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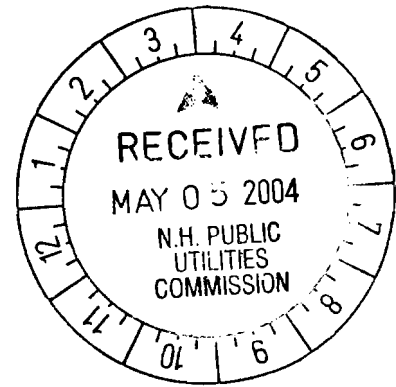
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May 5, 2004

**Hand Delivered**

Deborah Howland  
Executive Director  
PUC  
8 Old Suncook Road  
Concord, NH 03301-7319



Dear Ms. Howland:

I represent the Merrimack Valley Regional Water District Charter Committee, a group of New Hampshire communities that have been engaged in drafting a Charter for the formation of the Merrimack Valley Regional Water District ("Water District"). The Charter was approved on April 29, 2004 and has been sent to the Attorney General for approval pursuant to RSA 53-A.

The Water District will be a municipal corporation for purposes of RSA 362. RSA 362:4, VI (a). Municipal corporations providing water services within their municipal boundaries are not public utilities subject to control by the PUC. RSA 362:2. If a municipal corporation, however, serves customers outside its municipal boundaries, it may be subject to PUC control. See RSA 362:4, II and III-a.

RSA 53-A:5 provides:

In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or

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disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to RSA 53-A:3, V. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.

The issue presented by RSA 53-A:5 is whether the provision of water services by the Water District is a service with regard to which the PUC has statutory powers of control.

It is the announced intention of the City of Nashua to secure certain assets of Pennichuck Corporation and turn them over to the Water District. It may be that any assets secured will serve customers solely within the boundaries of the Water District and thus the Water District would not be a public utility. RSA 362:2. It is also possible that the Water District will serve customers outside its boundaries. Because the Water District has not yet been created and no rates have been established, it is impossible to predict whether new customers outside the boundaries of the district, if any, will have a rate higher than 15% above that charged to customers within the Water District. If this were to be the case, the PUC may take the position that the Water District would be a public utility subject to its control. See RSA 362:4, III-a. RSA 362:4, VI (b) also provides that, under certain circumstances, for the initial 4 years of operation by the Water District, any municipality that is a member of the Water District may petition for PUC review of proposed rate changes. It is impossible to predict whether these circumstances will arise during the first four years of operation.

Given the foregoing, and in what is perhaps an excess of caution, the Charter is hereby submitted to the PUC pursuant to RSA 53-A:5 to be approved or disapproved as to all matters within the PUC's jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general.

The attorney general "shall approve any agreement submitted to him hereunder unless he shall find that it does not in substance meet the conditions set forth herein ...." RSA 53-A:3, V. The statute also provides that failure to disapprove an agreement submitted hereunder within 30 days of its submission shall constitute approval thereof.

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The conditions referenced in the statute are contained in RSA 53-A:3, II (a) through (f) which requires that certain provisions be specified in the agreement. The required provisions and their location in the Charter are as follows:

RSA 53-A:3, II (a) duration - Article 8

RSA 53-A, II (b) precise organization and delegated powers - Articles 4, 5, 6, 7, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21 and 23

RSA 53-A:3, II (c) purpose - Articles 1 and 2

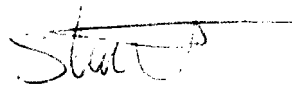
RSA 53-A:3, II (d) financing - Articles 6, 7, 10 and 20

RSA 53-A:3, II (e) termination - Article 8

RSA 53-A:3, II (f) other necessary matters - Article 3, 9, 13, 17, 22 and 24

The communities await with eager anticipation the PUC's review of their work. They are ready to move forward as soon as this review is complete. I would be happy to answer any questions you may have. Please let me know if you require any further information. Thank you for your timely review of this important agreement.

Very truly yours,



Stephen J. Judge

SJJ/dcl  
Enclosure

**CHARTER OF THE  
MERRIMACK VALLEY REGIONAL WATER DISTRICT  
(As approved April 29, 2004)**

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**CHARTER OF THE  
MERRIMACK VALLEY REGIONAL WATER DISTRICT**

**ARTICLE 1  
AUTHORITY**

In accordance with and under the authority of New Hampshire Revised Statutes Annotated, Chapter 53-A, Chapter 33-B, Chapter 38, and Chapter 362 as amended, the governmental units who are the signatories of this Charter have jointly agreed to make the most efficient use of their powers by cooperating on the basis of mutual advantage to provide services and facilities in a manner that will benefit the geographic, economic, health, safety, general welfare and other needs of their local communities.

**ARTICLE 2  
PURPOSE**

The Merrimack Valley Regional Water District is created as a regional water district and established for the purpose of providing and assuring for the provision of an adequate and sustainable supply of clean potable water at reasonable cost and to advance the conservation and compatible recreational use of the land subject to the District's control consistent with the foregoing. The Merrimack Valley Regional Water District shall exercise its powers and carry out its duties under this Charter for the benefit of the Customers of the Water District consistent with the health, safety, welfare, and well-being of all residents of the District.

**ARTICLE 3  
DEFINITIONS**

The following words, terms and phrases as used in the various Articles and sections of this Charter shall have the following meaning unless a provision explicitly states otherwise.

- a) **Bonds** - means bonds, notes, and other evidences of indebtedness issued by the Water District.
- b) **Board of Directors or Board** - means the group of elected or appointed Directors who represent the Members of the Water District.
- c) **Governing Body** - when referring to the Water District, means the Board of Directors; when referring to a Member of the District, means the governing body of the Member as defined in RSA 21:48.

