

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is dated October 12, 2005, by and between **R. W. Beck, Inc.** ("CONSULTANT"), with offices at Corporate Center, East Wing, 550 Cochituate Road PO Box 9344, Framingham, Massachusetts 01701+9344 and **City of Nashua, New Hampshire** ("OWNER"), with offices at 229 Main Street, Nashua, NH 03061.

NOW, THEREFORE in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Scope of Services:** CONSULTANT and OWNER agree CONSULTANT will perform water utility oversight services as described in the Scope of Services attached as Exhibit A in accordance with the schedule set forth therein for water utility oversight in Nashua, New Hampshire. The CONSULTANT designates Paul B. Doran, P.E., as the CONSULTANT's Project Manager for services to the OWNER. If a replacement project manager is required, the CONSULTANT will notify the OWNER in writing and such replacement will be subject to approval by the OWNER, which shall not be unreasonably withheld.
2. **Independent Contractor:** CONSULTANT is an independent contractor and is not an employee of OWNER. Services performed by CONSULTANT under this Agreement are solely for the benefit of OWNER. Nothing contained in this Agreement creates any duties on the part of CONSULTANT toward any person not a party to this Agreement.
3. **Standard of Care:** CONSULTANT will perform services under this Agreement with the degree of skill and diligence normally practiced by professional engineers or CONSULTANTS performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.
4. **Changes/Amendments:** This Agreement and its exhibits constitute the entire agreement between the Parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment signed by both Parties. The estimate of the level of effort, schedule and payment required to complete the Scope of Services is reflected herein. Services not expressly set forth in this Agreement or its exhibits are excluded. CONSULTANT shall promptly notify OWNER if changes to the Scope of Services affect the schedule, level of effort or payment to CONSULTANT and the schedule and payment shall be equitably adjusted. If CONSULTANT is delayed in performing its services due to an event beyond its control, including but not limited to fire, flood, earthquake, explosion, strike, transportation or equipment delays, act of war, or act of God, then the schedule or payment under the Agreement shall be equitably adjusted, if necessary, to compensate CONSULTANT for any additional costs due to the delay.
5. **Fee for Services:** The fee for the services under this Agreement will be based on the



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following.

- A. For *OWNER's Support for Public Utility Commission Proceedings* outlined in the Scope of Services of this Agreement: The fee will be based on the actual hours of services furnished multiplied by CONSULTANT's Billing Rates included in Exhibit B, plus all reasonable expenses directly related to the services furnished under this Task.
- B. For *Initial Tasks* outlined in the Scope of Services of this Agreement: A Fixed Fee of Two Hundred Thirty Thousand Dollars (U.S. \$230,000.00) including expenses directly chargeable the services furnished. The fixed fee is valid until December 31, 2005, after which the fixed fee will be escalated beginning July 1, 2006 in accordance with the Consumer's Price Index (CPI) for the Boston-Brockton-Nashua area, except the portion of the index associated with energy or fuel costs shall not increase by more than 10 % in any given year. The revised price and escalation will be set forth in an Amendment to this Agreement.
- C. For *Recurring Tasks* outlined in the Scope of Services of this Agreement: The fee will not exceed a maximum of Three Hundred Fifteen Thousand U.S. dollar (U.S. \$315,000.00), including expenses directly chargeable the services furnished, without obtaining the prior written authorization of OWNER. CONSULTANT shall not be required to furnish services or incur expenses above the maximum amount without written authorization and additional funding from the OWNER. This maximum amount is valid until December 31, 2005. Pricing for subsequent years will be escalated beginning July 1, 2006 in accordance with the Consumer's Price Index (CPI) for the Boston-Brockton-Nashua area, except the portion of the index associated with energy or fuel costs shall not increase by more than 10 % in any given year,. The annual price and escalation will be set forth in an Amendment to this Agreement.

6. Payment:

- A. OWNER shall pay CONSULTANT for *OWNER's Support for Public Utility Commission Proceedings* services based upon monthly invoices in an amount equal to actual hours of services furnished multiplied by the Billing Rates attached as Exhibit B, plus reasonable expenses at cost and at cost plus 10% for the services of any SubCONSULTANT.
- B. OWNER shall pay CONSULTANT the Fixed Fee for *Initial Tasks* upon submission of 8 monthly invoices equal to \$230,000 divided by 8 each.
- C. OWNER shall pay CONSULTANT for *Recurring Services* furnished under this Agreement upon submission of monthly invoices in an amount equal to actual hours of services furnished multiplied by the Billing Rates attached as Exhibit B. Additionally, the OWNER shall reimburse CONSULTANT monthly for reasonable expenses at cost and at cost plus 10% for the services of SubCONSULTANTS.
- D. OWNER shall pay CONSULTANT for *Supplemental Services* furnished under this Agreement upon submission of monthly invoices in an amount equal to actual hours

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of services furnished multiplied at then current Billing Rates. Additionally, the OWNER shall reimburse CONSULTANT monthly for reasonable expenses at cost and at cost plus 10% for the services of SubCONSULTANTS.

Except in connection with *OWNER's Support for Public Utility Commission Proceedings* services, rates included in Exhibit B are valid until December 31, 2005, and subject to review and annual adjustment beginning July 1, 2006 in accordance with the Consumer's Price Index (CPI) for the Boston-Brockton-Nashua area, except the portion of the index associated with energy or fuel costs shall not increase by more than 10% in any given year, which will be set forth in an Amendment to this Agreement.

