

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.**

Docket No. DW 17-062

**PETITION FOR APPROVAL OF FRANCHISE EXPANSION,
ACQUISITION OF ASSETS, AND APPLICATION OF EXISTING RATES**

Pursuant to: RSA 485:41; the New Hampshire Department of Environmental Services (“DES”) Administrative Order No. 17-006 WD dated March 29, 2017; the “Decision and Order” of the New Hampshire Water Council in its Docket No. 17-06 WC dated October 25, 2019; the New Hampshire Public Utilities Commission (“Commission”) Order No. 26,016 dated May 10, 2017; RSA 374:22; RSA 374:30; and Puc 202.01(a), Aquarion Water Company of New Hampshire, Inc. (“Aquarion”) respectfully petitions the Commission to issue an order authorizing Aquarion to provide permanent water service to homes in the Wiggin Way/Winterberry subdivisions in the Town of Stratham. To effectuate this service, Aquarion seeks: i. approval of the expansion of its franchise into a limited area in the Town of Stratham; ii. approval of the contract for the acquisition of certain existing water distribution infrastructure assets by Aquarion; and, iii. approval for Aquarion to apply its existing tariff rates to these new customers.

Aquarion seeks the actions in this petition under this docket pursuant to this Commission’s direction to do so in Order No. 26,016 dated May 10, 2017, stating at page 6, “[t]his docket will remain open pending Aquarion's petition to expand its franchise as ordered by DES.”

A. BACKGROUND AND PROCEDURAL HISTORY

1. This matter has already been addressed by this Commission in the instant proceeding as well as in Docket No. DW 16-804 *Petition for Authorization for Temporary Emergency Connection with Wiggin Farm Homeowners Association* (now closed).

2. The procedural history of this petition's issues began with the issuance of DES Administrative Order No. 17-006 WD on March 29, 2017 (the "DES Order")¹ ordering that Aquarion temporarily interconnect with the water system operated by the Wiggin Way Homeowners' Association ("WWHA") for the provision of water to WWHHA members, and to transition that temporary connection to permanent water service by Aquarion once the DES Order became final. DES Order at 9.

3. The DES's authority over Aquarion arises from RSA Chapter 485, the "New Hampshire Safe Drinking Water Act." Specifically, DES has the authority to order the "extension of water service from an existing public water supply system to the area of impaired water quality or quantity". RSA 485:4, II.

4. The DES Order was appealed by the Towns of Hampton and North Hampton to the New Hampshire Water Council. On October 25, 2019, the Water Council issued its Decision and Order in its Docket No. 17-06 WC rejecting the Towns' appeals.² The rehearing period for that Order expired on November 25, 2019 and became final on that date as no rehearing motions were filed.

5. Upon the finality of the DES Order, Aquarion and WWHHA began work on the Order's provision that "[WWHA] and Aquarion shall complete the remaining steps required for permanent interconnection." DES Order at 9. Those actions have included negotiation of an Asset Transfer Agreement ("ATA") with WWHHA that will govern the terms for Aquarion acquiring the existing water distribution system infrastructure and property rights.

B. REQUEST FOR APPROVAL OF EXPANSION OF FRANCHISE

6. The DES Order directs Aquarion to "[file] a request with the PUC to expand the service area of Aquarion into Stratham to provide water to the residents of the Wiggin Farm and Winterberry subdivisions." DES Order, pg. 9, paragraph 3.

¹ The DES Order was filed as an attachment to the petition of Aquarion in this docket on April 14, 2017 and is available from the Commission's virtual file room for this docket at <https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-062.html> and included with this petition as Attachment 'A'.

² See Water Council Docket No. 17-06 Decision and Order included as Attachment 'B' and available online at: <https://www4.des.state.nh.us/Legal/?jump=Appeals/Water%20Council>.

7. RSA 374:22 requires approval by the Commission of a franchise to engage in the business of a public utility as follows:

374:22 Other Public Utilities. -

- I. No person or business entity ... shall commence business as a public utility within this state, or shall engage in such business, ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission . . .
- II. No water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any requirements of the department of environmental services concerning the suitability and availability of water for the applicant's proposed water utility.

8. Per Rule Puc 1603.05(c), attached hereto as Attachment C is a map reflecting the new service area Aquarion has been ordered to serve in the Town of Stratham by the DES Order. In conjunction with the expansion the existing well serving identified on the Attachment C map will be bypassed, requiring a new 20 foot wide distribution easement across four parcels (Map 10, Lots 129, 130, 131 & 132) as well as ratification of existing access and utility easements upon four additional parcels (Map 10, Lots 136, 137, 138 & 139) for the benefit of Aquarion, which the Board of the WWHA will obtain in accordance with Section 6.1 of the ATA.

9. The limited area in the Town of Stratham for which Aquarion seeks a franchise expansion includes the Wiggin Way and Winterberry subdivisions. This geographic area is adjacent to Aquarion's existing franchise territory in the Town of North Hampton.

10. The Town of Stratham supports this request. Letters evidencing this support from the Town of Stratham Select Board dated January 9, 2020 and the Town of Stratham Planning Board dated September 2, 2016, are included as Attachment D.

11. The expansion of Aquarion's franchise territory into Stratham and the transfer of assets and property rights from WWHA to Aquarion is in the public good as the DES has ordered these actions as necessary as "the most feasible and cost-effective option to address the Water System's arsenic and low water quantity issues" (DES Order at 9), and pursuant to DES's statutory authority of RSA Chapter 485. Therefore, Aquarion requests that the Commission grant this franchise expansion.

C. REQUEST FOR APPROVAL OF ACQUISITION OF ASSETS

12. RSA 374:30 requires Commission approval for the transfer and sale of the franchise, works, or system of an existing public utility as follows:

374:30 Other Public Utility Leases, Etc. Any public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise

13. The Supreme Court has stated that RSA 374:30 requires that "all sales or transfers of regulated public utility property must be approved by the PUC after a finding that the sales are for the public good." *Appeal of Verizon New England, Inc.*, 153 N.H. 50, 62 (2005) citing *Appeal of Public Serv. Co. of N.H.*, 124 N.H. 479, 483 (1984). Although WWHHA is not a public utility under RSA 362:2, in this matter the transfer of assets from WWHHA to Aquarion is at the direction of the DES Order that also requires Aquarion to receive approval from the Commission. Furthermore, to the extent it might be necessary for the Commission's determination under RSA 374:30, this transaction is in the public good as it enables the fulfillment of the objectives of RSA Chapter 485 and the execution of the DES Order terms.

14. Attachment E is the ATA entered into by Aquarion and WWHHA that is comprised of the transfer of the delivery portion of WWHHA's water system; the provision of necessary land rights; the installation of residential water meters at each customer location; accounting for the impacts and costs of the Tax Cuts and Jobs Act of 2017; and party responsibility for costs of the transaction. To ensure that Aquarion receives clear title to the Water Distribution System Assets, free of claims and encumbrances, every WWHHA member-owner shall execute a "Joinder" prior to the Closing, evidencing their consent to the terms of the ATA and transfer of Assets to Aquarion, see Attachment F.³

15. RSA 485:4, II requires that, "any order issued under this paragraph shall not delegate any costs associated with a connection to the person receiving the order from the

³ The Joinder is necessary to ensure that Aquarion obtains full legal title to the WWHHA assets being acquired, free of claims and encumbrances WWHHA subdivision. The Joinder eliminates any uncertainties regarding title to the water distribution system assets that could potentially arise from gaps in documenting ownership of said assets as between WWHHA and its nonprofit predecessor entities.

department.” Therefore, the terms of the ATA are crafted to ensure that neither Aquarion or its existing customers bear any costs of the transaction entailed by the DES Order’s mandate.

D. REQUEST FOR APPLICATION OF EXISTING AQUARION TARIFF RATE TO WWhA CUSTOMERS

16. Aquarion requests that its existing tariff be applied to the new customers that will be obtained under this transaction. As noted above, the one-time costs of this transaction are being borne by WWhA and not by Aquarion. Thus, it is fair, reasonable, and in the public interest that the proposed WWhA Aquarion customers be subject to the same approved rates, terms and conditions currently approved for Aquarion.

E. EFFECTIVE DATE OF TRANSACTION

17. The DES Order mandates that Aquarion receive Commission approval of this transaction. Receipt of final Commission approval of the requests made in this Petition is a condition precedent to the effectiveness of the ATA.

18. The ATA also includes other conditions precedent to closing set forth in ATA Sections 5 and 6.

19. The “Closing Date” for the ATA is defined in Paragraph 1.4:

[O]n the first business day after a period of thirty (30) days following the date on which all of the “Closing Conditions” set forth in Section 5.1 have either been satisfied or expressly waived by the Party for whose benefit such condition exists (other than conditions which, by their nature, are to be satisfied at Closing, but subject to the satisfaction or written waiver by Aquarion of those conditions), or on such other date or at such other place as the parties may mutually agree upon.

20. Until the Closing Date occurs, Aquarion will continue to provide water to WWhA on a temporary basis.

WHEREFORE, Aquarion Water Company of New Hampshire, Inc. respectfully requests that the Commission implement the DES Order by granting the following relief:

1. Approve the Asset Transfer Agreement between Aquarion and WWHA, pursuant to RSA 374:30;
2. Authorize and approve Aquarion's franchise expansion into a portion of the Town of Stratham to provide permanent service to WWHA pursuant to the DES Order; and
3. Approve the application of Aquarion's then-existing tariff to the customers obtained by this transaction; and
4. Approve any and all other relief as may be just and reasonable under these circumstances.

Respectfully submitted by:

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

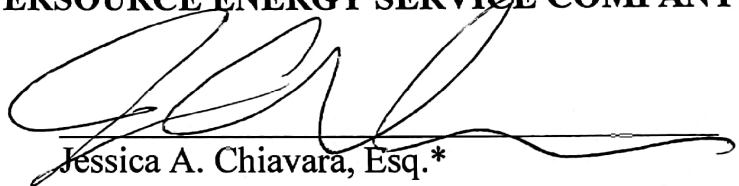
By its counsel

EVERSOURCE ENERGY SERVICE COMPANY

Date:

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By:



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ATTACHMENT A

NH DES ORDER NO. 17-006WD



The State of New Hampshire
Department of Environmental Services



Clark B. Freise, Assistant Commissioner

Wiggin Way Home Owners Association
Attn: Stephen Cook, Vice President

55 Bunker Hill Avenue
Stratham, NH 03885

Aquarion Water Company of New Hampshire, Inc.
Attn: Carl McMorran, Operations Manager

7 Scott Road
Hampton, NH 03842

ADMINISTRATIVE ORDER

No. 17-006 WD

March 29, 2017

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Wiggin Way Home Owners Association and Aquarion Water Company of New Hampshire, Inc. under the authority of RSA 485:4, II, and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division, is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. Wiggin Way Home Owners Association ("Wiggin Way HOA") is an association of homeowners in the Wiggin Farm and Winterberry subdivisions in Stratham, New Hampshire; having a mailing address of c/o Stephen Cook, 55 Bunker Hill Avenue, Stratham, NH 03885.
3. Aquarion Water Company of New Hampshire, Inc. ("Aquarion") is a New Hampshire corporation having a mailing address of 7 Scott Road, Hampton, NH 03842.