- d) **Chief Executive Officer or CEO** - means that person designated by the Board of Directors to be primarily responsible for the execution of the policies of the District, for the control of the day-to-day operations of the District and for the direction of the other employees of the District.
- e) **Conflict of Interest** - A situation, circumstance, or financial interest that has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty.
- f) **Customer** - means any premises or group of premises treated as a unit for ordinary billing or other ordinary receipt of charges for water services by the District. The Customers of the District in any year shall be determined from the records of the District on the last day of that fiscal year. The residence of a Customer shall be deemed to be the location of the premises in question.
- g) **Water District or District** - means the Merrimack Valley Regional Water District.
- h) **Legislative Body** - when referring to the Water District, means the Board of Directors; when referring to a Member of the District, means the legislative body of a Member as defined by RSA 21:47.
- i) **Water Company** - means any private or public company (including the Water District) that supplies water to persons or entities within or without the District.
- j) **Franchise Areas** - means those areas within and outside the District where a Water Company has been authorized to conduct business or provide service by the NH Public Utilities Commission.
- k) **Member** - means a municipality (which shall not be a village district) which is eligible for membership in the District, as defined in this Charter, which has elected to join the Water District by appropriate vote under RSA 53-A and which has been admitted to membership as provided for in this Charter.1)
- l) **Eligible Member** - means a municipality which is eligible for membership in the District, as defined in this Charter, but which has not been admitted to membership in the Water District.

- m) **Properties** - means the Water Supply, Transmission, Treatment and Distribution System and other real or personal property of the Water District.
- n) **Revenues** - means all income derived by the Water District from any source whatsoever including rents, charges, services, operations and investments.
- o) **Non-District Territories** - means those areas outside the District containing Customers who have contracted with the District for water services.
- p) **Water Supply, Transmission, Treatment and Distribution System** - means real and personal property, acquired, constructed or operated for the purpose of supplying water, including land, reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, wells, waterworks or other sources of water supply, purification or filtration plants or other parts and works, rights of flowage or diversion and other plants, structures, or property or any rights therein and all appurtenances thereto which are necessary, useful or convenient for the accumulation, supply, transmission, treatment or distribution of water.
- q) **Resource Plan** - means an analysis of the existing water supply for the District and a forecast of future demand for water service within the District for the following 20 years, adopted by the District in accordance with the procedures prescribed in Article 18 of this Charter.
- r) **Service Areas** - means those areas within the District, composed of (a) the former Franchise Areas of a private Water Company which has been acquired by the District, (b) the locations of the Customers of any municipal Water Company which has been acquired by the District, (c) the locations of any other Customers of the District, and (d) the locations of the District's water distribution lines servicing the foregoing
- s) **Capital Improvements Plan** - means a twenty (20) year plan for the upgrade of the Water Supply, Transmission, Treatment and Distribution System of the District, adopted in accordance with the procedures prescribed in Article 18 of this Charter.

**ARTICLE 4**  
**BOUNDARIES**

**Boundaries** - The geographical boundaries of the Merrimack Valley Regional Water District are consistent with the collective non-contiguous boundaries of its Member municipalities. The initial Members are those listed in **Exhibit A**. As new municipalities become Members or as existing Members withdraw, the boundaries of the District and Exhibit A shall be adjusted accordingly.

**Service Area Maps and Franchise Area and Non-District Territory Maps** - The Service Areas of the Merrimack Valley Regional Water District shall be delineated on a map entitled "Service Areas of the Merrimack Valley Regional Water District". The Franchise Areas and Non-District Territories outside the Merrimack Valley Regional Water District shall be delineated on a map entitled "Franchise Areas and Non-District Territories outside the Merrimack Valley Regional Water District". The Service Areas map and Franchise Areas and Non-District Territories map may be amended from time to time.

**ARTICLE 5**  
**MEMBERSHIP**

- a) **Eligibility for Membership** - Prior to June 1, 2005, any municipality which contains any customers of or any part of the Water Supply, Transmission, Treatment and Distribution System of the Pennichuck Corporation or its subsidiaries or which itself is a customer of the Pennichuck Corporation or its subsidiaries shall be eligible for membership in the District. After June 1, 2005, any municipality which contains any Customers of the District or any part of the District's Water Supply, Transmission, Treatment and Distribution System or is itself a Customer of the District shall be eligible for membership in the District.
  
- b) **Procedure for Becoming a Member** - The election of an Eligible Member to join the District shall be accomplished in the manner prescribed by RSA Chapter 53-A, as it may be amended from time to time. Any Eligible Member may elect to become a Member of the District on or before June 1, 2005 and, upon signing this Charter, shall be a Member of the District. After June 1, 2005, in addition to the foregoing, admission of an Eligible Member shall require the approval of the Board of Directors of the District. Membership shall be effective upon receipt by the Board of a certification by the Governing Body of the Member that such election to join has been accomplished and that the District's Director and alternate have been selected in the manner required by law and this Charter.