OWNER shall pay CONSULTANT in U.S. dollars within thirty (30) days of receipt of invoices less any disputed amounts. However, CONSULTANT acknowledges that OWNER may elect to defer payment for *OWNER's Support for Public Utility Commission Proceedings* services until approval of OWNER's fiscal year 2006/2007 budget and OWNER shall notify CONSULTANT in writing if deferral is elected. CONSULTANT agrees to such deferral until the earlier of (1) [30] days after approval of OWNER's fiscal year 2006/2007 budget, or (2) September 1, 2006.

If OWNER disputes any portion of the invoice, the undisputed portion will be paid and CONSULTANT will be notified in writing, within ten (10) days of receipt of the invoice of the exceptions taken. CONSULTANT and OWNER will attempt to resolve the payment dispute within sixty (60) days or the matter may be submitted to arbitration as provided below.

Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law, whichever is lower) on the unpaid, undisputed invoiced amounts except interest will be waived for *OWNER's Support for Public Utility Commission Proceedings* services if such invoices are paid by September 1, 2006. Any interest charges due from OWNER on past due invoices are outside any amounts otherwise due under this Agreement. If OWNER fails to pay undisputed invoiced amounts within sixty (60) days after delivery of invoice or by September 1, 2006 for *OWNER's Support for Public Utility Commission Proceedings* services, CONSULTANT, at its sole discretion, may suspend services hereunder or may initiate collections proceedings, including mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.

- 7. Indemnity:** To the extent permitted by law, CONSULTANT agrees to indemnify, defend and hold harmless OWNER and its Mayor, Aldermen, other elected and appointed officials, CONSULTANTS and employees, individually and in their representative capacities, from and against any liability (including without limitation, reasonable costs and attorneys' fees) incurred by OWNER to the extent caused by CONSULTANT's negligent acts, errors or omissions, including judgments in favor of any third party.

To the extent permitted by law, OWNER agrees to indemnify, defend and hold harmless CONSULTANT and its directors, officers, shareholders, employees and

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subCONSULTANTs from and against any liability (including, without limitation, reasonable costs and attorney's fees) incurred by CONSULTANT to the extent caused by OWNER's negligent acts, errors or omissions, including judgments in favor of any third party.

Each Party (the "First Party") specifically and expressly waives its immunity under applicable worker's compensation and industrial insurance laws regarding liability against the other Party (the "Second Party") for actions brought by any of the First Party's employees against the Second Party, to the extent the liability is caused by the First Party's negligent acts, errors or omissions.

OWNER agrees to use language acceptable to CONSULTANT in all third party O&M, procurement, construction and/or EPC contracts relating to services furnished under this Agreement, including but not limited to terms which provide: i) contractor(s) shall indemnify and hold harmless OWNER and CONSULTANT from any and all loss, damage, claim, or liability (including, without limitation, reasonable attorneys' fees) incurred by OWNER or contractor and arising from work performed for OWNER by contractor or its subcontractors; provided, however, that OWNER and CONSULTANT shall not be indemnified for any loss, damage, claim, or liability resulting solely from the negligent acts, errors, or omissions of OWNER or CONSULTANT; and ii) each and every contractor (a) to purchase and maintain Commercial General Liability Insurance in limits appropriate for the size of the contract (b) to name OWNER and CONSULTANT as additional insureds. OWNER and CONSULTANT will be added to the contractor's policy using ISO Endorsement CG2032 0798 or equivalent.

8. **Re-performance of Services:** If OWNER believes any of the services provided under this Agreement do not comply with the terms of this Agreement, OWNER shall promptly notify CONSULTANT to permit CONSULTANT an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly re-perform the services at no additional cost to OWNER, including assisting OWNER in selecting remedial actions. If OWNER fails to provide CONSULTANT with prompt notice of non-compliance and an opportunity to investigate and reperform its services, CONSULTANT's total obligation to OWNER will be limited to the costs CONSULTANT would have incurred to re-perform the services.
9. Section Intentionally Left Blank.
10. **Insurance:** CONSULTANT shall maintain insurance with the following required coverages and minimum limits and upon request, will provide insurance certificates to OWNER:

Worker's Compensation	Statutory
Employer's Liability	U.S. \$1,000,000
Commercial General Liability	U.S. \$1,000,000 per occurrence
	U.S. \$1,000,000 aggregate
Comprehensive General Automobile	U.S. \$1,000,000 combined single limit

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Professional Liability U.S. \$1,000,000 per claim and in the aggregate

11. **Work Product:** OWNER shall have the unrestricted right to use the documents, analyses and other data prepared by CONSULTANT under this Agreement ('Work Products'); provided, however OWNER shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of CONSULTANT. If OWNER releases the Work Products to a third party without CONSULTANT's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) OWNER does so at its sole risk and discretion, (b) CONSULTANT shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) OWNER shall indemnify, defend and hold CONSULTANT harmless from any and all claims or damages related to the release, change or reuse.
12. **Limitation of Liability:** No employee of CONSULTANT shall have individual liability to OWNER. To the extent permitted by law, the total liability of CONSULTANT, its officers, directors, shareholders, employees and subCONSULTANTS for any and all claims arising out of this Agreement, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed One Million Dollars (U.S. \$1,000,000)..
- Due to the anticipated integrated nature of the construction phase services of OWNER and CONSULTANT, the parties agree that the construction contractors and vendors will remain exclusively responsible for compliance with contract requirements. Any construction phase observation or inspection by CONSULTANT or OWNER is intended solely to provide greater assurance that deficiencies in the contractor's work are discovered as early as possible. CONSULTANT has no legal or financial responsibility for OWNER's claims against a contractor or vendor arising from a contractor's or vendor's failure to comply with its contract or warranty obligations; provided, however, that CONSULTANT remains liable to OWNER for negligent actions or failures to act relating to observed conditions or circumstances which CONSULTANT knew or should have known, constituted deficient construction not in accordance with design requirements; provided, further, that CONSULTANT's liability in those cases of negligent actions or failures to act relating to observed conditions shall be limited to U.S. \$1,000,000 in the aggregate for claims which arise from a single project.
13. **No Consequential Damages:** In no event and under no circumstances shall CONSULTANT be liable to OWNER for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages in excess of \$1,000,000 and only if not excluded by insurance.
14. **Information Provided by Others:** OWNER shall provide to CONSULTANT in a timely manner any information CONSULTANT indicates is needed to perform the services

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hereunder. CONSULTANT may rely on the accuracy of information provided by OWNER and its representatives.

