approval of MWW, to be used for Town municipal purposes only and not for distribution or resale. The gravel removal shall commence at a date chosen by the Town and will continue for the ten year term of this gravel agreement. The Town shall provide an annual accounting detailing the volume of sand and gravel removed from the Gravel Property. The report will be provided to MWW on or before November first of each year and the credit for each year shall be applied to the December first PILOT payment. The details of the Town's excavation operations shall be governed by a pit agreement to be entered into by MWW and the Town prior to the commencement of any excavation activity (the "Pit Agreement"). The rights and obligations of this Agreement to remove gravel shall terminate upon termination of this Agreement, including termination of any Renewal Term.

4.2 Fees and Permits. The Town will be responsible for payment of any taxes or fees that are assessable with respect to the removal of sand and gravel material from the Gravel Property including any Excavation Tax assessment pursuant to RSA 72-B:1 I(e). The Town will be responsible for obtaining all permits, licenses, and approvals necessary for the sand and gravel removal, including an Alteration of Terrain Permit from the New Hampshire Department of Environmental Services and a pit agreement and restoration plan for this project with the Town of Auburn Planning Board as required under RSA 155-E: 2 IV. The restoration plan shall be submitted to MWW for review and subject to the reasonable approval of MWW prior to submission to the Planning Board.

4.3 Restoration. The Town will be responsible for the restoration of the Gravel Property and any other portion of the MWW Land that is impacted by the Town's removal activities during the course of removing the sand and gravel, in accordance with the restoration plan developed for this project and provided to the Town of Auburn Planning Board as required by RSA 155-E:2, IV. The restoration shall include shredding of stumps, spreading of loam over the excavated area, and planting vegetation intended to deter erosion of the final grades and slopes.

4.4 Safety and Health. The Town shall be responsible for securing the site in a safe and prudent manner during the course of the excavation project. MWW will not be held responsible for any equipment left on the site during the course of the excavation project. The Town will seek to have police patrols check the Gravel Property during routine patrol shifts. The Town shall ensure that MWW shall have access to the Gravel Property throughout the duration of the project at all times. If, in the sole judgment of MWW, the sand and gravel removal is adversely impacting or threatens to adversely impact Lake Massabesic water quality, the Town must cease or alter its operation, as directed by MWW.

4.5 Payment. Prior to the Town commencing removal of sand and gravel from the Gravel Property, (i) the Parties shall determine the current market price for sand and gravel materials and agree on an average market price for all materials and (ii) the Town shall have a topographical survey of the area to be excavated professionally prepared, including the boundaries of the cubic area to be excavated and the approximate amount of material to be excavated over the 10 year period.. Excavation shall be limited to that area. If the Parties are unable to reach agreement on market price, they shall average the current price of sand and gravel material from the ten quarries closest to Auburn Town Hall. The Town shall credit to MWW ½ of the Market Price for one-tenth of the sand and gravel material to be removed from the Gravel Property against MWW's payments in lieu of taxes during the initial five years of the Pit Agreement and shall adjust the credit for the second five years of the Pit Agreement based upon the parties' agreement as to then current market price for sand and gravel (or in the absence of agreement, the average price determined in the manner described above). This credit shall not vary regardless of whether the actual volume of sand and gravel removed from the site in any year is more or less than one tenth of the sand and gravel to be removed and shall occur each year for the 10-year term of the Pit Agreement, unless earlier terminated.

4.6 Insurance. The Town shall name MWW as an additional insured on the Town's general liability and errors and omissions insurance policies. The Town will provide a Certificate of Insurance to MWW to document the coverage.

4.7 Title; Timber. MWW shall retain title to the Gravel Property and shall have the exclusive right to the timber on the Gravel Property. In the event that timber must be felled in order to remove sand and gravel, the Town must notify MWW, which will cut and remove the timber within a reasonable time following such notice.

5. Circle of Fun Playground. The Parties hereby amend the expiration date of the Lease executed between them dated August 16, 1996, as amended on or around June 28, 2006, of a portion of the parcel of land located at the corner of Bunker Hill Road and Route 121, on which the Town has located and maintains its Circle of Fun Playground (the "Circle of Fun Lease"), from August 15, 2016, such that the lease term runs with and is equivalent to the Term and Renewal Terms of this Agreement.

6. Access Driveway and Repairs of Griffin Mill Bridge.

6.1 Driveway Easement. MWW shall grant to the Town a temporary, 25-foot wide access easement (the "Driveway Easement") over the length of parcel shown on the Tax Maps of the Town as Map 7, Lot 30 (the "Driveway Easement Property") to provide access from Route 121 to properties owned by James and Janice Fusco, described on the Tax Maps of the Town as Map 7, Lots 29 and 29-1 the ("Fusco Properties"). The Town may locate a gravel driveway over the Driveway Easement, which shall be constructed and maintained by the Town in accordance with standards appropriate for its intended use. The precise location

of the Driveway Easement will be determined by MWW, and the driveway shall be located and constructed such that it does not disturb existing stone walls.