C. STATEMENTS OF ACTS AND LAW

1. RSA 485 authorizes the Department of Environmental Services ("DES") to regulate public water supplies. The Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Dw 100 *et seq.* (the "Drinking Water Rules") to implement this program per RSA 485:2, V.
2. RSA 485:I-a, XV, defines "[p]ublic water system" to mean "a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year."

www.des.nh.gov

3. RSA 485:1-a, I, defines "[c]ommunity water system" to mean a public water system ("PWS") "which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents."
4. Wiggin Way HOA owns and operates a community water system that serves 43 single-family homes, and about 108 residents, located near Union Road and Christie Lane in Stratham, New Hampshire (the "Water System"). Stephen Cook is the primary contact for issues related to the Water System. Pennichuck Water Service Corporation employs the certified operator for the Water System.
5. The Water System is a community water system as defined in RSA 485:1-a, I.
6. Env-Dw 405.12(a), and its predecessor rule in Env-Ws 300, require that minimum total source capacity for community water systems "shall be not less than 2 times the design flow of the water system based on a 24-hour day."
7. Env-Dw 405.10, and its predecessor rule in Env-Ws 300, set the design flow for single family homes at 150 gallons per day ("gpd") per bedroom.
8. As originally approved in 1999, the Water System was constructed to serve 45 four-bedroom homes using water from three bedrock wells ("BRW1," "BRW2," and "BRW3"). DES calculated the design flow for the Water System to be 27,000 gpd, or 18.75 gallons per minute ("gpm"). DES calculated the minimum total source capacity of the Water System to be 54,000 gpd, or 37.5 gpm.
9. RSA 485:1-a, VII, defines "[m]aximum contaminant level" ("MCL") to mean "the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from the definition."
10. Env-Dw 704.02 sets the current MCL for the inorganic contaminant arsenic in drinking water at 0.010 milligrams per liter ("mg/L").
11. Env-Dw 711.05 requires the PWS owner to collect a confirmation sample if the concentration of a regulated inorganic in a representative sample is greater than or equal to 50% of the applicable MCL, subject to certain exceptions. One exception is that if results from the sampling point or the contributing source have historically demonstrated the presence of that regulated inorganic, then a confirmation sample is not required, but the monitoring frequency for the approved sampling point is increased to quarterly for that regulated inorganic.
12. For a system at which regulated inorganics are monitored at a frequency greater than annually, Env-Dw 711.07(a) requires DES to determine compliance with the MCL specified in Env-Dw 704 using a running annual average as defined in Env-Dw 103.
13. Env-Dw 103.47 defines "[r]unning annual average ('RAA') to mean "a calculation made to determine compliance with an MCL where all water quality data taken within a one-year period are averaged and that number compared to the respective MCL in which the average is recalculated by considering each new data point and dropping from consideration those data points that are more than one year old."

14. Env-Dw 711.07(b) establishes that a PWS is deemed out of compliance if DES determines that the RAA at any sampling point is greater than the MCL specified in Env-Dw 704.
15. In January 2004, the arsenic MCL, established in Env-Ws 314.01(now Env-Dw 704.02), was lowered from 0.050 mg/L to 0.010 mg/L. Compliance with the new arsenic MCL was required by January 22, 2006.
16. On December 21, 2004, DES sent a letter to Wiggin Way HOA to notify it that recent samples collected from the Water System and analyzed for arsenic were above the new arsenic MCL, and that compliance with the new arsenic MCL was required by January 22, 2006.
17. On August 31, 2005, Wiggin Way HOA collected a sample from the Water System and had it analyzed for all regulated inorganic contaminants, including arsenic. The test results showed an arsenic concentration of 0.008 mg/L.
18. On September 29, 2005, DES sent a letter to Wiggin Way HOA to notify it that the Water System's sampling schedule for arsenic was being increased to quarterly based on the results of the sample collected on August 31, 2005, being greater than 50% of the arsenic MCL.
19. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in the first quarter of 2010 ("Q1-2010"). The test results showed an arsenic concentration of 0.011 mg/L, and a running annual average of 0.011 mg/L, which exceeded the MCL. As a result, on February 5, 2010, DES issued a Notice of Violation ("NOV") to Wiggin Way HOA that identified the violation.
20. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in Q2-2010. The test results showed an arsenic concentration of 0.008 mg/L, and a running annual average of 0.011 mg/L, which exceeded the MCL. As a result, on June 4, 2010, DES issued an NOV to Wiggin Way HOA that identified the violation.
21. On June 10, 2010, Pennichuck notified DES that it would "reduce/restrict the flow rate from the well with the highest concentration of arsenic" serving the Water System.
22. On February 16, 2012, Pennichuck notified DES that BRW3 had been offline since 2010, and requested that the sampling location description be revised on the Water System's Master Sampling Schedule.
23. On March 15, 2012, Pennichuck notified DES that BRW3 had recently been physically disconnected from the Water System.
24. In response to the February and March 2012 communications, DES changed the description of the sampling location in the Master Sampling Schedule for the Water System to remove BRW3.
25. Env-Dw 304.08 requires that a PWS notify DES no later than two business days after any bulk water is delivered to customers.
26. On July 15, 2012, the Water System received a 9,000 gallon bulk water delivery. On the bulk water delivery notification form submitted to DES, the reason given for delivery was *no water in atmospheric tank* and that there was a *supply/demand issue*.

27. On May 28, 2015, the Water System received a 7,000 gallon bulk water delivery. On the bulk water delivery notification form submitted to DES, the reason given for delivery was *low well production/no water in system*.

28. On June 1, 2015, DES staff spoke with the certified operator for the Water System, who stated that the Water System had run out of water at some point during the summer during each of the last three years, but that Wiggin Way HOA had not instituted any outdoor watering bans.

29. Env-Dw 503.13 requires the owner of a PWS to promptly repair and fully maintain the operational readiness of the system.

30. Env-Dw 503.18 requires the owner of a water system to review, periodically as needed, the sources and treatment of the water supply in relationship to customer demand, for the purpose of ensuring that the system can meet its obligations to customers.

31. Env-Dw 503.20 requires the owner of a water system whose water demand exceeds supply for more than 30 days to implement water use restrictions, inform DES in writing of any actions taken or directed to restrict customer demand within three days, and submit a plan to permanently correct the problem to DES within 60 days.

32. On July 15, 2015, DES sent a Notice of Violation ("2015 NOV") to Wiggin Way HOA. In the 2015 NOV, DES noted the lack of well production and requested Wiggin Way HOA to immediately implement water use restrictions and submit to DES a plan to permanently correct the lack of water supply within 60 days of the date of the 2015 NOV.

33. On July 30, 2015, DES received a memo from Wiggin Way HOA in response to the 2015 NOV. In the memo, a board member asserted that all homeowners were advised of an outdoor watering ban on May 29, 2015, and that the ban would remain in effect for the summer. In the memo, Wiggin Way HOA also informed DES that it was working with Pennichuck to reactivate BRW3, and install arsenic treatment. Wiggin Way HOA stated that a written plan would be submitted to DES within 30 days.

34. DES did not receive a written plan from Wiggin Way HOA in August 2015.

35. By e-mail dated September 3, 2015, DES reminded Wiggin Way HOA of its request that Wiggin Way HOA submit to DES a plan to permanently correct the lack of water supply within 60 days of the date of the NOV.

36. On September 14, 2015, DES received a memo from Wiggin Way HOA in further response to the 2015 NOV. In the memo, Wiggin Way HOA suggested that reactivation of BRW3 may resolve the source capacity issues. Wiggin Way HOA also informed DES that it had a meeting scheduled with Aquarion the following week to discuss the costs and other issues associated with connecting to the PWS owned and operated by Aquarion.

37. Aquarion owns and operates a community water system with approximately 8,100 service connections serving about 23,000 residents of Hampton, North Hampton, and Rye. The Aquarion community water system expands each summer to approximately 8,900 service connections serving about 54,200 residents and visitors.

38. On September 29, 2015, the Wiggin Farm Water System received two 8,000 gallon bulk water deliveries. On the bulk water delivery notification forms submitted to DES, the reason given for deliveries was *low atmospheric tank level*.

39. In an e-mail dated October 30, 2015, DES received a memo from Wiggin Way HOA to update DES on the proposed solution to connect to the Aquarion PWS. Wiggin Way HOA, Aquarion, and the Town of Stratham met in September to discuss the costs associated with interconnection. On October 17, 2015, Wiggin Way HOA voted to connect to the Aquarion PWS. In its memo to DES, Wiggin Way HOA provided a schedule for completion of interconnection by March 31, 2016, weather permitting.

40. DES approved the schedule for interconnection with Aquarion, and notified Wiggin Way HOA of the approval by reply e-mail dated October 30, 2015.

41. On November 12, 2015, representatives of DES, Wiggin Way HOA, and Aquarion attended a meeting of the Stratham Public Works Commission to discuss the proposal for Aquarion to provide water to the residents of the Wiggin Farm and Winterberry subdivisions. The commission voted to recommend supporting a limited franchise, and to pursue a joint filing by the Town of Stratham, Aquarion, and Wiggin Way HOA with the New Hampshire Public Utilities Commission ("PUC").

42. By e-mail dated November 30, 2015, Wiggin Way HOA notified DES that Aquarion was scheduling the PUC review.

43. By e-mail dated January 3, 2016, Wiggin Way HOA notified DES that it was meeting with Aquarion to supply any remaining information needed, and to finalize plans for interconnection.

44. By e-mail dated January 13, 2016, Wiggin Way HOA notified DES that its representatives had met with Aquarion and the Stratham Town Administrator to develop a list of remaining steps for interconnection, including obtaining DES approval of the assumption of the Water System by Aquarion, approval from the Town of Stratham Select Board, and the joint filing with the PUC requesting to expand the service area of Aquarion into Stratham to provide water to the residents of the Wiggin Farm and Winterberry subdivisions.

45. On January 25, 2016, Aquarion contacted DES to determine what information DES needed in order to approve the interconnection. DES provided an answer to Aquarion on the same day.