15. **Opinions of Cost:** CONSULTANT does not control the cost of labor, materials, equipment or services furnished by others, nor does it control pricing factors used by others to accommodate inflation, competitive bidding or market conditions. CONSULTANT estimates of operation expenses or construction costs represent its best judgment as an experienced and qualified professional and are not a guarantee of cost. This section does not apply to the cost of CONSULTANT performing the Scope of Services.
16. **Safety and Security:** CONSULTANT has established and maintains programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, CONSULTANT specifically disclaims any authority or responsibility for job site safety and safety of persons other than CONSULTANT's employees. CONSULTANT shall not provide any such services and disclaims any responsibility under this Agreement related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.
17. **Level of Authority:** CONSULTANT provides its services, comments, opinions and recommendations solely as a CONSULTANT to OWNER. The parties acknowledge that primary responsibility for any design and construction remains with the OWNER and its contractors, and operation of any facilities remains with the OWNER and operator. Employees of CONSULTANT will not perform any of the responsibilities of OWNER, OWNER, contractors, or operator, nor issue directions as to construction, facility operation or safety precautions and programs in connection with the facilities.
18. **Termination:** Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party. OWNER shall pay CONSULTANT for all services rendered to the date of termination plus reasonable expenses for winding down the services. If either Party defaults in its obligations hereunder, the non-defaulting party, after giving seven (7) days written notice of its intention to terminate or suspend performance under this Agreement, may, if cure of the default is not commenced and diligently continued, terminate this Agreement or suspend performance under this Agreement.
19. **Dispute Resolution:** CONSULTANT and OWNER shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator (except for payment disputes which may be submitted directly to arbitration). If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, the dispute or conflict shall be subject to arbitration in English under the rules governing commercial arbitration as promulgated by the American Arbitration Association and shall take place in Nashua, New Hampshire.

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Arbitrability shall be subject to the Federal Arbitration Act.

20. Administration by the OWNER:

- a. General Administration. Except as otherwise provided by this Agreement, in performing its obligations under this Agreement, CONSULTANT shall report to and act under the direction of the Mayor of the City of Nashua, and such persons designated in writing by the Mayor. Except as otherwise provided, CONSULTANT shall make all reports to the Mayor and the Mayor's designee(s).

- b. Policy Administration. All matters of policy shall be determined by the Board of Aldermen. For the purpose of this Agreement, matters of policy includes (but is not limited to), questions related to rates, terms of service, long-term capital improvements and other matters. In performing its obligations under this Agreement with respect to matters of policy, CONSULTANT shall report to and act under the direction of the Board of Alderman, and such persons designated in writing by the Board.

If CONSULTANT requires a policy decision of any nature, CONSULTANT shall provide notice of the required decision and a recommendation to the Board of Aldermen. To the extent that obligations under this Agreement concern both general administration and matters of policy, CONSULTANT shall report to and act under the direction of the Board of Alderman.

21. Miscellaneous:

- a. This Agreement is binding upon and will inure to the benefit of OWNER and CONSULTANT and their respective successors and assigns. The OWNER may assign this Agreement to Merrimack Valley Regional Water District (MVRWD), however, neither Party may assign its rights or obligations hereunder to any other entity without the prior written consent of the other Party.

- b. Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

OWNER: City of Nashua, New Hampshire
Attention: Mayor
Address: 229 Main Street, Nashua, NH 03061

CONSULTANT: R. W. Beck, Inc.
Attention: Paul B. Doran, P.E.
Senior Water Consultant
Address: Corporate Center, East Wing,
550 Cochituate Road PO Box 9344,
Framingham, Massachusetts 01701+9344

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With a copy to:
Lin Ross (such copy not to be considered notice)
1001 Fourth Avenue, Suite 2500 Seattle
Washington 98154-1004 USA

- c. OWNER expressly agrees that all provisions of the Agreement, including the clause limiting the liability of CONSULTANT, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, CONSULTANT's compensation for services would otherwise be greater and/or CONSULTANT would not have entered into the Agreement.
- d. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
- e. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire.
- f. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorneys' fees and costs from the other party.
- g. This Agreement shall not be construed against CONSULTANT only on the basis that CONSULTANT drafted the Agreement.
- h. Notwithstanding any statute to the contrary, the Parties agree that any action to enforce or interpret this Agreement shall be initiated within two (2) years from the time the party knew or should have known of the fact giving rise to its action, and shall not in any case be initiated later than six (6) years after CONSULTANT completes its Scope of Services under this Agreement.
- i. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

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IN WITNESS WHEREOF, the Parties have signed this Agreement the date first written above.