- c) **Withdrawal** - Any Member that ceases to meet the requirements for eligibility for membership in the District shall, upon written notice from the Board, be deemed to have withdrawn. Any Member may voluntarily withdraw from District membership upon a vote of its Governing Body approving a resolution to that effect which receives a simple majority vote and upon 60 days notice thereof to the Board of Directors. However, in circumstances in which the withdrawal will cause the District and/or the withdrawing Member to seek and obtain PUC or other regulatory agency approval, no withdrawal shall become effective until such approval has been granted. Withdrawal shall not affect the District's Franchise Areas, Service Areas or Non-District Territories or its authority to provide water service within the boundaries of the withdrawing municipality or to charge for services therein. Following withdrawal from the district, nothing shall preclude a former member from exercising its powers of eminent domain under RSA-38 to acquire district property.
- d) **Municipalization** - A municipality which becomes a Member does not thereby grant any rights in or relinquish control over the assets or operation of any Water Supply, Transmission, Treatment and Distribution System owned or operated by the Member or any village district located within the municipal boundaries of such Member. Moreover, so long as it remains a Member, any Member municipality may continue to exercise its powers of eminent domain to obtain local control of Water Supply, Transmission, Treatment and Distribution System assets within its municipal boundaries which are not already owned or operated by said Member or a village district within said Member municipality's boundaries, EXCEPT for Water Supply, Transmission, Treatment and Distribution System assets which are owned by the District.

## **ARTICLE 6**

### **BOARD OF DIRECTORS**

- a) **Representation** - The Board of Directors shall consist of one voting representative and one alternate from each Member of the District. The alternate present at a meeting shall vote if the voting representative is absent or disqualified from voting. Directors shall be residents of the Member municipalities which they represent and shall be elected or appointed and removed by each Member in such manner as shall be determined by the Governing Body of the Member. The Chief Executive Officer of the District shall be an ex-officio member of the Board of

Directors, without vote, whether voting by Director or by Customer. All Directors entitled to vote who are present at a meeting shall vote on every issue put to a vote.

- b) **Vote Apportionment** - Each Director shall ordinarily be entitled to cast one vote (which shall hereinafter be described as a "Vote by Director" or "Voting by Director"). However, whenever this Charter provides that the Directors shall "Vote by Customer" or "Voting by Customer", the Director representing a Member shall be assigned the number of votes equal to the number of Customers residing in that Member municipality, except that each Director representing a Member in which no Customers reside shall nevertheless be assigned one (1) vote.
- c) **Term of Office** - Each Director (including alternates), except the CEO of the District, shall serve for a term determined by the Governing Body of the Member which the Director represents. Directors shall continue to serve until their successors are appointed or elected and have qualified. In the event of resignation, death, disability or removal of a Director representing any Member, a successor may be appointed by the Governing Body of such Member for the unexpired portion of the term. No Director who is a voting representative, except the CEO of the District, shall be permitted to serve more than ten consecutive years.
- d) **Vote by Proxy** - Directors shall not vote by proxy.
- e) **Salary** - Directors (including alternates), except ex officio Directors, shall receive a sum of \$1,000 per year for their services, payable quarterly. Any Director may waive such salary, and shall do so if required by law.
- f) **Officers and Meetings** - The CEO of the District shall be the permanent Chairman of the Board of Directors. The Board of Directors shall elect a vice-chairman and a secretary, who shall be elected from the membership of the Board of Directors and who shall hold office for one year or until their successors are elected and have qualified. The Board of Directors shall hold regular meetings at least monthly. Special meetings shall be held whenever called by the Chairman or upon the written request of any three (3) Directors. Committees of the Board of Directors may meet as often as they shall consider prudent to conduct their business.
- g) **Bylaws and Rules** - The Board of Directors shall adopt and may amend such bylaws and rules of procedure for the conduct of its affairs as it deems appropriate. Such rules shall not require that motions be seconded to be in order for action by the Board (or any committee thereof). In addition, such rules shall make provision

for the permitted attendance at any public or non-public session of the Board of the members of the Governing Body of a Member or of the members of any committee or other representative body designed by the Governing Body of a Member for such purposes unless a majority of the Board votes by Director and by Customer to exclude such persons from such session. Finally, such rules shall provide that any Director may, as a matter of right, call for a brief recess, subject to the call of the Chair, for the purpose of consulting with the members of that Member's Governing Body or the members of any committee or other representative body thereof designed by the Governing Body of a Member for such purposes.

- h) **Powers and Duties** - The Board of Directors shall have the general superintendence and control of the affairs of the District.
  
- i) **Committees** - The Board shall establish such committees as may be necessary for the business of the District. The Board shall, at a minimum, establish the following standing committees, and it shall determine their numbers and terms and appoint their members, which may include Directors, members of the Operations Group, representatives from the general populace of the Member municipalities, and outside experts:
  - 1. A committee on resource planning and land use management to study and monitor matters of land use, including land acquisition and sale, regional growth and development, and the protection of existing and future water sources and supply for the District, and to make recommendations to the Board with respect to specific land use issues as are consistent with the Resource Plan;
  - 2. A committee on consumer affairs to consult with the Board and the Office of Customer Affairs established pursuant to this Charter on matters concerning the interests of Customers and potential Customers;
  - 3. A committee (which shall not include the CEO) to identify, review the qualifications of, and nominate candidates to serve as CEO of the District, to review applications of Eligible Members to become Members, to make nominations for officers and members of the committees of the Boards and, at least annually, to review the compensation and performance of the CEO;

4. A committee on capital improvements to study and monitor capital improvements to the District's Water Supply, Transmission, Treatment and Distribution System and to make recommendations to the Board with respect to specific issues as are consistent with the Capital Improvements Plan;
5. A committee (which shall include the CEO) to study and monitor employee compensation; and
6. A committee (which shall not include the CEO) to select auditors for the District and to receive and review their reports.