46. By e-mail dated January 27, 2016, DES received a letter from Aquarion regarding the interconnection. In its letter, Aquarion proposed the steps that it would take to acquire the assets of the Water System, and provide water to the residents of the Wiggin Farm and Winterberry subdivisions. In the letter, Aquarion characterized the additional water demand from the residents of the Wiggin Farm and Winterberry subdivisions as an "insignificant increase" to Aquarion's PWS. Aquarion updated DES on the transition process, and assured DES that all expenses related to future operations, maintenance, and capital improvements for the Water System, once interconnected, would be Aquarion's responsibility.

47. By e-mail dated February 5, 2016, DES requested Aquarion to provide some additional information about the process for interconnection within 30 days.

48. By e-mail dated February 29, 2016, Aquarion provided to DES plans and specifications for the connection of the Water System to Aquarion's PWS.

49. By e-mail dated March 29, 2016 DES notified Aquarion and Wiggin Way HOA that it approved an extension of the March 31, 2016 completion date for interconnection. DES suggested a new completion date of June 3, 2016.

50. In a letter sent by e-mail dated April 4, 2016, DES notified Aquarion of its approval of the interconnection plan, subject to PUC approval of Aquarion's proposed expansion into Stratham, New Hampshire.

51. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in Q1-2016. The test results showed an arsenic concentration of 0.0127 mg/L, and a running annual average of 0.011 mg/L, which exceeded the MCL. As a result, on February 22, 2016, DES issued an NOV to Wiggin Way HOA that identified the violation.

52. On May 23, 2016, the Water System received a 7,000 gallon bulk water delivery. On the bulk water delivery notification form submitted to DES, the reason given for delivery was that *the storage tanks were empty*.

53. By e-mail dated June 1, 2016, DES notified Aquarion and Wiggin Way HOA that it approved an extension of the June 3, 2016 completion date to allow more time to complete the interconnection. DES suggested a new completion date of August 31, 2016.

54. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in Q2-2016. The test results showed an arsenic concentration of 0.0126 mg/L, and a running annual average of 0.011 mg/L, which exceeded the MCL. As a result, on April 29, 2016, DES issued an NOV to Wiggin Way HOA that identified the violation.

55. On July 25, 2016, the Water System received a 7,000 gallon bulk water delivery. On the bulk water deliver notification form submitted to DES, the reason given for delivery was *low well production, low atmospheric tank*.

56. By e-mail dated July 26, 2016, Wiggin Way HOA requested DES assist with approval of an emergency connection to the Aquarion PWS, due to the lack of source capacity of the Water System.

57. In a letter sent by e-mail dated July 27, 2016, DES informed Wiggin Way HOA that a temporary connection to the Aquarion PWS on an emergency basis was approved, as a supplemental source for the Water system, due to the lack of source capacity of the Water System. In the letter, DES noted that authorization for the temporary connection would expire on September 15, 2016.

58. On July 29, 2016, Aquarion began supplying drinking water to the Water System on a temporary emergency basis to supplement to the source wells serving the Water System.

59. By e-mail dated August 24, 2016, DES notified Aquarion and Wiggin Way HOA that it approved an extension of the August 31, 2016 completion date to allow more time to complete the interconnection. DES suggested a new completion date of December 31, 2016.

60. On August 24, 2016, Aquarion notified DES that the towns of Hampton and North Hampton opposed the permanent interconnection of the Water System to the Aquarion PWS.

61. On September 15, 2016, Aquarion disconnected the temporary connection to the Water System.
62. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in Q3-2016. The test results showed an arsenic concentration of 0.0107 mg/L, and a running annual average of 0.011 mg/L, which exceeded the MCL. As a result, on October 4, 2016, DES issued an NOV to Wiggin Way HOA that identified the violation.
63. On October 21, 2016, Aquarion notified DES that it was abandoning the process of acquiring the Water System due to the strong opposition expressed by the towns of Hampton and North Hampton.
64. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in Q4-2016. The test results showed an arsenic concentration of 0.0101 mg/L, and a running annual average of 0.011 mg/L, which exceeded the MCL. As a result, on November 3, 2016, DES issued an NOV to Wiggin Way HOA that identified the violation.
65. By e-mail dated November 3, 2016, DES requested that Wiggin Way HOA submit a new plan to permanently correct the source capacity issues of the Water System. DES requested Wiggin Way HOA to submit the plan to DES by December 16, 2016.
66. By e-mail dated November 4, 2016, Wiggin Way HOA notified DES that it would provide a new plan by December 16, 2016, and reported that they were working with Pennichuck to reactivate BRW3 and install arsenic treatment.
67. Based on the 2016 quarterly arsenic MCL violations, DES issued Letter of Deficiency ("LOD") No. DWGB 16-084 dated November 7, 2016 to Wiggin Way HOA. In LOD #DWGB 16-084, DES recounted the violations and requested Wiggin Way HOA to retain the services of a qualified consultant to address the water quality violations, submit to DES the consultant's report for review and approval, and take corrective actions as approved by DES.
68. By e-mail dated December 7, 2016, Wiggin Way HOA responded to LOD #DWGB 16-084. In its response, Wiggin Way HOA notified DES that it had retained Pennichuck to explore reactivation of BRW3. Wiggin Way HOA also noted that it was working with DES to schedule a meeting with Aquarion and representatives of Hampton, North Hampton, and Stratham, to discuss selling the Water System to Aquarion.
69. On January 16, 2017, the Water System received a 7,000 gallon bulk water delivery. On the bulk water deliver notification form submitted to DES, the reason given for delivery was *low atmospheric tank*.
70. On January 17, 2017, the Wiggin Farm Water System received a 7,000 gallon bulk water delivery. On the bulk water deliver notification form submitted to DES, the reason given for delivery was *low atmospheric tank level* and that there might have been *a leak in the well line*.
71. By e-mail dated January 17, 2017, Wiggin Way HOA notified DES that it received bulk water deliveries on January 16th and 17th, because BRW1 stopped producing water on January 13, 2017.
72. On January 18, 2017, representatives of DES, Wiggin Way HOA, and Aquarion attended a meeting of the North Hampton Water Commission with representatives of the towns of Hampton and North Hampton to discuss concerns with Aquarion providing water to the residents of the

Wiggin Farm and Winterberry subdivisions. During the meeting, the town of Hampton stated its opposition to Aquarion's proposed expansion of service into Stratham.

73. In a letter sent by e-mail dated January 23, 2017, DES conditionally approved the emergency connection of BRW3 to the Water System to increase the source capacity of the Water System for 90 days. In its approval letter to Wiggin Way HOA, DES noted that the approval was subject to distribution of public notice to all residents, to include information on the health effects of arsenic in drinking water. DES also noted its approval was subject to the following conditions: (1) Wiggin Way HOA will submit to DES arsenic treatment plans and specifications by February 23, 2017, and (2) Wiggin Way HOA will install arsenic treatment in the Water System, as approved by DES, by April 24, 2017.

74. Wiggin Way HOA immediately brought BRW3 online to supply water to the Water System.

75. By e-mail dated January 30, 2017, Wiggin Way HOA notified DES that BRW1 and BRW2 were producing water at 3-4 gpm combined, and that BRW3 was producing water at 20 gpm.

76. Wiggin Way HOA collected a sample for arsenic monitoring from the designated sampling site at the Water System in Q1-2017. The test results showed an arsenic concentration of 0.0185 mg/L, and a running annual average of 0.013 mg/L, which exceeded the MCL. As a result, on March 23, 2017, DES issued an NOV to Wiggin Way HOA that identified the violation.

77. RSA 485:4, II, requires that upon complaint of not less than 10 customers of an existing PWS, DES shall make an investigation of conditions regarding water quality or quantity problems described in the complaint.

78. In February 2017, DES received over 30 complaints from residents served by the Water System, complaining of high arsenic in their drinking water, and insufficient water supply.

79. RSA 485:4, I, empowers DES to investigate the sanitary conditions and methods pertaining to the source, treatment, and distribution of all public water supplies for domestic use, and to require the application of any treatment or improvement in conditions and methods as DES may deem necessary to insure fitness and safety and adequate protection of the public health. If DES determines that improvements are necessary, the municipality, corporation, or person shall be so notified in writing and the requirements so ordered shall be effected within a reasonable time to be fixed by DES.

80. RSA 485:4, II, provides that if DES determines that (1) an extension of water service from an existing public water supply system to the area of impaired water quality or quantity is the most feasible and cost-effective alternative; (2) the extension is consistent with municipal master planning, local water system policies and rules, RSA 9-B, and RSA 162-C:2, V; and (3) the existing PWS has adequate water supply and system capacity to serve the problem area, DES shall order the municipality, corporation, or person who owns the PWS to allow connection to its water distribution system from the identified area, regardless of existing municipal or PWS service area boundaries.

81. Based on information received by DES, the estimated cost of additional well siting and permitting, capital costs of installing treatment, and on-going maintenance and operations of the Water System using current or additional source wells is approximately three times the estimated cost of connecting the Water System to the Aquarion PWS.

82. Based on information regarding Aquarion's capacity to provide water, DES has determined that Aquarion has adequate water supply and system capacity to serve the residents of the Wiggin Farm and Winterberry subdivisions without adversely affecting its existing customers.

83. Based on the costs and Aquarion's capacity, DES has determined that allowing the residents of the Wiggin Farm and Winterberry subdivisions to connect the Water System to Aquarion's water distribution system is the most feasible and cost-effective option to address the Water System's arsenic and low water quantity issues.

D. DETERMINATION OF VIOLATIONS

1. Wiggin Way HOA has violated Env-Dw 405.12(a), by failing to meet the required total source capacity for the Water System.
2. Wiggin Way HOA has violated Env-Dw 503.13, by failing to promptly repair and fully maintain the operational readiness of the Water System.
3. Wiggin Way HOA has violated the arsenic MCL established in Env-Ws 314.01(now Env-Dw 704.02) and is deemed out of compliance per Env-Dw 711.07 based on the running average arsenic levels exceeding the arsenic MCL during five consecutive quarters from Q1-2016 through Q1-2017, inclusive.

E. ORDER

Based on the above findings and determinations, DES hereby orders Wiggin Way HOA and Aquarion as follows:

1. Aquarion shall immediately seek PUC approval to allow the temporary connection of the Water System to its water distribution system on an emergency basis.
2. Upon Aquarion's receipt of PUC approval for the temporary connection, Wiggin Way HOA shall immediately connect the Water System to the Aquarion water distribution system on a temporary emergency basis and Aquarion shall allow the temporary connection per RSA 485:4, II.
3. **Within 30 days of the date of this Order**, Wiggin Way HOA and Aquarion shall meet with representatives of the Town of Stratham to develop a list of remaining steps for permanent interconnection, including obtaining approval from the Stratham Select Board, and filing a request with the PUC to expand the service area of Aquarion into Stratham to provide water to the residents of the Wiggin Farm and Winterberry subdivisions.
4. Wiggin Way HOA and Aquarion shall complete the remaining steps required for permanent interconnection, as soon as possible after the meeting held pursuant to E.3.
5. **Within 45 days of the date of this Order and every 15 days thereafter**, Wiggin Way HOA shall report to DES in writing the status of progress towards permanent connection to the Aquarion water distribution system.
6. **Within 60 days of receiving PUC approval** to expand the service area of Aquarion into Stratham to provide water to the residents of the Wiggin Farm and Winterberry subdivisions, Wiggin Way HOA shall permanently connect the Water System to Aquarion's water distribution system and Aquarion shall allow the permanent connection per RSA 485:4, II.