City of Nashua, New Hampshire

Signature _____
Name _____
Title _____
Date _____

Signature _____
Name _____
Title _____
Date _____

R. W. Beck, Inc.

Signature _____
Name _____
Title _____
Date _____

Attachments

- Exhibit A – Scope of Services
- Exhibit B – Hourly Billing Rates

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****OWNER'S SUPPORT FOR PUBLIC UTILITY COMMISSION PROCEEDINGS****PUC Task 1 O&M Service Agreement Negotiations Support**

Under the direction of the OWNER's law firm Upton-Hatfield, LLP (Upton), the CONSULTANT will support the OWNER with development and negotiation of its Service Agreement for Water Utility Operations and Maintenance with a private Operation and Maintenance Contractor (O&M Contractor) as requested. The CONSULTANT will attend applicable negotiation sessions with the O&M Contractor, review draft agreements prepared by Upton, and provide comments in the form of Technical Memoranda. The CONSULTANT will also contribute to the development of Technical Appendices to be included with the Service Agreement as attachments.

As of October 12, 2005, the CONSULTANT started work on this PUC Task 1.

PUC Task 2 Consulting Support for PUC Proceedings

Under the direction of Upton and as requested, the CONSULTANT will support the on-going proceedings before the New Hampshire Public Utilities Commission (Commission) under docket DW 04-048 related to the filing by the OWNER to take the utility assets of Pennichuck Water Works, Inc. (PWW).

OWNER'S SUPPORT FOR BONDING REQUIREMENTS

The CONSULTANT will perform the following services

- A) Prepare information requirements for OWNER's Chief Financial Officer
- B) Oversight of any technical, lock-box items required by OWNER's Chief Financial Officer
- C) Oversight of appropriate rate structure in place for bonds requirements
- D) Oversight of any requirements by the bond insurers, if any
- E) Oversight and assurance of annual reporting forms by OWNER
- F) Oversight and assurance of reporting requirements monthly and annually for the bond trustees
- G) Development of reporting forms from the O&M Contractor and oversight that proper O&M Contractor reporting to the Finance Department is completed, including, but not limited to, the following:
 - 1) Revenues, monthly and totalized year to date, projected and actual
 - 2) Expenses, monthly and totalized year to date, projected and actual
 - 3) Capital expenses, monthly and totalized year to date, projected and actual
 - 4) Long-term improvements, monthly and totalized year to date, projected and actual
- H) Oversight of any information and reporting required by the O&M Contractor for the OWNER for GASB requirements

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

- I) Meetings required
 - 1) Monthly with the OWNER's Chief Financial Officer
 - 2) Monthly with Finance Committee
 - 3) Quarterly with Aldermen
 - 4) Annual or semi-annual, as/if required, for PUC and bond agents
- J) Oversight and assurance that appropriate collection procedures are in place to satisfy bond holders

OVERSIGHT OF OWNER'S WATER ORDINANCE

The CONSULTANT will oversee that the provisions of the OWNER's Water Ordinance is being adhered to by the O&M Contractor, with respect to the following areas:

- 1) Applicable rate structures
- 2) Turn-on and shut-off policy
- 3) CIAC policies
- 4) Backflow prevention program
- 5) Conservation plans
- 6) Contamination mitigation
- 7) Watershed protection and management
- 8) Jobbing policies and fees

OVERSIGHT OF STATE, FEDERAL AND LOCAL PERMIT COMPLIANCE

The CONSULTANT will oversee that the O&M Contractor and the OWNER have in place the following permits:

- A) Water treatment permits
- B) Water withdrawal permits
- C) Dam and reservoir permits
- D) Pumping and storage permits
- E) Transmission and distribution permits
- F) Security requirements
- G) Reliability requirements
- H) Vulnerability assessment requirements
- I) Dig-Safe requirements (if subscribed to)

OVERSIGHT OF OM&M CONTRACTOR SERVICE AGREEMENT –BASIC SERVICES

The CONSULTANT will provide basic oversight of the Service Agreement between the OWNER and the O&M Contractor to ensure the general provisions and requirements are being met by the O&M Contractor.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****OVERSIGHT OF OM&M CONTRACTOR SERVICE AGREEMENT – INITIAL TASKS**

The O&M Contractor and the OWNER will be involved in the necessary one-time activities related to the transfer of Pennichuck Water Works properties, information, and employees from a privately owned regulated utility to a municipally owned public utility (Transition Period). Also, the Transition Period is designed to provide for an orderly transfer and disposition of data, facts, figures, information, plans, IT facilities, computer programs, records, historic information, materials, equipment, buildings, land, property, and all other things necessary to conduct the water business as usual for the OWNER.

The CONSULTANT will provide the following Initial Tasks in support of the OWNER during the Transition Period. The CONSULTANT anticipates that there will be the need for additional CONSULTANT services during the Transition Period. These additional services will be provided, when authorized by the OWNER, as Supplemental Services described in this Exhibit A.

Initial Task 1 - Evaluate Maintenance Plan

Review the O&M contractor's proposed Final Maintenance Plan to determine its compliance with the requirements of the O&M contract. It is expected that the Maintenance Plan will include the following:

- Initial Asset Condition Assessment; Functional Assessment, Structural Assessment and Predictive Maintenance Report;
- risk analysis of asset failure;
- predicted rates of asset deterioration;
- the cost-effective point at which to renew, repair or replace an asset;
- the failure modes for each asset;
- conditions under which failures will most likely occur;
- consequence of reduced performance;
- planned facility changes that will eliminate the need for the asset;
- schedule of maintenance activities over the term of the O&M service contract; and
- well-defined costs of maintenance by type and year.

Deliverable

Prepare a Summary Letter Report of findings.