Each committee shall elect its own officers. Committees shall coordinate their activities with each other. Minutes of committee meetings shall be filed with the Board of Directors. Each committee shall report to the Board on its activities from time to time as required by the Board.

j) **Quorum and Voting** – A quorum of the Board of Directors for purposes of a Vote by Director shall consist of sixty percent (60%) of the Directors. A quorum of the Board of Directors for purposes of a Vote by Customer shall consist of Directors representing sixty percent (60%) of the Customers. Except as otherwise required by law or as provided in this Charter, all votes of the Directors, whether Voting by Director or Voting by Customer, shall be determined by a majority of the votes cast by Directors present and voting at a meeting at which a quorum is present. In addition, except as provided below or elsewhere in this Charter, all matters determined by the Board shall be accomplished by Voting by Director.

1. The following matters shall be determined by a two-thirds vote of the entire Board Voting by Director:
  - A. The adoption of the District's Resource Plan and any amendments thereto;
  - B. The acquisition, sale or other transfer of real property;
  - C. The admission to membership in the District after June 1, 2005 of any new Member;

- D. The decision to enter into a new bulk water contract or to alter an existing bulk water contract (except that rates shall be determined by Voting by Customer);
  - E. The selection of a Chief Executive Officer for the District.
2. The following matters shall be determined by a majority vote of the Board Voting by Customer:
- A. The adoption of the District's Capital Improvements Plan and any amendments thereto;
  - B. The issuance, refunding or advance payment of Bonds;
  - C. Any establishment of fees, rates, charges or tariffs.
  - D. Any amendment or procedural or other subsidiary motion on a matter subject to a vote by Customer.
3. The sale or other transfer of any portion of the District's active Water Supply, Transmission, Treatment and Distribution System shall be determined by a two-thirds vote of the entire Board Voting by Director, including the affirmative vote of the Directors representing all Members in which such facilities lie.
4. The sale or other transfer of real property within four hundred (400) feet of any water body, including connected surface wetlands, shall be subject to the provisions of Article 19(c) and shall require two-thirds vote of the Board Voting both by Director and by Customer.
- k) **Agendas** - Except as otherwise provided for in the Board's rules of procedure, agendas for each regular or special meeting of the Board shall be provided to the Clerk of each Member municipality not less than seven (7) days in advance of the meeting. Notwithstanding the aforesaid, unless otherwise required by law or as provided in this Charter, the failure to make a timely filing of an agenda or the failure to include an item of business in the agenda shall not affect the legality of any meeting of the Board or the business conducted thereat.

**ARTICLE 7**  
**THE CEO AND THE OPERATIONS GROUP**

- a) **Powers and Duties of the Chief Executive Officer** - The Chief Executive Office of the District shall be responsible for all day-to-day operations of the District and the employment and management of all of the other employees of the District and shall be the Chairman of the Operations Group. The CEO shall have the authority, without further Board approval, to enter into such contracts that are specifically so authorized in the Capital Improvements Plan or the Resource Plan.
- b) **Composition of Operations Group** - The Operations Group shall consist of the Chief Executive Officer and the other senior managers with responsibility for management of the District. At a minimum, the Operations Group shall include, in addition to the CEO of the District, a Chief Operating Officer, a Treasurer/Chief Financial Officer, and a Chief Engineer. The CEO may designate such other employees of or individuals affiliated with the District to serve as members of the Operations Group as are necessary, from time to time, for the efficient operation of the District.
- c) **Duties of the Operations Group** - The duties of the Operations Group shall include the following:
1. developing and recommending to the Board of Directors the District Resource Plan and the District Capital Improvements Plan, including periodic updates of each;
  2. recommending to the Board of Directors rate and tariff changes;
  3. recommending to the Board of Directors an annual budget for the District;
  4. recommending to the Board of Directors the purchase or sale of specific elements of the District's Water Supply, Transmission, Treatment and Distribution System and the expansion or contraction of the District's Franchise Areas, Service Areas or Non-District Territories;
  5. recommending to the Board of Directors the issuance, refunding or advance payment of Bonds; and
  6. commenting to the Board of Directors upon the applications of Eligible Members to become Members.

**ARTICLE 8**  
**DURATION OF WATER DISTRICT**

The District shall come into existence and this Charter shall become effective when three (3) Eligible Members have elected to join the District and have selected their Directors, as provided for herein.

The duration of the District shall be perpetual unless dissolved by (1) a two-thirds Vote by Director of the Board of Directors, and (2) a two-thirds Vote by Customer of the Board of Directors and (3) approval by the Superior Court of a plan of dissolution which makes appropriate provision for the payment of all of the District's Bonds, if any, the payment of its other liabilities and the distribution of its Properties.

**ARTICLE 9**  
**PUBLIC HEARINGS**

Whenever a public hearing is required or permitted under this Charter, such hearings shall be held in such location as will maximize the ability of the affected members of the public to attend and assure broad participation in the discussion of the matter under consideration. Notice of such hearing shall be published by the Board of Directors or its designee, at least ten days prior to the date set for the hearing, in at least one (1) newspaper having a general circulation within the Nashua area and one (1) newspaper having a general statewide circulation, and also posted electronically. Such notice shall set forth the date, time and place of such hearing and shall include a description of the matters to be considered at such hearing. A copy of the notice shall be mailed to the office of the Governing Body and the clerk of each Member and shall be available for inspection by the public at least ten days prior to the date set for the hearing. At such hearings, all Customers, and, at the discretion of the Board of Directors, other interested persons shall have an opportunity to be heard, concerning the matters under consideration. The chairman of the Board of Directors shall the power to determine that additional public hearings are necessary and to direct such additional hearings to be held in suitable locations within the District so as to achieve the desired broad participation. In the case of a sale or transfer by the District of real property pursuant to Article 19 of this Charter, a public hearing shall be held in the city or town in which such real property is situated. Any decision of the Board of Directors on matters considered at such public hearings shall be in writing and notice of the decision shall be published in newspapers having a general circulation in each city and town comprising the District within 30 days after such decision is made. Notwithstanding the aforesaid, unless otherwise required by

law or unless the hearing is required by this Charter, the failure to timely publish a notice or make the notice available for inspection shall not affect the legality of the hearing or the actions taken thereat or thereafter.