Administrative Order No. 17-006 WD
JO

Page 10 of

7. Wiggin Way HOA and Aquarion shall send **all** correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

DES Water Division, Drinking Water and Groundwater
Bureau Attn: Leah McKenna, Enforcement Supervisor
P.O. Box 95, Concord, NH 03302-0095
Fax: (603) 271-3490
E-mail: leah.mckenna@des.nh.gov

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the N.H. Water Council ("Council") by filing an appeal that meets the requirements specified in RSA 21-0:14 and the rules adopted by the Council, Env-WC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/water/index.htm>). Copies of the Council's rules also are available from the DES Public Information Center at (603) 271-2975.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and/or criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Respondents remain obligated to comply with all applicable requirements, in particular RSA 485 and the Drinking Water Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.


Clark B. Freise, Assistant Commissioner
Department of Environmental Services

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office

K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Stratham Select Board & Health Officer

Leah McKenna, DES Water Division, Drinking Water and Groundwater
Bureau Pennichuck Water Service Corporation

ATTACHMENT B

NH DES ORDER NO. 17-006WD

Before the
STATE OF NEW HAMPSHIRE
WATER COUNCIL

RE: DOCKET NO. 17-06 WC: APPEAL OF TOWN OF HAMPTON, NH, and NORTH
HAMPTON WATER COMMISSION

(collectively “APPELLANTS”)

DECISION AND ORDER

ON

NOTICE OF APPEAL

BACKGROUND

This consolidated Appeal concerns the Appellants’ challenge to Administrative Order No. 17-006 WD (the “Order”) issued by the Department of Environmental Services (the “Department”) under the authority of RSA 485:4, II, to the Wiggin Way Homeowners Association (“Wiggin Way”) and Aquarion Water Company of New Hampshire, Inc. (“Aquarion”) on March 29, 2017, in response to source capacity, repair, maintenance, and arsenic contamination issues affecting the Wiggin Way water system in Stratham, NH. *Order*, at Section D.

Aquarion owns and operates a public water system for the residents in its service area consisting of Hampton, North Hampton and Rye, NH. The Order requires, among other things, that Aquarion and Wiggin Way undertake the necessary steps before the NH Public Utilities Commission and otherwise to permanently connect the Wiggin Way water system to the Aquarion water distribution system. *Id.*, at Section E.

The Town of Hampton filed its Appeal of the Order on April 28, 2017. The Town of North Hampton and the North Hampton Water Commission filed similar appeals on the same date, with Docket # WC 17-07. (North Hampton subsequently withdrew its appeal.) By agreement of the parties, the two appeals were consolidated under Docket # WC 17-06.

Appellants raise four issues in this appeal:

I. Whether the Order should be reversed because the Department is bound by its longstanding interpretation that RSA 485:4, II can be invoked only when there is no alternative water source available;

II. Whether the Order should be reversed because the Department failed to perform the investigation required under RSA 485:4, II after it received notice of 10 or more complaints from water users;

III. Whether the Order should be reversed because the Department ignored its obligation to consider whether the interconnection was consistent with municipal master planning; and

IV. Whether the Order should be reversed because it is both contrary to statute and arbitrary and capricious.

(See Hampton Hampton's Hearing Brief, pp. 4-8)

The Water Council conducted hearings on this matter on April 10, June 12, July 15 and July 16, 2019. A deliberative session was held at the conclusion of the hearing on July 16, 2019. As discussed below, the Council denied the Appeal.

DISCUSSION

As the appealing parties, Appellants bear the burden of proving by a preponderance of the evidence that the Department's decision to issue the Order was unlawful or unreasonable. RSA 21-O:14, I-a. (In the same vein, Env-WC 204.14 (a) provides that the burden is to prove that the decision is either "contrary to statute" or "arbitrary and capricious;" (for present purposes the statutory recitation will be followed.)

The Order requiring Aquarion to facilitate an interconnection of its water supply system with that of Wiggin Way is based on the authority of RSA 485:4, II, which provides as follows:

II. Upon complaint of not less than 10 customers of an existing public water system or not less than 10 residents not currently served by a public water supply, the department shall make an investigation of conditions regarding water quality or quantity problems described in the complaint. If, as a result of any such investigation, the department concludes that a significant public health or safety problem exists due to water supply quality or quantity, it shall perform a preliminary analysis of alternatives which address the problem. The department may

request additional information from the complainants and nearby public water supply system owners, such as data on water supply quality and quantity, well characteristics, and water distribution system characteristics, as is necessary to perform its investigation and analysis. If the department determines that an extension of water service from an existing public water supply system to the area of impaired water quality or quantity is the most feasible and cost-effective alternative, that the extension is consistent with municipal master planning, local water system policies and rules, RSA 9-B, and RSA 162-C:2, V, and that the existing public water system has adequate water supply and system capacity to serve the problem area, the municipality, corporation, or person who owns the public water system shall be ordered to allow connection to its water distribution system from the identified area, regardless of existing municipal or public water system service area boundaries. The connection so ordered shall be effected pursuant to RSA 38:25 within a reasonable time to be fixed by the department and may contain limitations on water system connections unrelated to the original petition in order to limit unintended land use impacts. Appeals of actions of the department may be made as provided in RSA 485:59. The department may set intermediate goals and time frames to assist municipalities, corporations, or persons to abide by an order of the department under this paragraph. The provisions of this paragraph or of any order issued under this paragraph shall not delegate any costs associated with a connection to the person receiving the order from the department.

The Order recites that Wiggin Way operates a public water system that serves 43 single-family homes in Stratham, NH. As such the system qualifies as a community water system as defined in RSA 485:1-a, I and thus falls under the regulatory authority of the Department.

The record establishes that at least since December, 2004, and from time to time continuing through the date of the Order on March 29, 2017, the Department was aware that the Wiggin Way water system had regulatory compliance issues pertaining to arsenic level exceedances, lack of capacity requiring bulk water deliveries, and maintenance and repair issues. As a result, the Department issued several Notices of Violations (“NOV’s”) that Wiggin Way was required to address. *See, e.g.*, Order, paras. 16, 19, 51, and 76 (arsenic exceedances) and 32 (lack of capacity). A Letter of Deficiency was also issued by the Department pertaining to arsenic contamination issues. Order, para. 67.

As of July, 2015, Wiggin Way was pursuing two avenues of corrective measures intended to address the Department's concerns and NOV's associated with its water system issues that adversely affected the public health and safety of the Wiggin Way residents. The first involved reactivating BRW3, subject to new arsenic treatment plans and specifications to be approved by the Department. The second was a connection to the Aquarion public water supply system. Order, paras. 33, 36, 39. Wiggin Way, Aquarion, the town of Stratham and the Department approved the permanent interconnection of the Aquarion public water system with that of Wiggin Way as of November 12, 2015. Order, paras. 39, 40, 41.

Before the interconnection work was completed, Wiggin Way experienced further arsenic contamination exceedances resulting in NOV's being issued in February and April, 2016. Order, paras 51, 54. Additional bulk water deliveries were also required to meet capacity demands in May and July, 2016. Order, paras. 52, 55. On July 26, 2016, Wiggin Way requested Department approval of a temporary emergency connection to the Aquarion water system due to the lack of source capacity of Wiggin Way's water system, which approval was issued on July 27, 2016. Order, paras. 56, 57.

Appellants apparently did not object to the temporary interconnection; by August 24, 2016, however, they did notify Aquarion that they objected to a permanent interconnection of Aquarion's system with that of Wiggin Way. Order, para. 60. Aquarion disconnected the temporary connection to Wiggin Way on September 15, 2016, and notified the Department the following month that it was abandoning the process of acquiring the Wiggin Way system due to strong opposition expressed by Appellants. Order, para. 61, 63.

Wiggin Way continued to experience arsenic contamination exceedances and capacity shortfalls resulting in NOV's and bulk water deliveries throughout the remainder of 2016. On January 23, 2017, the Department approved an emergency connection of BRW3 to the water system to increase capacity for 90 days, but subject to Wiggin Way installing arsenic treatment in the water system by April 24, 2017. Order, para. 73.

As of February 2017, the Department had received over 30 complaints from Wiggin Way homeowners complaining of high arsenic levels in their drinking water, and insufficient supply.

Order, para. 78. Subsequently, the Department implemented its authority under RSA 485:4, II, to issue the Order requiring Aquarion to connect its public water supply to the community water system of Wiggin Way. This Appeal followed.

I. Appellants' first argument regarding the Department's interpretation of when RSA 485:4, II may be employed to correct a public health or safety issue with a public water supply system stems from statements made by the Department's administrator of the Drinking Water/Groundwater Protection Bureau, Ms. Sarah Pillsbury. In an email to Steven Roy, of the Wiggin Way Homeowners Association, on January 25, 2017, she said that "Our interpretation of ...[RSA 485:4, II] has always been that it can only be used if a public water system does not have a viable option except connection." Hampton Ex 82. (The record indicates that other options for dealing with the association's water supply issues were considered by it, including fracking existing wells, reactivating BRW3 with arsenic contamination treatment, or digging a new well. Hampton Ex. 55. Because of operational, economic or regulatory issues associated with each, the Aquarion reconnection was the preferred solution in the opinion of the Department and the association. See Testimony of Steven Roy, Department water division technician.)

With respect to this issue, Ms. Pillsbury testified that the Wiggin Way situation was the first time the Department considered applying RSA 485:4, II in any water supply context. And while she did express her initial opinion on its inapplicability to Mr. Roy, upon further review by the Department and its legal staff, and input from a state representative from Wiggin Way's district, she acknowledged that she was in error, and the position was reversed. *See, e.g.*, Pillsbury's February 7, 2017, email to Assistant Commissioner Clark Freise, explaining the options she considered under the statute and her opinion that the Aquarion connection was the preferred option. Hampton Ex. 99.