Initial Task 2 - Evaluate Initial Inventory

Review the O&M contractor's Final Initial Inventory for completeness. Review the O&M contractor's proposed procurement of additional quantities of consumables and/or equipment.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

Check and verify that the final procurement quantities are appropriate for the O&M contractor to perform its services under the O&M Service Contract.

The Final Inventory includes: chemicals, fuel, general supplies and materials, spare parts, tools and equipment, vehicles (other than those identified to be retained by PWV), rolling stock, spare parts, hand tools, furniture and fixtures, computers and communications equipment. Equipment comprising the initial inventory does not include the PWV fixed assets that are included in the detailed Asset Inventory and condition assessment performed as part of Initial Task 4 - Evaluate Condition Plan.

Deliverable

Prepare a Summary Letter Report of findings.

Initial Task 3 - Evaluate Initial Staffing

Review the O&M contractor's Final Staffing Plan for the following:

- the number and type of employees required, including third-party contractors, to operate, maintain and manage the acquired assets in accordance with the O&M service contract and the law;
- an organizational chart that lists job roles and responsibilities of proposed staff;
- adequate coverage present at the acquired facilities for each shift seven days-per-week, and, for facilities to be left unattended, how emergency coverage will be handled;
- the qualifications of management, supervisory, technical, laboratory, and operating personnel required to be licensed and/or certified by the State for O&M;
- the availability and commitment of specialists, on-site or as part of a technical support group, as necessary, in water treatment, process control, instrumentation, trouble shooting, emergency management, and other skills necessary to perform according to contract requirements;
- a technical support group that will provide on-call back-up advice, expertise and quality control, management, maintenance and facility repair to assist the operational staff and ensure performance according to contract requirements and to assist in the design and construction of any needed and authorized improvements to the acquired assets.

Deliverable

Prepare a Summary Letter Report of findings.

Initial Task 4 - Evaluate Condition Assessment Plan

Review the appropriateness and adequacy of the O&M contractor's Condition Assessment Study where representations of the condition of the Water Utility as of the Service Commencement Date have been made. In addition, review the proposed work to be performed,

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

anticipated to include a Functional Evaluation, a Structural Evaluation, identification of Mission Critical equipment, and Predictive Testing Analysis. Participating with the O&M Contractor during its conduct of the Conditions Assessment Study shall be provided to the OWNER as a Supplemental Service described in this Exhibit A.

Deliverable

Prepare a Summary Letter Report of findings.

Initial Task 5 - Evaluation of Existing Hydraulic Models

Collaborate with the O&M contractor and utility staff to evaluate the existing model to determine if its level of detail is sufficient for accurate evaluations of system hydraulics and water quality under varying, existing and future operating conditions. Determine how the existing model was calibrated and if additional calibration or field data validation is needed to produce accurate results. Evaluate the strengths and weaknesses of existing models and generate a list of recommended improvements for future modeling work. Evaluate the existing model software in comparison to other available modeling software to determine which package best meets the utility's current and future needs.

Deliverable

Prepare a report summarizing the conclusions and recommendations of the modeling evaluation and to guide future system modeling work.

Initial Task 6 - Conduct Long-Range Planning

Working closely with the O&M contractor and key staff from the City and MVRWD, assist in creating a Long-Range Plan. The initial plan will focus on near-term priorities over the first five years. Focus on the CIP needed to renew and replace assets to maintain the established and planned levels of service.

Initial Task 7 - Review Security Plans

Review the existing Vulnerability Assessment (VAs), Emergency Preparedness and Response Plan (EPRP), risk assessments, and other appropriate security plans or programs required by state and federal law. Benchmark these documents against EPA Office of Water's "Instructions to Assist Community Water Systems in Complying with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002"; "Emergency Preparedness and Response Plan Guidance for Small and Medium Community Water Systems to Comply with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002".

Deliverable

Prepare a Technical Memorandum detailing completeness and practicality of existing Plans.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****OVERSIGHT OF OM&M CONTRACTOR SERVICE AGREEMENT – RECURRING TASKS**

Recurring Tasks will begin on the date the O&M Contractor begins to provide the OWNER OM&M Services. As defined in the O&M Contractor's Agreement with the OWNER, this date is known as the Service Commencement date. The Recurring Tasks will continue over the term of the O&M Contractor's Agreement with the OWNER.

Recurring Task 1 - Represent the OWNER in Negotiations

Within the limits of allowance specified in the Assumptions Section of this Agreement, provide technical assistance to the OWNER and represent the OWNER in discussions and/or negotiations with the O&M Contractor and others as requested. If additional services are needed for this task, they will be performed by the CONSULTANT as Supplemental Services as authorized by the OWNER.

Recurring Task 2 - Audit Performance of Contractor Planned Maintenance Activities

Annually review the O&M Contractor's compliance with contract terms requiring adequate planned maintenance which usually include: preventive maintenance, predictive maintenance testing, and corrective maintenance and for appropriateness in preventing, minimizing and delaying asset failures or shutdowns resulting in unplanned maintenance.

Deliverable

Prepare a Summary Letter Report of findings. Make recommendations on changes that would enhance system performance.

Recurring Task 3 - Review O&M Contractor Unplanned Maintenance Requests

Perform an evaluation of the O&M Contractor's renewal, repair and replacement maintenance (RRRM) requests to check that they are reasonable and appropriate. Evaluate the conditions leading up to the RRRM event to determine if the events are traceable to O&M Contractor non-performance of its contract obligations and contract conditions, or if the contractor failed to properly and faithfully execute the approved Maintenance Plan.

The CONSULTANT will also review unplanned maintenance considering the approved CIP to determine the least-cost alternative plan of action based on a life-cycle cost analysis of the asset.