## **ARTICLE 10** **POWERS**

The District shall have all powers available to a regional water district under New Hampshire law, including without limitation the following:

- a) To sue and be sued;
- b) To have a seal and alter the same at its pleasure;
- c) To acquire in the name of the District by purchase, lease or otherwise and to hold and dispose of personal property or any interest therein;
- d) To acquire in the name of the District by purchase, lease or otherwise and to hold and dispose of any real property or interest therein;
- e) To own, operate, maintain, repair, improve, construct, reconstruct, replace, remove, enlarge, and extend a Water Supply, Transmission, Treatment and Distribution System;
- f) To sell, transmit, treat and distribute water and to sell fire protection, sprinkler and other related services and to set the fees, charges, rates, and tariffs thereof;
- g) To purchase water and other related services from any person or entity;
- h) To adopt and amend bylaws, rules, and regulations for the management and regulation of its affairs and for the use of its Properties;
- i) To make contracts, including but not limited to contracts with third parties to manage the Water Supply, Transmission, Treatment and Distribution System or any portion thereof;
- j) To borrow money and to issue, sell and refund Bonds as permitted by RSA 33B or otherwise;



- k) To open the grounds in any street, way or highway for the purpose of laying, installing, maintaining or replacing utilities or structures, subject to securing permits for such work from the appropriate governmental agency;
- l) To enter into cooperative agreements with other water authorities, municipalities, water districts or Water Companies within or outside of the District for interconnection of facilities, for exchange or interchange of services and commodities or for any other lawful purpose;.
- m) To acquire, hold, develop, and maintain land and other real estate and waters for conservation and for compatible active and passive recreational purposes and to levy charges for such uses, provided that such uses will not harm the quality of water provided by the District, and to assist Member municipalities to do the same;
- n) To apply for and accept grants, loans, or contributions;
- o) To raise Revenues by setting fees, rates, and charges for all services rendered;
- p) To grant mortgages, pledges, liens or other interests in the District's Properties, including its Revenues, as security for its Bonds or otherwise;
- q) To invest the funds of the District in any form of property and with any party permitted by law for towns and cities;
- r) To issue guarantees of the borrowings and liabilities of the District's Members which are incurred for purposes beneficial to the District's Water Supply, Transmission, Treatment and Distribution System;
- s) To hire, fire and manage employees to conduct the business and operations of the District and to retain auditors, attorneys, and such other outside consultants as may be necessary from time to time.
- t) To develop and implement a policy for the acceptance of Contributions In Aid of Construction ("CIAC");
- u) To do any and all other things necessary or appropriate for the benefit of the District, its Members or Customers consistent with the purpose and intent of this Charter.

**ARTICLE 11**  
**NON-COMPETITION**

The District shall not sell water to persons or entities within the geographical boundaries of any town, city, or village district which is a Member of or which is located within the boundaries of a Member of the District and which operates a municipal Water Supply, Transmission, Treatment and Distribution System, unless such town, city, or district, shall consent in writing to such sale by the District, or the District is ordered to provide service by any authorized State or federal agency. The District shall not acquire the land or other property interests, water rights, or any other assets of any municipal Water Supply, Transmission, Treatment and Distribution System which is owned or operated by a Member or a village district located within any Member municipality without the consent of the municipality, or the village district, as applicable.

**ARTICLE 12**  
**ESTABLISHMENT OF RATES**

The Board of Directors shall establish just and equitable rates or charges for the use of the Water Supply, Transmission, Treatment and Distribution System authorized herein, to be paid by any Customer, and may change such rates or charges from time to time; provided that, upon the acquisition by the District of any existing Water Company, the rates and charges with respect to the customers of that Water Company at the time of the acquisition shall remain in effect until new rates are established under this Charter. Such rates or charges shall be established so as to provide funds sufficient in each year, with other Revenues, if any:

- a) To pay the cost of maintaining, repairing and operating the Water Supply, Transmission, Treatment and Distribution System;
- b) To pay the principal of and the interest on outstanding Bonds of the District as the same shall become due and payable;
- c) To meet any requirements of any other legal or contractual obligations of the District;
- d) To make payments in lieu of taxes as provided in Article 20 of this Charter, as the same become due and payable;

- e) To provide for the acquisition, maintenance and conservation of the District's real property;
- f) To pay all other reasonable and necessary expenses of the District;
- g) To fund capital reserves in compliance with the Capital Improvements Plan approved by the District;
- h) To fund reserves necessary for any and all of the following purposes; security, debt coverage, Contribution In Aid of Construction reimbursement, working capital, treatment plant capital improvement sinking fund, environmental protection compliance, drought, water supply held for future use, capacity payments, depreciation and amortization (including items which may be assumed from the balance sheet of the selling utility Pennichuck as the deal is structured).
- i) To fund the exercise of any of the District's other powers authorized by Article 10.