Appellants rely on *Bell Air Associates v. N.H.H.H.S.*, 154 N.H. 228, 234 (2006) and *Petition of Kalar*, 162 N.H. 314, 321 (2011) for the proposition that a long-standing agency interpretation of a statute without legislative interference is evidence that that interpretation is consistent with legislative intent. Hampton Hearing Brief, at 5. As noted above, however, there is no long-standing history of the Department applying RSA 485:4, II to any situation prior to the subject case. *Cf. Bell Air Assoc.* (agency implementation of two-year statutory interpretation

apparently not indicative of a long-standing position); and *Petition of Kalar* (prior incorrect interpretation of unambiguous statute by agency employee corrected three years later; “administrative gloss” doctrine not applicable.) Ms. Pillsbury testified that she was initially in error in her interpretation of the statute, and that that error was corrected and an evaluation of other water service options available to the association was conducted by the Department. The Department’s review of available options is consistent with the statute’s unambiguous requirement that the Department must determine “that an extension of water service from an existing public water supply system to the area of impaired water quality or quantity is the most feasible and cost-effective alternative....” Accordingly, on this point, Appellants’ argument is not persuasive.

II. Appellants’ second argument is that the Department erred in issuing the Order before it investigated the conditions under which RSA 485:4, II can be employed. The provision requires that “upon complaint of at least 10 customers... the department shall make an investigation of conditions regarding water quality or quantity problems described in the complaint.” Appellants argue that the Department had reached a conclusion that interconnection between Wiggin Way and Aquarion was preferable before it received any of the required complaints. They also take issue with the Department’s determination that the interconnection was the most feasible and cost-effective alternative to address the association’s water issues or that Aquarion’s water system had sufficient supply and system capacity to serve the problem area. Hampton Hearing Brief, at 6.

The Council reviewed the record in this appeal and determined that the Department had complied with all of the statutory requirements of RSA 485:4, II before it issued the Order to Aquarion and Wiggin Way. As noted above, the Order confirms that the Department did have a lengthy history of investigating water quality and quantity issues associated with the Wiggin Way system dating back to at least 2004. This knowledge led to the Department’s determination that an Aquarion interconnection was the best option as early as October 30, 2015. Order, para. 40. At the hearing Ms. Pillsbury again confirmed that the Department was well aware of these quantity and quality issues such that when Wiggin Way homeowners began filing complaints required by the statute starting February 4, 2017, (Wiggin Way Ex. 2) there was no

need to conduct additional investigation of quality or quantity issues. Hearing Transcript, pp. 532, 533.

Following receipt of the complaints, and contrary to Appellants' assertions, additional investigation over a six-week period was conducted by the Department regarding the cost estimates for connection to Aquarion versus the alternative of reactivating BRW3 with arsenic treatment. See DES Ex. 1, pp. 0134-0138; 0151; 0163-0166. Ms. Pillsbury testified that this analysis indicated that the cost of reactivating BRW 3 would be approximately \$42,000 while the cost of the Aquarion interconnection would be in the range of \$11,000 to \$14,000. Hearing Transcript, p. 574. Other evidence indicated the latter amount could be as high as \$25,000, but still less than \$42,000. Hampton Ex. 105.

With respect to the statute's requirement regarding feasibility, Ms. Pillsbury testified that the Aquarion interconnection "runs right by" Wiggin Way's system, so the Department determined that there was no issue regarding the feasibility of making the connection. Hearing Transcript, p.570; *see also* DES Ex. 5 (Wiggin Way System Map with location of interconnection noted); *and* testimony of Mr. Steven Roy, the Department water division technician, that the Wiggin Way interconnection would be about 40 feet from the Aquarion supply line.

Mr. Roy also testified that reactivating BRW 3, even with effective arsenic treatment, was likely not feasible in his opinion given the fact that it was not an approved drinking water source because it was located in a swampy wetland area and tests indicated it was impermissibly drawing surface water into the system. He also opined that hydrofracking the existing BRW 1 and 2 wells was not a viable permanent solution; and drilling a new well within the Wiggin Way development was not an option given local setback rules.

Finally, with respect to Aquarion's capacity to add the Wiggin Way system to its service area, Appellants introduced evidence that at times during drought conditions in the summer of 2016, Aquarion had difficulty meeting existing demand even without addition of the Wiggin Way system. *See, e.g.*, N. Hampton Ex. D-1, Tab 6. However, Ms. Pillsbury testified that adding Wiggin Way's estimated daily water demand of anywhere between 6000 and 12,000 gallons per day to Aquarion's system capacity of approximately 4.5 million gallons per day would amount to

only “a drop in the bucket”. Transcript, p. 490; *see also*, Hampton Ex. 50, Pillsbury Affidavit, p.6 (adding 6000 gallons per day to an estimated Aquarion production capacity of 5.04 million gallons per day is an insignificant increase of .0026%) Similarly, Mr. Carl McMorran, Aquarion’s operations manager, testified that the addition of Wiggin Way to its service area would have no measurable impact on Aquarion’s Hampton system, particularly in view of the opening of a new well with anticipated production of 1.35 million gallons per day, citing an independent supply/demand analysis performed at Aquarion’s request. DES Ex. 9.

Given the above, the Council determined that the Department had complied with the complaint, investigation and cost and feasibility determinations required under RSA 485:4, II.

III. Appellants’ third assignment of error is that the Department failed to determine that “the extension is consistent with municipal master planning...” as RSA 485:4, II requires.

Considerable evidence was introduced by the Appellants that the master plans of Hampton, North Hampton and Rye contained significant provisions indicating the concern those communities had regarding protection and conservation of groundwater resources within their boundaries. *See, e.g.*, N. Hampton Ex. Tab 7, summarizing applicable provisions from the North Hampton and Rye Master Plans; and testimony of Mr. Timothy Harned, member, North Hampton Water Commission and chair, North Hampton Planning Board. Transcript beginning p. 180. He also testified, however, that North Hampton has no ordinances or regulations preventing new developments from connecting to the Aquarion system. Transcript, p. 185-186. *See also* excerpts, Hampton Master Plan, 2008-2009 Update, Hampton Ex. 9, p. CF -25 (“As growth continues in Aquarion’s service area, supply problems can be expected to recur periodically and perhaps chronically. [Conservation measures]... will be necessary to avoid future moratoria and use restrictions.”); and testimony of Mr. Jason Bachand, Hampton town planner to the effect that while the town did have concerns about conservation of water resources and future growth, the master plan does not contain a growth moratorium. Transcript, p. 320, 321.

Ms. Pillsbury testified that she did not review the master plans of Hampton and North Hampton prior to issuing the Order because in her opinion the statute only required a review of the municipal plans of Stratham...the community in which the interconnection was to occur. Transcript, p. 550. She also testified, however, that given the small amount of water the Wiggin

Way connection would take from the Aquarion system, the only issue that would be relevant in the Hampton or North Hampton master plans would be a moratorium on growth. Given her discussions in January, 2017, with the towns before the Order was issued, it was evident growth moratoria were not contemplated. Transcript, pp. 550-553. Furthermore, she also stated that she did review those master plans after the appeal was filed, and had she done so before the Order was issued, her decision to issue the Order would not have changed. Transcript, pp. 553-554.

The Council rejected the Appellants' argument that the Department erred by failing to take into account the Hampton and North Hampton master plans in approving the interconnection.

IV. Appellants' final argument is that the Department's Decision was generally contrary to statute or arbitrary and capricious.

The Council heard all of Appellants' arguments regarding the Department's actions in arriving at the decision to order interconnection of the Aquarion public water system with that of Wiggin Way. They found by unanimous vote that each of the requirements of RSA 485:4, II were satisfied before the Order was issued. As noted above, the Department had extensive knowledge of the water problems at Wiggin Way before receiving the necessary complaints from users, but after receiving them, the staff did engage in further investigation of the alternatives. The Council agreed with the Department that Aquarion had the capacity to service the Wiggin Way connection, and that it was the most cost effective and feasible alternative, given the conditions that existed at the Stratham subdivision. Moreover, the Council did not agree with Appellants that the efforts of a state legislator promoting the interconnection were improper. The fact that to some extent PFAS contamination may have been found to exist in Aquarion well #6, which might require Aquarion to engage in an expensive treatment program, or in a Wiggin Way well, was not considered relevant to the issues on appeal except to the extent that treating potential PFAS contamination through a regional water system would be more protective than addressing individual local water systems like Wiggin Way's.

The Council unanimously approved a motion to deny the Appeal, finding that the Department's decision to issue the Order was neither unlawful nor unreasonable, arbitrary or capricious.

The Council's rulings on Appellants' Requests for Findings and Rulings is attached.

CONCLUSION AND ORDER

For the reasons set out above, Appellant's Appeal is DENIED.

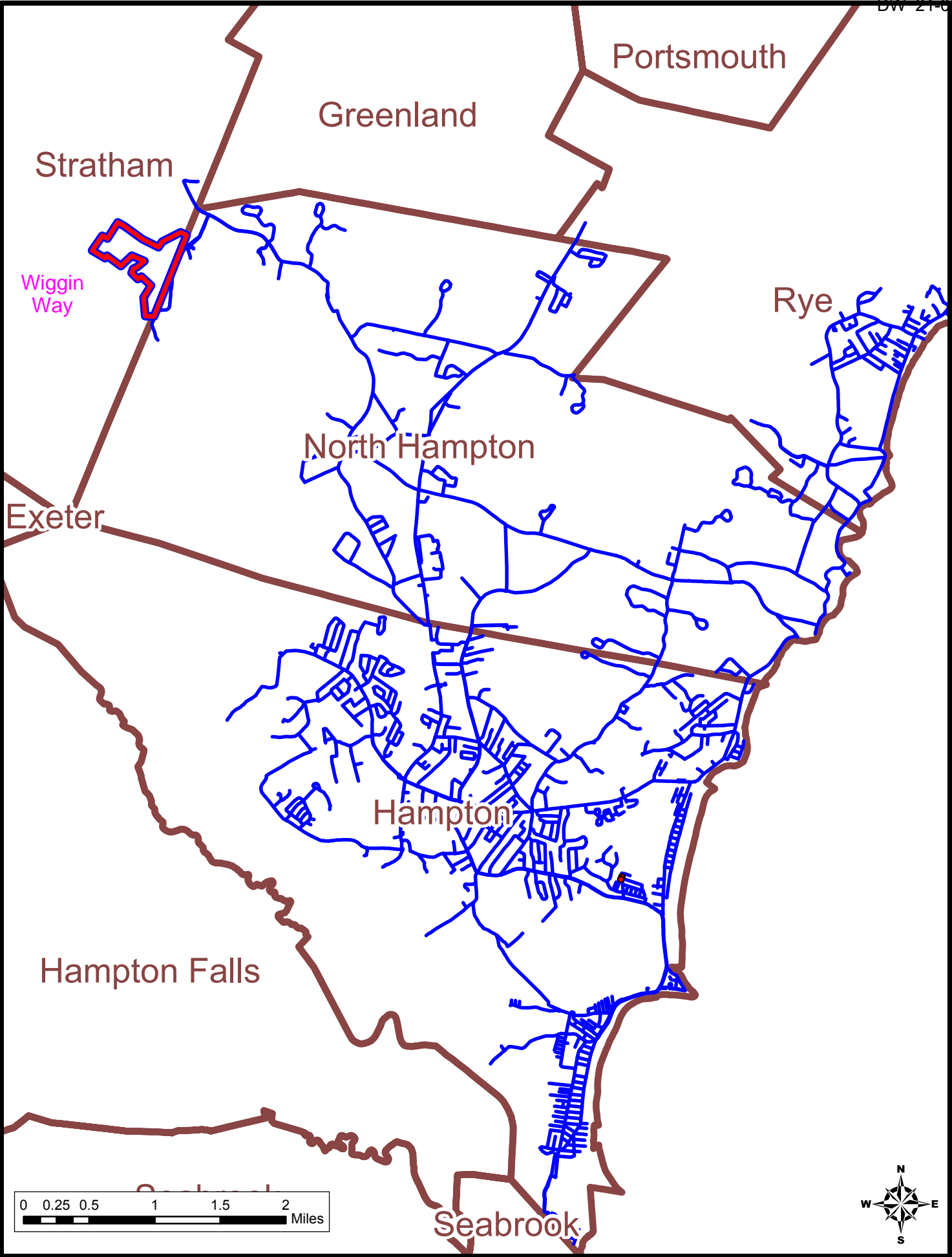
By order of the Hearing Officer.