6.2 Bridge Reconstruction. As a condition of the Driveway Easement grant, Town shall have applied to the State of New Hampshire Department of Transportation (“DOT”) for bridge reconstruction funds to pay for the necessary repairs to Griffin Mill Bridge (the “Bridge”), which provides access to a public right-of-way from the Fusco Properties.

6.3 Easement Term. The Driveway Easement shall terminate immediately following the completion of Bridge reconstruction and its opening to regular traffic; provided that the Driveway Easement will terminate, regardless of Bridge reconstruction, upon the later of (i) fifteen years from the date of this Agreement or (ii) termination of this Agreement, including termination of any Renewal Term.

6.4 Restoration. Within 60 days of the termination of the Driveway Easement, the Town will remove from the Driveway Easement Property and from any affected MWW Land all materials used to construct the driveway and return the Driveway Easement Property and all affected MWW Land to its original condition at the time of this Agreement’s execution.

7. Community Center and Second Playground.

7.1 Easement Grant. MWW shall grant easements to the Town to use between three and five acres of the parcel of land shown on the Town’s Tax Maps as Map 10, Lot 20 (“Community Center Lot”) on which the Town will be permitted to:

- i. Construct and operate a community center, associated recreational space, and athletic fields on the Community Center Lot (the “Community Center Easement”); and
- ii. Construct and operate a playground on the Community Center Lot (the “Playground Easement”).

7.2 Easement Term. Each of the Community Center Easement and Playground Easement, respectively, shall terminate at the later of (i) fifteen years from the date of this Agreement or (ii) termination of this Agreement, including termination of any Renewal Term, *unless* the community center or playground, respectively, is constructed prior to the Agreement’s termination, in which event the Community Center Easement or Playground Easement, respectively, shall continue and the payment requirements of Section 7.3 shall apply. Notwithstanding the above, each such Easement will terminate on the date that the Town ceases use of the community center or playground improvements, respectively.

7.3 Easement Payment. If the proposed community center is constructed prior to the termination of the Agreement, following the Agreement’s termination, the Town shall pay to MWW (or credit MWW’s continuing annual payments in lieu of taxes) an amount each year equal to 10% of the assessed value of the raw land, as equalized by the State, of the easement portion of the Community Center Lot on record with the Town.

If the proposed playground is constructed prior to the termination of Agreement, following the Agreement’s termination the Town shall pay to MWW (or credit MWW’s continuing annual payments in lieu of taxes) an amount each year equal to 10% of the assessed value of the raw land, without improvements, and as equalized by the State, of the playground easement portion of the Community Center Lot on record with the Town.

7.4 Construction. The construction plans for the community center and the playground shall be submitted to and will be subject to the approval of MWW prior to the

commencement of any construction activity. MWW shall have the exclusive right to the timber on the Community Center Lot, and in the event that construction of the community center or playground, the Town must notify MWW, which will cut and remove the timber within a reasonable time following such notice.

7.5 Second Right of Refusal. Prior to the termination of the Community Center Easement and the Playground Easement *plus* the duration of any period of payment pursuant to Section 7.3, the Town shall have a right of refusal to purchase the Community Center Lot, subject to the existing right of first refusal held by the Society from the Protection of New Hampshire Forests (“SPNHF”). If MWW elects during the Term or any Renewal Terms to sell the Community Center Lot to a third party other than SPNHF, MWW shall send written notice to the Town of its decision to sell the Subject Lot and the price below which it will not sell the Community Center Lot (“Minimum Price”). The Town shall have 60 days from the date of the notice to send to MWW a written response exercising its option to purchase the Community Center Lot. If the Town chooses not to exercise its option under this section or does not send a written response within 60 days, MWW may sell the Community Center Lot for no less than the Minimum Price, free of this restriction. If the Town exercises its option under this section, MWW shall sell and the Town shall purchase the Community Center Lot, at the Minimum Price, within 120 days of the Town’s response. Should the Town purchase the Community Center Lot, MWW shall not be obligated to pay the Land Sale Fee contemplated in Section 3 with respect to its sale to the Town.

8. Bike Path. MWW and the Town will cooperate and work with the State Department of Transportation in an effort to locate and enable the Town to construct and maintain a paved bicycle path along Route 121 in the Town (Manchester and Chester Roads) and possibly along stretches of Hooksett Road. The cost of bike path design and construction will be borne by the Town or entities other than MWW, and the Town will be responsible for maintenance of the bicycle path, maintaining adequate levels of insurance, and indemnifying and holding MWW, its employees, and commissioners harmless from all expenses, costs, losses, liability, and damages to any person, including the costs of defense and attorney’s fees for any action brought by a third party.