No such rate or charge shall be established until it has received the approval of the Board of Directors and until after the District has held a public hearing thereon. Any change in such rates or charges shall be made in the same manner in which they were established. Notwithstanding the aforesaid, the rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which are within the same class, without the necessity of a public hearing or a vote of the Board of Directors. No budget requiring an increase in fees, charges, rates or tariffs shall be adopted until such increase in fees, charges, rates or tariffs has been properly established.

### **ARTICLE 13**

#### **SURPLUS REVENUE CREDITS**

At the end of each fiscal year, the Board of Directors shall determine whether the District's Revenues exceed its expenses and capital requirements. In the event that revenues exceed expenses and capital requirements, the Board may set aside all or any part of such excess as a reserve to address local capital improvements, such as an extension or upgrading of water mains or the acquisition of watershed land, or to advance a local project that is low in priority in the Capital Improvements Plan.

- a) **Account** - The Board of Directors shall designate such reserves as "surplus revenue credits" and deposit funds equal to such reserves in a separate account.

**ARTICLE 14**  
**TERMS AND CONDITIONS OF SERVICES**

The Board of Directors shall adopt a tariff (generally applicable contract for different classes of Customers) establishing the terms and conditions upon which service will be provided to Customers. Nothing herein shall prohibit the Board from establishing tariffs other than those fixed by its schedules of general application, if special circumstances exist which render such a departure consistent with the public interest.

**ARTICLE 15**  
**OFFICE OF CONSUMER AFFAIRS**

The Board of Directors shall establish an Office of Consumer Affairs which shall have a location within the District to act on behalf of Consumer interests, including without limitation matters of rates, water quality, quality of service, and supply. The cost of such Office of Consumer Affairs shall be paid by the District.

Among other things, the Office of Consumer Affairs shall hear Consumer complaints and grievances and resolve such issues on behalf of the District. The Office of Consumer Affairs shall be appointed by the Board of Directors. The Board shall set the number and term of the members of the Office. The Office of Consumer Affairs shall have benefit of all experts, facilities, and/or information of the District in carrying out its duties, and it shall have access to the District's records. The Office of Consumer Affairs shall adopt its own rules of procedure, which shall be subject to the approval of the Board. Subject to limits set by the Board, the Office of Consumer Affairs shall have the following authority:

- 1) Adjust any individual Customer service bills;
- 2) Abate any individual Customer water rents;
- 3) Determine appropriate rate class for an individual Customer; and
- 4) Authorize corrective actions and resolve such other grievances with respect to individual Customers as the Office deems appropriate.

As used in this Article, "Consumer" means Customer and any other person, company, corporation, association, city or town that receives services from the District, whether or not such person, company, corporation, association, city or town that receives services is financially responsible for such service.

Nothing in this Article 15 shall confer any rights upon any Consumer with respect to a water bill, bill for other services or otherwise and the decision of the Office of Consumer Affairs to take or not to take any action upon a Consumer's complaint shall not be appealable to any court.

**ARTICLE 16**  
**PURCHASING**

The Operations Group shall prepare a Purchasing Policy for review and adoption by the Board of Directors. All contracts in excess of an amount to be determined in the Purchasing Policy for any supplies, materials, equipment, construction work or other contractual services shall be in writing and shall be awarded upon sealed bids or proposals made in compliance with a public notice duly advertised by publication, except for contracts for professional services, except for purchases of supplies, materials, equipment or work which can only be furnished by a single party, or except for when the Board determines by a two-thirds vote (Voting by Director) that the award of such contract by negotiation without such public notice in cases of emergency will be in the best interest of the District. The Board may include a waiver provision in the Purchasing Policy subject to public notice duly advertised by publication. The Board of Directors may, in its sole discretion, reject all bids or proposals or any bids received from a person, firm or corporation the Board of Directors finds to be unqualified to perform the contract, or to have any relationship to a member of the Board and may, at its sole discretion, award the bid to the bidder who best meets the needs of the District.

**ARTICLE 17**  
**CONFLICT OF INTEREST**

- a) If any Director, alternate or employee of the District is financially interested in or has any other material personal beneficial interest, directly or indirectly, in any proposed contract or proposed purchase order for any supplies, materials, equipment or contractual services to be furnished to or used by the District, such Director, alternate or employee shall immediately so inform the Board of Directors, and, if the Board determines that such an interest exists, shall take no part in the deliberations or vote concerning such contract or purchase order. The Board of Directors may expel any Director or alternate or terminate the employment of any employee who violates this subsection.

- b) No Director, alternate or employee of the District shall in connection with his/her official duties accept gifts or any free or preferred services, benefits, or concessions from any person, company, or agency. An occasional non-pecuniary gift of insignificant value may be accepted. This paragraph does not prohibit the acceptance of awards which are generally presented in recognition of public service, nor does it prohibit the acceptance of any gift that would have been offered or given to the Director, alternate or employee if said Director, alternate or employee were not an official or employee of the District.
- c) No employee of the District shall serve on the Board of Directors except the Chief Executive Officer.
- d) No Director or alternate -- or member of a Director's or an alternate's immediate family -- shall accept a paid employee position with the District for a period of one (1) year after serving on the Board.
- e) The Board of Directors shall adopt a Conflict of Interest Policy for the District.
- f) Notwithstanding the foregoing provisions of this Article 17, no violation of this Article or of the District's Conflict of Interest Policy shall make voidable at the instance of the other party to the transaction any contract, agreement, purchase, sale or other transaction between the District and such other third party, but such transaction shall be voidable by the District if it was not, at the time entered into, commercially reasonable.
- g) This Article 17 shall not be construed to prohibit a Director or an alternate who is a Customer from voting upon any matter solely on account of such relationship.

