

## WASTEWATER DISPOSAL AND WATER FACILITIES TRANSFER AGREEMENT

This WASTEWATER DISPOSAL AND WATER FACILITIES TRANSFER AGREEMENT ("Agreement") dated as of January 1, 1993, by and between the PEASE DEVELOPMENT AUTHORITY a body corporate and politic organized under the laws of the State of New Hampshire ("PDA") and the CITY OF PORTSMOUTH, NEW HAMPSHIRE, a New Hampshire municipal corporation having a mailing address of 1 Junkins Avenue, Portsmouth, County of Rockingham, State of New Hampshire 03801-0628 ("Portsmouth").

### Recitals

A. The PDA is an agency of the State of New Hampshire established pursuant to RSA Ch. 12-G, "Pease Development Authority," for the redevelopment of the former Pease Air Force Base ("Pease") and is authorized to enter into this Agreement pursuant to the provisions contained therein.

B. The PDA anticipates acquiring fee title to the portion of Pease comprising the Airport District from the United States Air Force (the "Air Force") by public benefit transfer (i.e. transfer without consideration) pursuant to Section 13(g) of the Federal Surplus Property Act of 1944, 50 App. USC §1622(g) (the "Public Benefit Transfer"). The terms of such acquisition are set forth in an Amended Application for Public Benefit Transfer executed by the PDA (the "Application") and accepted by the Air Force on April 14, 1992 (the "Acceptance"). Pending final disposition of the Airport District in the accordance with the terms of the Application and Acceptance, the PDA and Air Force have entered into a Lease as of April 14, 1992 (the "Master Lease") pursuant to which the PDA has leased the property described in Exhibit A and B thereto (the "Airport District").

C. Pending completion of the Public Benefit Transfer, the PDA and Portsmouth have entered into a Wastewater Disposal and Water Distribution Facilities Sublease and License Agreement of even date herewith (the "Sublease") pursuant to which the PDA has subleased to Portsmouth certain wastewater disposal, water distribution and related facilities and equipment and has granted Portsmouth a license relating to Portsmouth's operation of certain wastewater disposal, water distribution and related facilities during the terms of the Master Lease and any extension or renewal thereof. (Capitalized terms not otherwise defined herein shall have the meanings set forth in the Sublease.)

D. The PDA and Portsmouth have agreed to provide for elimination of the time limitations contained within the Sublease with respect to Portsmouth's ownership of existing wastewater disposal, water distribution and related facilities and Portsmouth's license rights upon completion of the Public Benefit Transfer.

## Operative Provisions

NOW, THEREFORE, in consideration of the foregoing recitals, which recitals are incorporated herein by reference, and of the covenants herein contained, and of other good and valuable consideration, the receipt of which is hereby acknowledged, the PDA and Portsmouth hereby agree as follows:

### 1.0 Transfer of Title and Elimination of Time Limits.

1.1 Upon the occurrence of the Public Benefit Transfer, the PDA will as soon as practicable:

1.1.1 Execute a bill of sale or deed in the case of real property transferring to Portsmouth title to the wastewater disposal, water distribution and related facilities subleased to Portsmouth in Section 1.1 of the Sublease (the "Facilities").

1.1.2 Execute a new license agreement granting to Portsmouth the same license rights as are granted to Portsmouth in the Sublease but eliminating the time limitation specified in Section 1.2 of the Sublease.

1.2 The transfer of the title to wastewater disposal, water distribution and related facilities and the granting of license rights pursuant to Section 1.1 of this Agreement will be subject to all of the same terms, covenants and conditions of the Sublease and the Application and Acceptance, as the Public Benefit Transfer to the PDA is subject.

### 2.0 Miscellaneous.

2.1 Each individual executing this Agreement on behalf of PDA and of Portsmouth represents and warrants that he or she is duly authorized to execute this Agreement on behalf thereof, and that this Agreement is binding thereon in accordance with its terms.

2.2 This Agreement, and the Portsmouth Agreements as defined in the Sublease of even date herewith between PDA and Portsmouth, cover in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning the subject matter hereof and shall supersede all preliminary negotiations and agreements of every kind or nature whatsoever with respect thereto; and no other person, firm or corporation has at any time had any authority from the PDA to make any representations or promises on behalf of the PDA. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statute, law, or custom to the contrary notwithstanding. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

2.3 Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between the PDA and Portsmouth.

2.4 This Agreement shall be construed and enforced in accordance with the laws of the State of New Hampshire, and, where applicable, the laws of the United States of America.

2.5 Any actions or proceedings with respect to any matters arising under or growing out of this Agreement shall be instituted and prosecuted only in courts located in the State of New Hampshire.

2.6 This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

2.7 The provisions of this Agreement shall inure to the benefit of, and be binding upon, the respective successors and assigns of the PDA and Portsmouth. Portsmouth shall not, without the written consent of the PDA, assign its rights under this Agreement unless such assignment is incident to a transaction which shall have been approved by the NHPUC.

2.8 If any provisions of this Agreement are deemed invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

PEASE DEVELOPMENT AUTHORITY

By: 

Its: Executive Director

CITY OF PORTSMOUTH

By: 

Its: City Manager