9. Miscellaneous.

9.1 Entire Agreement; Amendment. This Agreement is the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to its subject matter. This Agreement may be amended only by a written agreement between the Parties.

9.2 Waiver. If a Party fails to enforce any provision of this Agreement, it will not be precluded from enforcing that provision at another time.

9.3 Assignment. This Agreement and the rights granted under it may not be assigned or transferred by either Party without the written consent of the other Party. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.

9.4 Severability. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a

manner that most closely represents the original intent of the Parties, and the remaining terms and conditions of this Agreement will remain in full force and effect.

9.5 Governing Law. This Agreement shall be governed by and construed in accordance with law of the State of New Hampshire. In the event of any adjudication of any dispute under this Agreement, the prevailing Party in such action will be entitled to reimbursement of its attorneys' fees and related costs by the other Party.

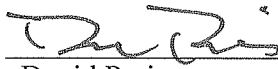
9.6 Force Majeure. Neither Party will be responsible for delays or failures in performance resulting from acts beyond its control, including acts of God, labor conflicts, acts of war or civil disruption, governmental regulations imposed after the fact, public utility outage failures, industry wide shortages of labor or material, and natural disasters.

9.7 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement must be in writing and sent to the addresses set forth in the preamble above. A notice will be deemed effective: (a) upon delivery, if delivered personally to an executive employee of a Party; (b) one business day after deposit, if delivered to a nationally recognized courier service offering guaranteed overnight delivery; or (c) three business days after having been deposited in the United States mails, certified mail, postage prepaid, return receipt requested.

9.8 Execution; Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and which together will constitute one and the same instrument.

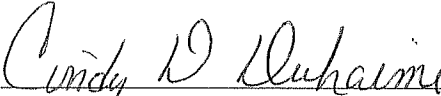
BY THEIR SIGNATURES, the parties have executed this Agreement as of the Effective Date, on the dates indicated below.

MANCHESTER WATER WORKS

By: 
Name: David Paris
Title: Director
Dated: 1/30/14

State of New Hampshire
County of Hillsborough

This instrument was acknowledged before me on the 30th day of January, 2014 by David Paris.


Notary Public, State of New Hampshire

My commission expires: 9/14/2016

BOARD OF WATER COMMISSIONERS

By: *Paul G. Lessard*
Name: Paul G. Lessard
Title: President
Dated: 1/30/14

State of New Hampshire
County of Hillsborough

This instrument was acknowledged before me on the 30th day of January, 2014 by Paul G. Lessard.

Cindy D. Lechaine
Notary Public, State of New Hampshire

My commission expires: 9/14/2016

TOWN OF AUBURN

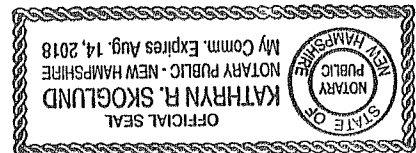
By: *Russell C. Sullivan*
Name: Russell C. Sullivan
Title: Board of Selectmen, Chair
Dated: 2/1/14

State of New Hampshire
County of Rockingham

This instrument was acknowledged before me on the 1st day of February, 2014 by Russell C. Sullivan.

Kathryn R. Skoglund
Notary Public, State of New Hampshire

My commission expires: 8/14/18



By: *James F. Headd*
Name: James F. Headd
Title: Board of Selectmen, Vice Chair
Dated: 2/1/14

State of New Hampshire
County of Rockingham

This instrument was acknowledged before me on the 1st day of February, 2014 by James F. Headd

Kathryn Skoglund
Notary Public, State of New Hampshire

My commission expires: 8/14/18



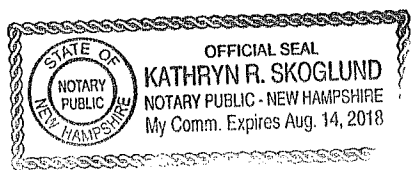
By: *Paul M. Raiche*
Name: Paul M. Raiche
Title: Board of Selectmen
Dated: 2/1/14


State of New Hampshire
County of Rockingham

This instrument was acknowledged before me on the 1st day of February, 2014 by Paul M. Raiche

Kathryn Skoglund
Notary Public, State of New Hampshire

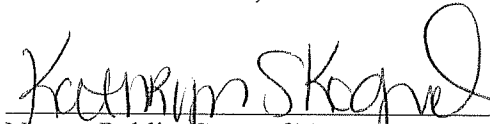
My commission expires: 8/14/18



By: 
Name: William G. Herman, CPM
Title: Town Administrator
Dated: 2/1/14

State of New Hampshire
County of Rockingham

This instrument was acknowledged before me on the 1st day of FEBRUARY 2014 by William G. Herman, CPM.


Notary Public, State of New Hampshire



My commission expires: 8/14/18