

AMENDMENT NO. 1 TO THE
WASTEWATER DISPOSAL AND WATER SERVICE AGREEMENT

This Amendment No. 1 is made and entered into as of July 1, 1998, by and between the City of Portsmouth, a municipal corporation located in Rockingham County, New Hampshire ("COP") and the Pease Development Authority, a body politic and corporate of the State, located in Rockingham County, New Hampshire ("PDA").

WHEREAS effective January 1, 1993, PDA and COP entered into a Wastewater Disposal and Water Services Agreement (the "Wastewater/Water Agreement") to provide certain water distribution and wastewater disposal services to the former Pease Air Force Base (to include the Airport District and so-called Extended Area);

WHEREAS on June 27, 1997, PDA acquired by lease from the United States of America - Department of the Air Force ("Air Force" or "Government") all of the remaining portions of the former Pease Air Force Base (to include portions of the Extended Area);

WHEREAS PDA and COP desire to amend the Wastewater/Water Agreement to reflect the current PDA leasehold and to incorporate other agreed changes in terms and conditions;

NOW, THEREFORE, the Wastewater/Water Agreement is hereby modified in the following particulars, but no others:

A. Section 1.1. Definitions of Certain Terms is hereby deleted in its entirety and the following Section 1.1. is inserted in its place:

1.1 Definitions of Certain Terms. As used in this Agreement, the following terms have

the following meanings:

Administrators: as defined in Section 4.1 hereof.

Airport District: That portion of Pease as it is defined in RSA 12-G:2(I) as of January 1, 1998, and remaining following contraction of the Airport District by removal of the "Pilot Property".

Application: as defined in the Sublease.

COP: the City of Portsmouth.

Extended Area: the area of the Pease not included within the Airport District or the Pilot Property.

Extended Area Services: as defined in Section 3.3 hereof.

Master Lease: a lease by and between PDA and the United States of America, acting through the Air Force, dated April 14, 1992, as amended by a Supplement No. 1 thereto dated August 4, 1992, a Supplement No. 2 thereto dated July 15, 1993, and a Supplement No. 3 thereto dated June 27, 1997, pursuant to which PDA has leased the property described therein.

Municipal Services: Fire Services, Police Services and/or Public Works Services, but specifically excluding water and wastewater services.

Municipal Services Agreement: an Agreement by and between PDA and COP effective July 1, 1998, and concerning the provision of certain Municipal Services.

NPDES Permit: as defined in Section 3.2 hereof.

Pease or Pease Base: the former Pease Air Force Base.

PDA: the Pease Development Authority.

Stormwater: stormwater runoff, snow melt runoff and drainage.

Sublease: as defined in Section 2.1 hereof.

Systems: as defined in the Sublease.

Transfer Agreement: as defined in Section 2.2 hereof.

Wastewater Disposal

Facilities: as defined in the Sublease.

Wastewater Disposal

Service: Airport District Wastewater Disposal Service, Pilot Property Wastewater Disposal Service and Extended Area Wastewater Disposal Service.

Wastewater Treatment

Facility or WWTF: the wastewater treatment facility that is part of the System.

Wastewater/Water

Services: as defined in Section 3.2 hereof.

Wastewater/Water

Service Fees: as defined in Section 5.1 hereof.

Water Distribution

Facilities: as defined in the Sublease.

Water Distribution

Service: Airport District Water Service, Pilot Property Water Service and Extended Area Water Service.

Water Tower: all buildings and fixtures comprising the Water Tower located in the New Hampshire Air National Guard Cantonment Area described in more detail and shown on Appendix I attached hereto.

B. Section 3.2, Airport District Services, The first paragraph of Section 3.2 is hereby deleted in its entirety and the following new paragraph is inserted in its place:

3.2 Airport District and Pilot Property Services. COP shall provide services to all portions of the Airport District and Pilot Property. Such services shall, as COP deems necessary, include the following component services:

C. Section 3.3. Extended Area Services is hereby amended by inserting the phrase "(excluding any Airport District or Pilot Property)" after the words "Services in the Extended Area at Pease".