Deliverable

Prepare a Summary Letter Report of findings.

Recurring Task 4 - Review and Evaluate Operational Data

Review operations data and work with the O&M contractor to assess its completeness and accuracy, including reviewing and checking the O&M contractor's QA/QC procedures for analytical tests and its' calibration of devices and instruments used to collect and record data.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

Check operating data as they pertain to regulatory requirements, design limits or license to make sure that the facility is operating as required. Operating data to include:

- Raw Water Quality and Quantity
- Finished Water Quality and Quantity
- Chemical Use Data
- Filter Backwash Water Quality and Quantity
- Waste Backwash Water Quality and Quantity
- Recycle Water Quality and Quantity
- Residuals Production Data
- Filter Run Times and Unit Filter Run Volumes
- Other Process Performance Parameters

Deliverable

Prepare a Summary Letter Report of findings.

Recurring Task 5 - Review and Evaluate Test Results for External Reports

Review reports prepared for submittal to the regulatory agencies, the OWNER and the public to confirm that appropriate data is accurately collected and reported. Review the O&M contractor's QA/QC program for analytical tests and calibration of devices and instruments used to monitor and record process performance and water quality to confirm appropriate quality management procedures are in place by the O&M contractor.

Review of the sampling and monitoring programs to confirm that the programs are designed to monitor the performance of the treatment facilities and water quality within the distribution system and storage facilities. Monitor the data collection process for compliance with the O&M contract for collecting all of the required data and using the proper sampling and analytical procedures.

Recurring Task 6 - Review and Test Security Plan

Conduct continuing reviews of the O&M Contractor's Security Plans. On an annual basis, review and assess the number and type of incidents and prepare a summary, evaluate the response to each incident to determine if it was in accordance with the Security Plan and if the response required by the plan was appropriate. When necessary, recommend modifications to the Security Plan or improvements to the facilities to enhance and strengthen security and to provide appropriate responses to each incident.

The CONSULTANT will assess the appropriateness and timeliness of the O&M contractor's response and provide recommendations on ways to improve the detection, delay and response to various threats.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****Deliverable**

Prepare a Summary Letter Report of findings.

Recurring Task 7 - Coordinate Construction

Construction coordination will be provided on an “as-needed” basis throughout the term of the O&M contract. Prepare and submit to the OWNER, a Construction Administration Plan (CAP) for project organization and the performance of oversight of future construction and provide construction administration of the capital improvements in accordance with the approved CAP.

Within the limits of allowance specified in the Assumptions Section of this Agreement, monitor the construction work for compliance with the contract documents; prepare the procedures for and witness start-up tests; observe acceptance testing; and represent the utility according to industry standards for construction administration services. If additional services are needed for this task, they will be performed by the CONSULTANT as Supplemental Services as authorized by the OWNER.

Work with the O&M contractor to coordinate the construction work to minimize interference with normal operation of the water system. Construction oversight and coordination tasks will be performed in accordance with industry standards as defined by the National Society of Professional Engineers.

Recurring Task 8 - Long-Range Planning

As the utility matures, the CONSULTANT will support it with ongoing, annual updates to the Long-Range Plan. We envision a highly collaborative process with key stakeholders to assure that the Long-Range Plan remains current with the highest priorities of the utility’s leadership. As an engineering-based management CONSULTANT, with deep experience with water utility municipalization and operations, The CONSULTANT is well suited to assist the OWNER and MVRWD in providing excellent service to its customers at the least cost, while enhancing the local environment.

Recurring Task 9 - Review Capital Improvement Plans

With input from the results of the Condition Plan Evaluation (Task 4); the Hydraulic Model Evaluation (Task 5); and the Security Plan Review (Task 8), review the CIP to confirm critical elements such as: affordability, consistency with the selected rate structure, deferred and ongoing asset renewal and replacement, and the future needs of the utility are addressed..

Coordinate the CIP with the Asset Register database and identification of ranking of Mission Critical Equipment replacement or upgrade.

Review the O&M contractor’s assessment of impacts of asset failure to determine if an asset is mission critical and the consequences to the utility if the asset becomes non-operational, and utility impact of an asset that is operating at a sub-standard level, has defects (a condition in an

EXHIBIT A

Scope of Services Between The CONSULTANT and the OWNER for Water Utility Oversight Services

asset that may prevent it from operating as intended), is in poor condition or has a low Functional/Structural Evaluation.

The above services will be performed within the limits of allowance specified in the Assumptions Section of this Agreement. If additional services are needed for this task, they will be performed by the CONSULTANT as Supplemental Services as authorized by the OWNER.

SCHEDULE

The CONSULTANT's support of Public Utilities Commission Hearing Tasks were started on October 12, 2005.

The CONSULTANT support of the OWNER's bonding requirements will be ongoing throughout the term of this Agreement.

The CONSULTANT's oversight of the OWNER's Water Ordinance requirements and the oversight of State, Federal and Local permit requirements will be ongoing throughout the term of this Agreement.

The Initial Tasks will be completed within 8 months of notice to proceed after utility taking, or in a time frame as mutually agreed.

The Recurring Tasks will be completed annually, in a timely manner throughout the term of this Agreement.

Any Supplemental Service the OWNER requests the CONSULTANT to undertake will be performed to the schedule negotiated as part of the scope of the Supplemental Service requested.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****ASSUMPTIONS**

The scope of services and associated pricing of the CONSULTANT are based on the following assumptions, clarification and information/assistance being provided in a timely manner. If these items or the anticipated level of effort are inaccurate, additional services may be required.