10/25/19
Date


COPY
David F. Conley, Esq. (Bar #130)

Any party may file a Motion for Reconsideration or Rehearing with the Council pursuant to the requirements of RSA 541:3, within thirty days of the date of this decision.

ATTACHMENT C
MAP OF NEW AQUARION SERVICE TERRITORY



Stratham

North Hampton

Location of Wiggins Way
Pumphouse and Wells
(Not Included in Asset Transfer)

Water Mains

Aquarion Mains

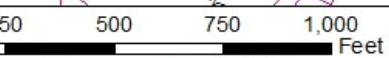
Pumphouse Bypass Man

Wiggin Way Mains

Not Included In Asset T

Other

Franchise



ATTACHMENT D
LETTERS IN SUPPORT FROM THE TOWN OF STRATHAM
PLANNING BOARD AND SELECT BOARD



TOWN OF STRATHAM

Incorporated 1716

10 Bunker Hill Avenue · Stratham, NH 03885

Town Clerk/Tax Collector 603-772-4741

Select Board's Office/ Administration/ Assessing 603-772-7391

Code Enforcement/ Building Inspections/ Planning 603-772-7391

Fax (All Offices) 603-775-0517

January 9, 2020

Steven Roy
WWHA President
14 Christie Lane
Stratham, NH 03885

Mr. Roy,

On January 6, 2020, the Stratham Select Board authorized and requested I send a letter in support of the Wiggin Way Homeowner Association's efforts to establish a permanent connection to a water supply source. Specifically, the Board wishes to express its support for Aquarian's application to extend its franchise into Stratham.

The Board first became aware of this opportunity in June of 2016 when the Planning Board amended the original subdivision to permit connection to a public water supply. Further, as the subdivision is already developed with the appropriate infrastructure and has been serviced by Aquarion since 2016, with the support of the NH Department of Environmental Services, the Select Board fully supports your Association's permanent connection to a public water supply with Aquarion.

Congratulations on your progress in resolving this longstanding challenge. Please keep us informed of the process and be sure to contact us again should you have further questions or seek additional support in this effort.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Moore', is written over a faint, curved line.

David Moore
Town Administrator
Town of Stratham, NH

**CASASSA LAW OFFICE
ATTORNEYS AT LAW**

459 LAFAYETTE ROAD
HAMPTON, NEW HAMPSHIRE 03842-2242
(603) 926-6336
TELEFAX (603) 926-4127
(603) 929-1632

H. ALFRED CASASSA
PETER J. SAARI
ROBERT A. CASASSA
FAYE R. GOLDBERG*
DANIEL R. HARTLEY*

*MEMBER: NH AND ME BAR

September 2, 2016

VIA EMAIL

Tavis Austin, AICP
TOWN PLANNER
TOWN OF STRATHAM

taustin@strathamnh.gov

RE: WWHA Water Projects

Tavis,

In response to your request for a legal opinion regarding the above matter, please find attached the following:

1. Declaration of Restrictive Covenants Winterberry of Stratham Subdivision recorded in the Rockingham County Registry of Deeds at Book 3454, Page 2261. A copy of this Declaration is attached.

You will note that page 8, paragraph 19 entitled, "Wiggin Way Home Owners Association", states that "A community well and master delivery system provides water to all the lots encumbered by these Covenants (which is identified on page 2 of the document as 27 residential house lots numbered 1, 2 4 through 7, 9 and 11 through 30 shown on Plan D-27549 of the Winterberry of Stratham Subdivision). Also attached is a copy of the Plan.

2. Agreement Among Members of Wiggin Way Home Owners Association recorded in the Rockingham County Registry of Deeds on July 7, 2000 and recorded at Book 3487, Page 1682. A copy of the Agreement is attached.

You will note that the first paragraph this Agreement ties in the Wiggin Farm Subdivision and the Winterberry Subdivision as being owners of the lots serviced by the community wells and private water delivery system. Paragraph 1(A) encompasses the Wiggin Farm Lots (broken down by their source seller) and paragraph 1 (B) does the same for the Winterberry lots.

This will confirm that it is my legal opinion that the community well and master delivery system in question provided water to the following Lots in the Wiggin Farm Subdivision controlled by the Wiggin Way Home Owners Association (Lots 6, 7, 8, 9, 10, 13, 14, 26, 27, 28, 29, 30, 31, 32, 33 and 34 shown on Plan D-24196), as well as the following lots in the Winterberry of Stratham Subdivision (1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 as show on Plan D-27549.)

If you have any questions, or require any additional information, please let me know.

CASASSA LAW OFFICES

By: 

Peter J. Saari, Esquire

PJS/cmb

cc: Stephen Cook
Steven Roy

stephenjcook09@gmail.com
steven.roy2014@gmail.com

ATTACHMENT E
ASSET TRANSFER AGREEMENT

ASSET TRANSFER AGREEMENT

This AGREEMENT, effective as of October 28th , 2020, is entered into by and between Wiggin Way/Winterberry Homeowners' Association, a New Hampshire nonprofit corporation, having an address of 14 Christie Lane, Stratham, New Hampshire, and Aquarion Water Company of New Hampshire, Inc., a New Hampshire public utility, having an address of 7 Scott Road, Hampton, New Hampshire 03842 ("Aquarion" or "Buyer").

W I T N E S S E T H :

WHEREAS, Wiggin Way/Winterberry Homeowners' Association and/or its member property owners (collectively, "WWHA") own and WWHA operates a water supply system, being the Wiggin Farm Winterberry System (the "Water System"), located in Stratham, New Hampshire, which supplies water to certain Property Owners in the Wiggin Way and Winterberry subdivisions ("Property Owners");

WHEREAS, the Water System is subject to the jurisdiction of the New Hampshire Department of Environmental Services Drinking Water & Groundwater Bureau ("NHDES");

WHEREAS, Aquarion is a public utility providing water service to approximately 9,500 customers in the State of New Hampshire and subject to the jurisdiction of the New Hampshire Public Utilities Commission ("PUC");

WHEREAS, pursuant to RSA 485:4, II the NHDES issued Administrative Order No. 170006 WD (the "Order") to WWHA and Aquarion on March 29, 2017, in response to source capacity, repair, maintenance, and arsenic contamination issues affecting the

WWHA Water System requiring that WWHA and Aquarion undertake the necessary steps to permanently interconnect portions of the Water System to Aquarion's system;

WHEREAS, RSA 485:4, II states that "any order issued under this paragraph shall not delegate any costs associated with a connection to the person receiving the order from the department." As a result, neither Aquarion nor its existing customers shall bear the costs required to permanently interconnect the Water System to the Aquarion's system;

WHEREAS, the Water System includes tangible water delivery infrastructure (such as transmission mains, distribution pipes and appurtenances) ("Water Distribution System") and water supply infrastructure (such as wells and a pumphouse) ("Water Supply System"), together with intangible access and maintenance easements, franchise rights, permits, licenses and agreements ("Intangible Rights");

WHEREAS, pursuant to the Order WWHA desires to transfer ownership of, and Aquarion agrees to acquire, service and operate certain assets relating to the Water Distribution System, and Intangible Rights, and excluding liabilities associated therewith, and also excluding the Water Supply System, as more specifically set forth herein and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, WWHA and Aquarion do represent, warrant, covenant and/or agree as follows:

1. TRANSFER AND ACCEPTANCE OF CERTAIN ASSETS, RIGHTS AND PRIVILEGES

1.1 Transfer.

(a) Subject to the terms and conditions of this Agreement, on the Closing Date (as hereinafter defined in Section 1.4) and without any additional payment or other compensation, WWHA agrees to grant, assign, transfer and deliver to Aquarion, and Aquarion agrees to acquire from WWHA the following assets (collectively, the “Water Distribution System Assets” or the “Assets”):

(i) grants of utility and access easements, together with the improvements and appurtenances located thereon and therein, as set forth on Schedule 1.1.1, attached hereto, free and clear of any liens and encumbrances of any sort, other than Permitted Encumbrances as defined below;

(ii) all assets of WWHA pertaining to the ownership and operation of the Water Distribution System located in Stratham, New Hampshire, including, without limitation: the complete and operating Water Distribution System shown on the maps attached hereto as Schedule 1.1.2, being: (a) the transmission and distribution mains described in Schedule 1.1.3 (collectively, the “Properties”); (b) and all of WWHA’s right, title and interest in and to the contracts described in Schedule 1.2; (c) all of WWHA’s right, title and interest in and to leases which pertain to the operation of the Water Distribution System, together with any and all franchise rights and exclusive service area grants and/or other agreements relating to the operation of all or any portion of the Water Distribution System, all or any portion of the Water Distribution System described in Schedule 2.8; (d), all of WWHA’s right, title, and interest in and to Licenses

identified in Schedule 2.11(a)); and (e) all of WWHA's right, title and interest in and to Permits identified in Schedule 2.11(c).

(iii) to the extent available and in the possession of WWHA or its agents, accountants, attorney, contractors, all documents, reports, maps, customer records and other information of any type or format pertaining to the Water Distribution System, including, but not limited to, all engineering, laboratory and operating reports, customer service records, fixture surveys, property maps, distribution maps, gate drawings, main laying specifications and tap and service cards; and

(iv) all materials, supplies, books, and records relating to the Water Distribution System.