**ARTICLE 18**  
**RESOURCE PLAN AND CAPITAL IMPROVEMENTS PLAN**

- a) Within two years from the date it acquires all or part of the Water Supply, Transmission, Treatment and Distribution System of the Pennichuck Corporation and its subsidiaries, the Operations Group shall recommend and the Board of Directors shall adopt the District Resource Plan. Prior to approving or amending the District Resource Plan, the Board of Directors shall hold at least two public hearings, one in Nashua and one in some other community within the District, to consider the proposed plan. The proposed plan shall be available for public inspection in the offices of the District from the date notice of such hearings is published.

1. The Resource Plan shall include an assessment of land owned by the District to provide water supply and an analysis of whether such land is “critical” to the water supply system or serves as a “buffer” to the system and these terms shall be defined in the Plan.
2. The Resource Plan shall also include provisions for land use management including whether any of the District's real property may be suitable for other uses and a policy regarding the disposition of land that is surplus.
3. The Resource Plan shall include a delineation of the District's existing Service Areas, and a description of those existing Service Areas capable of expansion and those potential locations capable of becoming new Service Areas, in either case without major capital improvements to the District's Water Supply, Transmission, Treatment and Distribution System.
4. The Resource Plan shall include a calculation of the safe yield of the District's existing and future water supplies and an allocation of uncommitted supply.
5. The Resource Plan must be renewed and approved at least once every ten years and reviewed and approved at least once every two years.
6. The Resource Plan shall include a detailed inventory of groundwater supplies, aquifers, and surface water supplies within the Merrimack River watershed basin and other watershed basins supplying water used by the Merrimack Valley Regional Water District, and shall consider any necessary protection.
7. The Resource Plan shall give priority to maintenance of existing infrastructure over the expansion of the system and the addition of new connections.
8. Prior to adoption of the Resource Plan by the Board of Directors, no extensions of or commitments to extend the District’s Service Areas shall be made and no new Service Areas shall be created which, in either case, involve connections, either singly or in the aggregate as part of a single or a group of related subdivisions or developments (whether residential, commercial, industrial or otherwise), where the reasonably anticipated average daily usage exceeds 100,000 gallons of water per day, unless and until such connections have been approved by the Board; provided,

however, that there is no requirement for Board approval of any connections that were approved by the Pennichuck Corporation prior to its acquisition by the District.

- b) Within one (1) year from the date it acquires all or part of the Water Supply, Transmission, Treatment and Distribution System of the Pennichuck Corporation and its subsidiaries, the Operations Group shall recommend and the Board of Directors shall adopt the District Capital Improvement Plan. Prior to approving or amending the District Capital Improvement Plan, the Board of Directors shall hold at least two public hearings in separate communities (one of which shall be the City of Nashua) to consider the proposed plan. The proposed plan shall be available for public inspection in the offices of the District from the date notice of such hearings is published.
  - 1. The Capital Improvements Plan shall classify projects according to the urgency and need for realization and shall recommend a time sequence for their implementation.
  - 2. The Capital Improvements Plan shall also contain the estimated cost of each project and identify the existing sources of funds or the need for additional sources of funds for the implementation of each project.
  - 3. The Capital Improvements Plan shall give priority to maintenance of existing infrastructure over the expansion of the system and the addition of new connections.
  - 4. The Capital Improvements Plan shall be reviewed and approved annually.
- c) The Board may establish policies and procedures for the adoption or amendment of the Resource Plan and/or the Capital Improvements Plan in addition to those prescribed in this Article 18 or elsewhere in this Charter.
- d) Once adopted, the Resource Plan and the Capital Improvements Plan shall be binding upon the District and no action inconsistent with such a plan shall be taken unless and until the Board of Directors has amended the plan, as provided for in this Charter.



**ARTICLE 19**  
**SALE, TRANSFER, OR DEVELOPMENT OF REAL PROPERTY**

- a) Notwithstanding any other provision of this Charter, until the District Resource Plan has been approved by the Board of Directors, the District shall not sell or otherwise transfer any real property or any interest or right therein, except for access or utility purposes, or except for developed parcels which are not a part of the District's Water Supply, Transmission, Treatment and Distribution System and do not otherwise materially contribute to a water supply function.
- b) After approval of the Resource Plan, the District shall not sell or otherwise transfer any real property or any interest or right therein, except for access or utility purposes, or develop such property for any use not directly related to a water supply function, other than for public recreational use, without approval of the Board of Directors.
- c) The Board of Directors shall not approve such sale or other transfer or development required by Section (b) of this Article to be approved by the Board unless it determines, following a public hearing, that the proposed action:
  - 1. Conforms to the Resource Plan;
  - 2. Does not materially adversely affect the environment, particularly with respect to the purity and adequacy of both present and future water supply; and
  - 3. Is in the public interest, giving due consideration, among other factors, to the financial impact of the proposed action on the Customers of the District and on the municipality in which the real property is located.
- d) Each proposed decision required by Section (b) of this Article to be made by the Board of Directors shall be made after consideration of a report prepared by the Operations Group detailing the potential impact of the proposed action including:
  - 1. A description of the real property and its environment, including its existing watershed function and the costs to the District of maintaining such property in its current use;
  - 2. A statement as to whether the proposed action, in the opinion of the Operations Group, conforms to the Resource Plan;

3. A detailed statement of the environmental impact of the proposed action and, if appropriate, of any alternatives to the proposed action, considering:
  - i. Direct and indirect effects upon the purity and adequacy of both present and future water supply;
  - ii. The relationship of the proposed action to existing land use plans, including municipal and regional master plans and applicable state plans for recreation and conservation;
  - iii. Any adverse environmental effects which cannot be avoided if the proposed action is implemented;
  - iv. Any irreversible and irretrievable commitments of resources that would be involved should the proposed action be implemented; and
  - v. Any mitigation measures proposed to minimize adverse environmental impacts.