1. OWNER shall provide the following information and data, and as requested by CONSULTANT, on which it can rely in performing services under the Agreement.
 - (a) O&M contractor's final draft Maintenance Plan
 - (b) O&M contractor's final draft Initial Inventory
 - (c) O&M contractor's final draft Initial Staffing Plan
 - (d) O&M contractor's final draft Condition Plan and Asset Register
 - (e) O&M contractor's final draft Billing Procedures and Standard Operating Procedures
 - (f) All existing hydraulic models including network diagrams, pipe condition data, fire flow data, and output analysis
 - (g) Operation manuals and shop drawings, and record drawings for all utility capital assets including, but not limited to: reservoirs; dams; aqueducts; pumping stations; treatment facilities; pipelines; and treated water tanks and related accessories and appurtenances throughout the entire water system
 - (h) Complete systems operations and maintenance records for calendar years 2000-2006
 - (i) Any and all facility plans, master plans and/or capital improvement plans completed for the water system, in whole or in part, from January, 1980 to December 31, 2006
 - (j) As-bid plans and specifications for any and all capital construction projects, related to the water system that are on-going at the time of Notice to Proceed.
2. The budgeted level of effort for Initial Tasks is based on the following:
 - Includes fourteen (14) OWNER meetings over the Initial Task period.
 - Includes two (2) meetings with Mayor and Board of Aldermen over the Initial Task period.
 - Includes ten (10) full-day and five (5) half-day meetings with O&M contractor over the Initial Task period.
 - Includes the review of the following O&M contractor deliverables:
 - One (the final) staffing plan
 - One (the final) maintenance plan
 - One (the final) initial inventory
 - Single review of the existing Vulnerability Assessment and Emergency Response Plan.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

3. The budgeted level of effort for Recurring Tasks is based on the following:

- Includes two (2) OWNER meetings per month over the first year of service.
- Includes one (1) meeting with Mayor and Board of Aldermen each month over the first year of service.
- Includes three (3) full-day on-site meetings per month with O&M contractor over the first year of service.
- Annual review of the Vulnerability Assessment and Emergency Response Plan for updates.
- Includes an allowance of \$20,000 for Recurring Task 1 representing the OWNER in OWNER Negotiations during the first year. This allowance is for R.W. Beck, Inc. to represent the OWNER in any O&M Contractor Service Agreement Amendments that may become necessary due to changes in O&M scope of services, occurrence of Uncontrollable Circumstances, occurrence of Changes in Applicable Law, and the addition of engineering and/or construction projects.
- Includes an allowance of \$40,000 for Recurring Task 7 - Construction Coordination during the first year based on the construction of improvements to the water treatment plant and the water distribution system needs. Acting as an extension of OWNER staff, this allowance is for R.W. Beck, Inc. to represent the OWNER's interest in any construction work for the newly acquired water utility, to include coordination with the various OWNER agencies and departments impacted by pipeline and other construction projects.
- Includes an allowance of \$20,000 for Recurring Task 9 - Review of the O&M Contractor's first year Capital Improvement Plan. This allowance is for R.W. Beck, Inc. to work with the O&M Contractor in the selection and prioritization of capital projects for the new utility in the first year of operations

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****SUPPLEMENTAL SERVICES**

If authorized in writing by the OWNER on a task by task basis in every case, the CONSULTANT shall furnish or obtain from others, Supplemental Services of the following types:

- grant funding assistance including applications and support for government grants or loans; preparation of environmental assessments or impact statements;
- preparing engineering analyses, feasibility studies, conceptual or detailed designs; financial consulting including the preparation of feasibility studies, cash flow analyses, economic evaluations, cost of service analyses, rate schedules or appraisals;
- Independent Engineering and other assistance in obtaining financing; services resulting from the need for the OWNER to engage more separate prime contractors for planning studies, engineering, equipment procurement, operations, maintenance or construction; preparation of operations and maintenance manuals;
- strategic planning; community outreach, public and government relations;
- watershed protection and management planning;
- training and staff development; organizational development; construction inspection/resident engineering;
- preparing to serve or serving as a CONSULTANT or witness in litigation, public hearings or other legal or administrative proceeding;
- other services in connection with the Project, including services normally furnished by the OWNER or O&M contractor; and
- services not otherwise provided for in this Agreement.

SUPPLEMENTAL TASK 1 – Transition Services

The CONSULTANT has included several services in the Initial Tasks of this Agreement that will be performed during the Transition Period. The CONSULTANT anticipates that there will be additional services that the OWNER will need during the Transition Period, such as needed Information Technology (IT) reviews, engineering services, finance and accounting services, forming a strategy for the transition of all information from Pennichuck to the City and a strategy for the control of the IT assets, licenses, and accounting information needs, including;

- IT strategic planning; software license control procedures, budgetary estimations; third-party expert identification, bid specifications and selection.
- Implementation plans.
- Project management and budgetary control.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

- Data migration and communication needs.
- On-going IT support as needed.
- Capital asset accounting transfer.
- Integration of capital asset accounting into City's capital asset records.
- Transitional reporting of information necessary for bond compliance.

These additional services will be provided, when authorized by the OWNER, as Supplemental Services

SUPPLEMENTAL TASK 2 - Community Outreach

Successful start-up of the new community-owned water utility will require the support and involvement of a number of local governments, the state, and the general public. This task will include Assisting the OWNER to establish a positive community relations using a variety of media and approaches over an extended time period, facilitate periodic workshop-type meetings to create and refine information that the differing audiences need to know, educate the public on water system issues, and help the OWNER to establish the participation and buy-in of all government entities and agencies that affect the acquisition, start-up and operation of the new community-owned water utility.