(b) There shall be no monetary compensation or payment due by Aquarion to WWHA for the transfer and delivery of the Water System Assets to Aquarion as described in Section 1.1(a), and WWHA acknowledges and agrees that Aquarion's acceptance of the Water Distribution System Assets and agreement to serve the member/customers of WWHA is being made pursuant to RSA 485:2, II and the DES Order and is adequate consideration for such transfer and delivery of the Water Distribution System Assets.

1.2 No Liabilities to be Assumed.

Aquarion shall assume no liability or obligation of WWHA whatsoever, including but not limited to any accounts payable, outstanding debt, taxes accrued, accrued interest, tax collections payable, deferred credits, or accumulated deferred income taxes, in connection with the transfer of Assets or otherwise with regard to the Water System, provided for in this Agreement, whether accrued, contingent or other, incurred prior to

the Closing Date, or arising from WWHA's ownership or operation of the Water System prior to the Closing Date, excepting only any obligations of WWHA expressly assumed in writing by Aquarion under any lease, contract, agreement or similar document which is assigned to Aquarion on and as of the Closing Date, and specified in Schedules 1.2 and 2.8 hereto. For the avoidance of doubt, except as otherwise set forth in Schedule 1.2, Aquarion shall not assume any liabilities or obligations under the agreements listed in Schedule 1.2 hereto that accrue prior to the Closing Date, all of which liability and obligation shall remain solely the responsibility of WWHA. The provisions of this Section 1.2 shall survive the Closing.

1.3 Instruments of Transfer.

Within thirty (30) days following the date of execution of this Agreement, WWHA shall provide Aquarion proper legal descriptions and copies of any available surveys in its possession for the easement interests being transferred pursuant to this Agreement. Within thirty (30) days following receipt of such descriptions, Aquarion shall provide WWHA with a list of title defects, liens or encumbrances that are objectionable to Aquarion in its sole discretion. If WWHA is unable to have such defects, liens or encumbrances removed on or prior to the Closing Date, Aquarion shall have the option either to terminate this Agreement with no further obligations hereunder, or to proceed to closing the transactions contemplated by this Agreement. Once accepted by Aquarion, such legal descriptions and copies of available surveys shall be attached hereto as updated Schedule 1.1.2. On the Closing Date, WWHA will transfer and deliver to Aquarion all of the Assets referred to in Section 1.1 above, and WWHA will deliver to Aquarion all such bills of sale, assignments and instruments of conveyance and transfer

as shall be necessary to transfer to and vest in Aquarion good and marketable title in and to all of the Assets free and clear of all liens and encumbrances, other than those liens and encumbrances accepted by Aquarion in its sole discretion, which shall be set forth in an updated Schedule 1.3 after Aquarion has agreed to accept the Assets subject to such liens and encumbrances (“Permitted Encumbrances”), including but not limited to a Bill of Sale, Assignment of Easements and new Easements in substantially the same form as attached hereto as Exhibits II, III & IV. At the request of Aquarion after the Closing Date, WWHA, or its successor in interest, will execute and deliver any such further instruments of conveyance and transfer or confirmation thereof and will take such other action as may reasonably be requested by Aquarion in order further to make effective and to assure the transfers of Assets and vesting of title as provided for by this Agreement.

1.4 Closing Date.

The transactions provided for in this Agreement shall take place at the offices of Aquarion Water Company of New Hampshire, 7 Scott Road, Hampton, New Hampshire 03842, on the first business day after a period of thirty (30) days following the date on which all of the “Closing Conditions” set forth in Section 5.1 have either been satisfied or expressly waived by the Party for whose benefit such condition exists (other than conditions which, by their nature, are to be satisfied at Closing, but subject to the satisfaction or written waiver by Aquarion of those conditions), or on such other date or at such other place as the parties may mutually agree upon (the “Closing Date”).

1.5 Rates.

As of the Closing Date, the Customers will be charged the rates set forth in Aquarion New Hampshire’s then-current “Tariff for Water Service” as approved by the

PUC, subject to change thereafter in accordance with Applicable Law (as that term is defined below in Section 2.12).

2. REPRESENTATIONS AND WARRANTIES OF WWHA

WWHA hereby represents and warrants as follows:

2.1 Organization and Good Standing of WWHA; Status of WWHA.

WWHA is a New Hampshire non-profit corporation formed for the express purpose of addressing any and all issues with respect to the community wells and water delivery system located on a portion of the Wiggin Farm subdivision property. WWHA owns all the Assets (including but not limited to the Properties), has the power and authority to execute, deliver and perform the terms and provisions of this Agreement, and is not, or upon receipt of regulatory approvals required for the consummation of the transaction contemplated by this Agreement, will not be, under any receivership, impediment, or prohibition imposed by any law, court, regulatory commission, board, administrative body, arbitration board or tribunal or other federal, state or municipal government instrumentality that would render WWHA unable to enter into or carry out any provision of this Agreement. WWHA is legally authorized to charge the rates which it has been charging its customers.

2.2 Title to Properties: Use of Water.

Schedule 3.2(ii) lists all liens on the Water Distribution System Assets that exist as of the effective date of this Agreement, each of which will be released on or prior to the Closing Date. WWHA has good and marketable title to all of the Water Distribution System Assets, each as referred to in Section 1.1 of this Agreement, free and clear of all mortgages, liens, pledges, security interests, restrictions on transfer, claims or

encumbrances of any nature whatsoever (collectively, “Liens”) other than Permitted Encumbrances, and no other property interests are necessary or appropriate for the proper conduct and operation of the Water Distribution System. Except as otherwise disclosed to Aquarion in writing, all water supply mains are located (i) within the public rights-of-way, or (ii) within appropriate permanent easements of record in favor of WWHA, and all services to customer premises from mains are located entirely on such customers’ premises, or on public rights-of-way, or consents in accordance with RSA 231:184.

2.3 Location and Use of Assets.

The location and present use of the Assets conforms to all zoning, building, building line, and similar restrictions, or necessary variances have been obtained, or the same are legally non-conforming under the appropriate law and regulations. The Assets are located exclusively in the Town of Stratham, New Hampshire. The Water Distribution System maps attached hereto as Schedule 1.1.2, showing the transmission and distribution mains of the Water Distribution System, are, to the best of WWHA’s knowledge and belief, accurate in all material respects, except as set forth in Schedule 1.3.

2.4 Certificate of Incorporation, By-Laws and Resolutions.

The copies delivered to Aquarion of WWHA’s Certificate of Incorporation and By-laws and of the resolutions adopted by WWHA’s Board of Directors authorizing the execution and delivery of this Agreement and performance of all terms and conditions hereunder attached hereto as Schedule 6.0, all of which copies have been certified by WWHA’s Secretary, are true and complete copies of said documents, and said Certificate

of Incorporation, By-laws, and resolutions are in full force and effect and include any and all amendments thereto.

2.5 Authorization of Agreement.

The execution, delivery and performance of this Agreement by WWHHA has been duly and validly authorized by all requisite action on the part of WWHHA, including without limitation the approval of all individual Property Owners evidenced by their execution of the joinder form attached hereto as Exhibit I, WWHHA's members and Board of Directors. This Agreement has been duly executed and delivered by WWHHA and constitutes a valid and legally binding obligation of WWHHA, enforceable against WWHHA in accordance with its terms. WWHHA has received or prior to the Closing Date will receive all regulatory approvals necessary for the transfer of the Water Distribution System and Assets to Aquarion, and approval of the transfer of the Water Distribution System and Assets by the Property Owners, WWHHA members, the WWHHA Board of Directors, the Town of Stratham Board of Selectman, the Town of Stratham Planning Department, and the PUC are the only other actions required in order to authorize WWHHA to consummate the transactions contemplated by this Agreement.

2.6 Absence of Defaults.

The execution and delivery of this Agreement do not, and upon receipt of all regulatory approvals described herein by the PUC the consummation of the transactions contemplated hereby will not, (a) violate any provision of the Certificate of Incorporation or By-laws of WWHHA; (b) violate, conflict with or result in the breach or termination of, or constitute a default under the terms of, any agreement or instrument to which WWHHA is a party or by which it or any of the Assets or any other properties of WWHHA may be

bound; (c) result in the creation of any lien, charge or encumbrance upon the Assets pursuant to the terms of any such agreement or instrument; (d) violate any law, judgment, order, injunction, decree, license, permit, award, rule or regulation against, or binding upon, WWHA or upon the Assets; or (e) constitute a violation by WWHA of any law or regulation of any jurisdiction, as such law or regulation relates to WWHA, the Water Distribution System or the Assets. Except for approval of the transactions contemplated by this Agreement by the PUC, DES, the Town of Stratham Board of Selectman, and the Town of Stratham Planning Department, as contemplated herein, WWHA has obtained all consents, releases or waivers from any federal, state, local or other governmental authority ("Governmental Authority") and third parties which may be necessary for the execution of this Agreement and the consummation of the transactions contemplated herein.

2.7 Litigation, Orders, Etc..

Other than the DES Order, there are no actions, suits, proceedings or governmental investigations pending, or insofar as is known to WWHA, in prospect or threatened against or relating to WWHA, the Assets or the transactions contemplated by this Agreement in or before any court, regulatory commission, board, administrative body, arbitration board or tribunal or other federal, state or municipal government instrumentality. Other than the matters set forth in the DES Order, the Water System and WWHA in its capacity as owner of the Water System and the Properties, are not subject to or in violation of any judgment, order, decree, injunction or award of any court, regulatory commission, board, administrative body, arbitration board or tribunal or other federal, state or municipal government instrumentality entered in any proceeding to

which WWHHA was a party or of which it had knowledge, including without limitation, decisions, orders or proceedings of NH DES, PUC and the Internal Revenue Service. No proceedings are pending or, to the knowledge of WWHHA, threatened against the rates now being charged by WWHHA in the Water System. The provisions of this Section 2.7 shall survive the Closing.

2.8 Contracts; Liabilities.

Schedule 2.8 contains a true and complete list of all material contracts, franchise rights, agreements, leases, instruments and similar or other documents pertaining, directly or indirectly, in whole or in part, to the ownership or operation of the Water System and the Properties to which WWHHA is a party or to which the Assets are subject by which (i) WWHHA is obligated to pay any amount or to provide any service at any time or (ii) WWHHA will receive any amount or to provide any service at any time. All such contracts, agreements, leases, instruments and documents are valid and in full force and effect, and, to the best of WWHHA's knowledge, no other party to any such contract, agreement, lease, instrument or document has breached any material provision of, or is in default in any material respect under the terms of any such contract, agreement, lease, instrument or document. Except as is expressly set forth to the contrary in Schedules 1.2 and 2.8, no contract, agreement, lease, instrument or document of WWHHA will be transferred to Aquarion, and every agreement, lease, instrument and document in Schedules 1.2 and 2.8 to be so transferred can be transferred by WWHHA to Aquarion pursuant to this Agreement, without obtaining the consent of any other party, or such consent shall have been given in a form reasonably satisfactory to Aquarion on or prior to

the Closing Date. The Assets are subject to no actual or contingent liabilities of any type whatsoever. The provisions of this Section 2.8 shall survive the Closing.