D. Section 3.5 Restrictions on Services is hereby amended by inserting the following at the end of the first sentence "and water use restrictions uniformly imposed on commercial properties during periods of exigent circumstances."

E. Section 4.2 Arbitration is hereby amended by deleting the second paragraph in its entirety and inserting the following new paragraph in its place.

4.2 Arbitration. Provided all Administrators consent to arbitration, arbitration shall be conducted by a panel of three arbitrators in accordance with the rules of the American Arbitration Association sitting at Boston, Massachusetts. The decision of the three arbitrators, by a majority vote, shall be final and binding on the parties hereto and not subject to any appeal except as otherwise contemplated in RSA 542:8 and any successor statute. All arbitration proceedings shall be held in a

public forum and costs of arbitration shall be shared equally by the parties to the arbitration.

F. Section 5.1 Airport District Service Fees is hereby deleted in its entirety and the following new Section 5.1 is inserted in its place.

5.1 Wastewater/Water Service Fees. COP shall charge each service location in the Airport District and Pilot Property for Services at the same rate or rates as are applicable in COP with respect to such service (the "Wastewater/Water Service Fees"). The Wastewater/Water Fees shall be calculated applying the same basis as is applied to service locations throughout COP; provided that COP shall not differentiate between Pease and other areas of the City in the calculation of such fees. Notwithstanding any other provision herein to the contrary, PDA shall not pay any such fees for Services used at the Pease Golf Course, up to an annual maximum usage of 15 million gallons, for as long as the PDA shall be the owner or lessee thereof or at any location owned or leased and occupied by PDA as "occupied by PDA" is defined in the Municipal Services Agreement.

G. Section 5.3 Costs for System Repairs and Improvements is hereby amended by adding a new Subsection 5.3.1 and a Section 5.5.

5.3.1 Notwithstanding the provisions of Section 5.3 above, the Parties agree that the costs of repairs and improvements to the WWTF identified as of June 30, 1998 at a total cost of \$7.3 million shall be allocated as follows:

A.	COP	\$2.18 Million
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- B. PDA \$2.23 Million
- C. Redhook Ale Brewery \$1 million (previously paid)
- D. NHDES State Aid Grant \$1.89 Million

The COP and PDA hereby agree to jointly cooperate in restructuring the existing State financing for the WWTF to implement the cost assessment set forth in this Section 5.3.

5.5 Costs for Nitrate Remediation: In the event that repairs or improvements to the Water Distribution System become necessary to remediate nitrates in the groundwater, COP agrees to undertake such repairs or improvements to the System. Except as otherwise set forth below, costs incurred by COP for such repairs or improvements shall be apportioned among all users of COP Water Services in the same manner as such costs are normally apportioned among all system users.

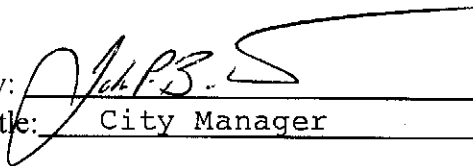
5.5.1 Exceptions. With respect to costs associated with the remediation of nitrates in ground water the following shall apply:

- A. PDA shall undertake the cost, to a maximum of \$300,000, which \$300,00 shall be allocated to PDA from the NHDES State Aid Grant Funding for the WWTF, to design and construct blending facilities to allow water from the Pease aquifer to be blended with COP water to meet Federal and State drinking water standards; and
- B. In the event a nitrate treatment plant is required to be constructed

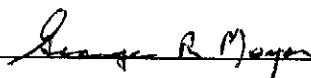
for the remediation of nitrates in ground water, PDA shall contribute a maximum of \$1.2 million dollars to COP for the cost of the design and construction of said treatment plant; provided, however, that PDA's obligation for reimbursement shall terminate on the twentieth (20th) anniversary following the effective date of this Amendment No. 1.

All other terms and conditions of the Wastewater/Water Agreement not expressly modified by this Amendment No. 1 are hereby ratified and shall remain in full force and effect.

CITY OF PORTSMOUTH

By: 
Title: City Manager

PEASE DEVELOPMENT AUTHORITY

By: 
Title: EXEC. DIR.