SUPPLEMENTAL TASK 3 - Comprehensive Watershed Protection Planning Program

Building upon the watershed services provided by the O&M Contractor, develop and implement a "source protection" program to create a detailed watershed management plan that begins to develop and implement an aggressive source protection program. Both the source protection and watershed management plan would include the following:

- an accurate technical basis for setting source protection priorities;
- participation of local communities in stewardship and public education about drinking water supplies;
- coordination with key elected officials, planning and zoning commissions, economic development commissions, conservation commissions and inland wetlands commissions, the Nashua Regional Planning Commission, regarding development issues, site plan reviews, and subdivision regulations;
- inspect existing land uses for compliance with local and state water quality protection regulations;
- cooperation among municipalities within MVRWD to control land uses in critical areas;
- cooperation among municipalities within MVRWD to purchase or acquire additional land for source protection;
- support the return of the remaining Southwood properties to watershed protection or obtain conservation easements, per the New Hampshire Forest Program;

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services**

- support additional New Hampshire water source supply protection regulations;
- comprehensive monitoring of water quality in the watersheds and aquifer recharge area;
- maintenance of accurate maps that delineate watershed boundaries along with land use;
- coordination with state and local agencies in investigating contamination incidents;
- inspection and patrols of watershed resources;
- implementation of security measures on a priority basis;
- implement Best Management Practice to remediate non-point source contamination; and
- development of an emergency spill response protocol.
- Identify violations of state and local water supply protection regulations and inform land OWNERS and appropriate enforcement agencies when violations occur.
- Maintain records of chemical use and potential contaminant routes at specific sites for use in water quality investigations and land use risk assessment.
- Educate property OWNERS and the employees of business establishments on the watershed about water supply protection issues.
- Ensure that land management techniques used at the utility's facilities and properties are exemplary and in compliance with all applicable State and Federal regulations to serve as a model for others.

SUPPLEMENTAL TASK 4 – Water Conservation Program Implementation

The CONSULTANT will review the O&M Contractor's water conservation plan, make any required modifications to the plan and administer and implement the plan within the service area.

SUPPLEMENTAL TASK 5 – Professional Engineering Services

The CONSULTANT will perform Professional Engineering services for the OWNER as required.

SUPPLEMENTAL TASK 6 – Engineering Management Services for OWNER CIAC Projects

The CONSULTANT will perform activities associated with providing water service to new customers in the OWNER's service area, including review, inspection and monitoring of developer water main extensions and new service line installations in accordance with Applicable Law and OWNER standards. In addition, the CONSULTANT will perform other support services to the OWNER by overseeing and managing the O&M Contractor's supplementary services under CIAC, including interfacing and coordinating activities with other departments of the OWNER.

**Scope of Services Between
The CONSULTANT and the OWNER for Water Utility Oversight Services****SUPPLEMENTAL TASK 7 - Financial Consulting**

Construct a financial model for the utility prior to final acquisition. In preparation for this business modeling, the OWNER may wish to take the following steps before taking possession of the utility:

- 1. Initiate detailed engineering due diligence on system assets.** The OWNER has been provided very limited access to the PWW sites and records. Prior to a final commitment to purchase price, the OWNER should conduct site visits, condition assessments and record review to better understand deficiencies and capital needs.
- 2. Evaluate O&M costs and renewal and replacement needs.** Experienced plant operations personnel should review the existing O&M costs and R&R allowances. These costs should be reviewed considering likely increases resulting from enhanced treatment to meet new regulations.
- 3. Develop an OWNER's financial planning model.** A financial model will be constructed to help calculate debt service coverage and projected rate increases. These tools allow the OWNER to analyze "what if", with input variables such as interest rates and timing of capital expenditures. Once developed, ongoing models become important planning tools for the utility's annual budgeting, rate setting and managing capital.

SUPPLEMENTAL TASK 8 - Strategic Planning

Develop a simple but iterative process, which integrates the strategic plan with the utility's annual budget cycle. This service helps to insure that short- and-long term business strategies are accounted for in the OWNER/District's annual budget planning process. It is recommended that the management of the new community-owned utility update and drive the strategic plan forward one year at a time and revise it on an annual basis. We offer the OWNER and MVRWD a planning process that produces practical, flexible, and useful strategic and business plans.

SUPPLEMENTAL TASK 9 - Grant Funding Assistance

The CONSULTANT will provide grant funding assistance to the OWNER in obtaining State and Federal grants, including the Drinking Water Revolving Fund (DWRF) loan programs; State Revolving Fund (SRF) loan programs; Community Development Block Grant (CDBG) programs; Rural Development Water and Waste Disposal grant and loan program; EPA's Environmental Programs and Management (EPM) Grants Program; Special Appropriations Projects (SPAPs) administered under EPA's State and Tribal Assistance Grants (STAG) Program; and many others.

EXHIBIT B
CONSULTANT BILLING RATES

R. W. BECK INC.

Billing Rates \$/Hour ^(*)			Category/Project Roles
12.00	-	72.00	Clerical, Administration, Junior Engineers and Technicians
84.00	-	120.00	Staff Engineers, Consultants and Technicians
132.00	-	168.00	Senior Engineers, Consultants and Technicians, and Project Managers
180.00	-	240.00	Executive Engineers and Consultants, Senior Project Managers, and Principals
252.00	-	295.00	Executive Engineers and Consultants, Executive Project Managers, and Senior Principals

Billing rates are based on actual salary paid and inclusive of allowances for personnel benefits and multiplier.