Notwithstanding the foregoing, if a sale or transfer is identified in the Resource Plan as being unlikely to have any significant effect on the environment, the Operations Group may provide a preliminary assessment of the impact likely to occur in lieu of such detailed statement of environmental impact.

- e) The Operations Group shall submit the report required by Section (d) of this Article for comment and review, at least sixty days in advance of the public hearing to the regional planning commission in which the property is situated and to the Governing Body, planning board and conservation commission of each city or town in which the real property is situated and may submit the report to other appropriate agencies. The Operations Group shall also make such report available to the public for inspection. Notice of the existence of the report and a brief summary of its findings shall be published in a newspaper or newspapers having a general circulation within the District and posted electronically on the District's website and copies of such notice shall be mailed to the clerk of each town and city in the District for posting in a public place.
- f) Whenever the District intends to sell or otherwise dispose of any real property or any interest or right therein which requires approval by the Board of Directors pursuant to Section (b) of this Article, the District shall first notify in writing, by

certified mail, return receipt requested, the appropriate State agencies that regulate land use and the Governing Body of each city or town in which such land is situated, of the proposed terms of such sale or other disposition, and no agreement to sell or otherwise dispose of such property may be carried out by the District except as provided in this Section (f).

1. Within ninety days after such notice has been given, the Governing Body of the city or town or the commissioner of the appropriate state agency may give written notice to the District, return receipt requested, of the desire of the Governing Body of the city, town or state to accept the District's offer to sell the property in question upon the terms and conditions offered, provided that the state's right to acquire the property shall be secondary to that of the city or town. In the event of an acceptance of the District's offer, the District shall transfer the property to the city or town or the state upon the terms and conditions specified in the notice.
  2. If the Governing Body of the city or town or the commissioner of the state agency fails to give written notice of its desire to accept the District's offer within ninety days or gives notice to the District that the Governing Body of the city, town, or the commissioner of the state agency does not desire to acquire such property, the District may sell or otherwise transfer the property in question to whomever the Board chooses and upon such terms and conditions it approves.
- g) Any municipality, through its conservation commission, parks and recreation commission, or other appropriate board, committee, or commission, may assume the management of any conservation, recreation, or watershed protection land owned by the District which is located within such municipality upon approval of a local land management plan by the Board of Directors. The Board of Directors may approve local land management plans following a public hearing and upon determination that the plan is consistent with the District's Resource Plan.

## **ARTICLE 20**

### **ANNUAL REPORT AND AUDIT**

The District shall cause an annual audit of its accounts, books, and records to be conducted by an independent certified public accountant. A copy of the audit shall be available for public inspection during the ordinary business hours of the District at the

principal office of the District. An annual report shall be published by the District and distributed to the Governing Body of every Member. A concise financial statement shall be published at least annually in at least one (1) newspaper having a general circulation within the Nashua area and one (1) newspaper having a general statewide circulation, and also posted electronically.

**ARTICLE 21**  
**PAYMENT IN LIEU OF TAXES**

- a) The District shall make payments in lieu of taxes, in amounts equal to that which would be similarly assessed under municipal property taxation, to each Member municipality in which it owns real property. Payments for real property acquired by the District during any tax year shall be adjusted for such fractional year in accordance with the customary practice in such municipality for adjusting taxes between the buyer and seller of real property.
- b) The District may contest the assessed valuation of any property owned by the District with respect to which any payment in lieu of taxes is determined in the same manner as any owner of real property in such municipality.

**ARTICLE 22**  
**THIRD PARTY BENEFICIARIES**

Except for the rights of Eligible Members to become Members provided for in Sections (a) and (b) of Article 5 hereof, this Charter shall not be construed to confer any rights or benefits upon any parties who are not Members of the Water District. Without limiting the foregoing, no Customer, Water Company or non-Member municipality shall have any right to enforce or otherwise claim the benefit of any provisions of this Charter.

**ARTICLE 23**  
**AMENDMENTS TO CHARTER**

- a) The Board shall hold a public hearing upon any proposed amendment to this Charter in accordance with Article 9 hereof. An amendment shall be proposed by a majority of the Board voting by Director or by a petition containing the verified signature of 1,000 registered voters in Member communities. The final form of any amendment voted upon by the Board may not substantively differ from that proposed to and considered at the public hearing without the Board holding another public hearing thereon.

- b) After the public hearing, the Board may at a meeting preceded by written notice to the Directors at least ten (10) days prior to the date thereof of the date, time and place of the meeting and the text of the proposed amendment(s), amend this Charter upon a two-thirds Vote by Director and a two-thirds Vote by Customer.

**ARTICLE 24**  
**SEVERABILITY AND CONSTRUCTION**

The Provisions of this Charter shall be severable and if any phrase, clause, sentence or article of this Charter is declared to be contrary to law, or the applicability thereof to any Member, agency, person, or circumstance is held invalid, the validity of the remainder of this Charter and the applicability thereof to any Member, agency, person or circumstance shall not be affected thereby. It is the intent that the provisions of this Charter shall be reasonably and liberally construed to accomplish its purposes.

**EXHIBIT A**

**LIST OF MEMBERS**

Signature of Authorized Representative of

Name of Member

Member's Governing Body

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