2.9 No Brokers.

All negotiations relative to this Agreement have been carried on by WWHA directly with Aquarion, without the intervention of any person as a result of any act of WWHA in such manner as to give rise to any valid claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment.

2.10 Asset Lists.

WWHA's Water Distribution System as set forth on Schedule 1.1.3, heretofore furnished to Aquarion, are true, correct and complete, present fairly and accurately their adjusted book value through the Date of Closing.

2.11 Absence of Adverse Change.

Since January 1, 2019, there has not been any material adverse change in the financial condition, results of operations, assets, liabilities or business of the Water Distribution System or the Assets.

2.12 Compliance with Laws; No Environmental Hazards.

(a) WWHA represents and warrants that, other than the matters set forth in the DES Order, to the best of its knowledge and belief the location and construction, occupancy, operation and use of all improvements now and hereafter attached to or placed, erected, constructed or developed on the Properties or as a portion of the Water Distribution System (the "Improvements") do not violate any applicable law, statute, ordinance, rule, regulation, policy, order or determination of any Governmental Authority or any restrictive covenant or deed restriction affecting any

portion of the Water System, including without limitation, any applicable health, environmental, rates, utility, water quality, antitrust, collective bargaining, safety, payment of withholding and social security taxes, zoning ordinances and building codes, flood and disaster laws, rules and regulations (hereinafter collectively called the “Applicable Laws”).

(b) WWHA represents and warrants that Schedule 2.11 (a) discloses a list of all governmental licenses, permits, certifications and approvals of any Governmental Authority possessed by or granted to WWHA (“Licenses”) and used or relied upon in the operation of the Water Distribution System. Except as set forth in Schedule 2.11 (a), WWHA knows of no reason why any License used in or necessary for the operation of the Assets and the Water System should terminate prior to its stated expiration date or not be renewed in accordance with past practices of the Water System, and WWHA is not in violation of any term or condition of any License.

(c) Without in any way limiting the generality of Section 2.12 (a) above, with the exception of the matters set forth in the DES Order, neither any of the Assets nor WWHA relating to the Water System are the subject of any pending or, to the best of WWHA’s knowledge, threatened investigation or inquiry by any Governmental Authority, or are subject to any known remedial obligations under any Applicable Laws pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), the Resource Conservation Recovery Act of 1987, as amended (“RCRA”), the Safe Drinking Water Act, as amended (“SDWA”), the Clean Water Act, as amended (“CWA”), the Toxic Substances Control Act (“TSCA”), the Water Pollution Control Act

(“WPCA”) or any other applicable provision of local, state and federal environmental laws (all collectively hereinafter referred to as “Applicable Environmental Laws”), and this representation and warranty would continue to be true and correct following disclosure to any applicable Governmental Authority of all relevant facts, conditions and circumstances pertaining to the Assets and/or WWHA.

(d) With the exception of the matters set forth in the DES Order, WWHA is in compliance with Applicable Environmental Laws and is not required to obtain any permits, licenses or authorizations to construct, occupy, operate or use any portion of the Assets as it is now being used by reason of any Applicable Environmental Laws, except as set forth in Schedule 2.11(b).

(e) With the exception of the matters set forth in the DES Order, no prior use of the Assets by WWHA or, to the best of WWHA’s knowledge, any prior owners of the Assets has occurred which violates any Applicable Environmental Laws. WWHA has not at any time, directly or indirectly “treated,” “disposed of,” “generated,” “stored” or “released” any “toxic or hazardous substances,” as each term is defined under the Applicable Environmental Laws, or arranged for such activities, in, on or under the Assets or any parcel of land, whether or not owned, occupied or leased by WWHA.

(f) There has been no litigation brought or, to the best of WWHA’s knowledge, threatened nor any settlement reached by or with any parties alleging the presence, disposal, release, or threatened release, of any toxic or hazardous substance or solid wastes from the use or operation of the Assets or the Properties, and none of the Assets or the Properties are on any federal or state “Superfund” list, or subject to any environmentally related liens.

(g) The provisions of this Section 2.12 shall survive the Closing..

2.13 Condition of Assets

Except as specifically set forth in Schedule 2.13 hereto, the Assets which constitute the Water Distribution System were designed and installed in accordance with good waterworks engineering practice as of the date the same were designed and installed and the then applicable rules and regulations of the DES and the Town of Stratham. The Assets have been adequately maintained by a professional certified water operator and are in operating condition and repair, ordinary wear and tear excepted, are fit for their intended purpose, and conform to and comply with all restrictive covenants, Applicable Laws, regulations and ordinances relating to their construction, use and operation, except as noted in Schedule 2.11(b) above.

2.14 Tax Matters.

(a) All taxes owed to any Governmental Authority, and all claims, demands, assessments, judgments, interest, penalties, costs and expenses connected therewith, in each case with respect to the Properties and the Water Distribution System Assets, have been paid in full through the Closing Date. WWHHA has complied with all requirements applicable to it with respect to all income, withholding, sales, use, gross earnings, real and personal property, excise and other taxes. WWHHA has not executed or filed with any Government Authority any agreement extending the period of assessment or the collection of any tax. WWHHA has not been the subject of any audit by any state or federal agency for any years completed within six years of the Closing Date.

(b) The Tax Cuts and Jobs Act (TCJA) of 2017 (Pub.L. 115–97) made changes to federal tax law that have an impact on developers making infrastructure

investments in the form of Customer Advances for Construction (CAC) or Contributions In Aid of Construction (CIAC). CAC and CIAC represent the amount of money or property advanced or contributed by a developer. Under the new tax law, CAC and CIAC are now federal taxable income to water and wastewater utilities that receive them. Because the TCJA now treats CAC and CIAC as taxable income to water and wastewater utilities, the amount of any CAC and CIAC must be increased, or “grossed-up,” so that, after paying its income tax liability, the utility’s after-tax amount equals the cost of the facility expansion being reimbursed by a developer. The value of items subject to the TCJA tax change that will be transferred by WWHHA to Aquarion pursuant to this Agreement will be subject to a tax gross-up payment by WWHHA to Aquarion based upon a tax multiplier in effect as of the date of Closing (1.0967 as of the date of this Agreement and valid through Sept. 15, 2020) applied to a net book value calculated as of the last day of the month prior to the date of Closing (total taxable net book value of \$307,936 as of August 31, 2020 as summarized in Schedule 2.14(b) hereof), to be paid by WWHHA to Aquarion. Schedule 2.14(b) lists the items subject to this TCJA tax multiplier along with their respective values and the resulting tax payment obligation by WWHHA. If the TCJA tax changes dealt with by this provision are repealed with retroactive effect eliminating the tax impact of that law on this transaction, Aquarion will refund the TCJA tax gross-up payments made by WWHHA. If the PUC adopts calculations of the TCJA tax that differ from the calculations or results stated herein and in Schedule 2.14(b), the PUC’s calculations and results shall control, and this Agreement shall be deemed to be amended to include such calculations or results in replacement of those herein.

2.15 Disclosure.

No representation or warranty in this Section 2 or in any information, list, schedule or certificate furnished or to be furnished by or on behalf of WWHA pursuant to this Agreement or in connection with actions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary to make the statement contained herein or therein misleading.

3. REPRESENTATIONS AND WARRANTIES OF AQUARION

Aquarion hereby represents and warrants as follows:

3.1 Organization and Good Standing.

Aquarion is a public utility and is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Hampshire.

3.2 Authority Relative to this Agreement.

Except for approval by the Board of Directors of Aquarion, the execution and delivery of this Agreement by Aquarion has been duly and validly authorized by all requisite action on the part of Aquarion. This Agreement has been duly executed and delivered by Aquarion and constitutes a valid and legally binding obligation of Aquarion, enforceable in accordance with its terms, subject to the conditions contained herein. Approval by the Board of Directors of Aquarion and approval of the transfer of the Water System and Assets by the DES and PUC are the only other actions required in order to authorize Aquarion to consummate the transactions contemplated by this Agreement.

3.3 Absence of Defaults.

The execution and delivery of this Agreement does not, upon the regulatory approvals of the transactions described herein, and consummation of the transactions

contemplated hereby will not, (a) violate any provision of the Certificate of Incorporation or Bylaws of Aquarion; (b) violate, conflict with or result in the breach or termination of, or constitute a default under the terms of, any agreement of instrument to which Aquarion is a party or by which it or any of the Assets may be bound; (c) violate any judgment, order, injunction, decree, award, rule or regulation against, or binding upon, Aquarion; or (d) constitute a violation by Aquarion of any law or regulation of any jurisdiction as such law or regulation relates to Aquarion.

3.4 No Brokers.

All negotiations relative to this Agreement have been carried on by Aquarion directly with WWHA without the intervention of any person as a result of any act of Aquarion in such manner as to give rise to any valid claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment.

4. CONDUCT OF THE PARTIES PENDING THE CLOSING DATE

4.1 Approvals and Consents.

WWHA and Aquarion will use commercially reasonable efforts to secure the approval of the transactions contemplated by this Agreement by DES and PUC and by all other parties whose consent is required by law or under the terms of any indenture, contract, consent order or agreement to which WWHA or Aquarion is a party.

4.2 Conduct of the Company's Business.

Until the Closing Date, WWHA shall conduct its business and affairs with respect to the Water System only in the ordinary course and so that the representations and warranties contained in Section 2 hereof will be true and correct at and as of the Closing Date, except for changes permitted or contemplated by this Agreement, and so that the

conditions to be satisfied by WWHA on or prior to the Closing Date pursuant to Section 5.1 shall have been satisfied. WWHA shall use its best efforts to maintain and preserve the operation of the Water Distribution System and to preserve its relationships with persons or entities having business relations with WWHA relating to the Water Distribution System. WWHA will cooperate with Aquarion on and after the Closing Date to effect a satisfactory transition in the ownership, service and operation of the Water System.

Without limiting the generality of the foregoing, pending the Closing Date, without the prior written consent of Aquarion:

- (a) WWHA shall not dispose of any of the Assets;
- (b) WWHA shall not enter into any contracts with respect to the Water Distribution System, incur any additional liabilities with respect to the Water Distribution System, or encumber any of the Assets;
- (c) WWHA shall not take any action that might adversely affect its ability to pass good and marketable title to the Assets free and clear of all liens and charges;
- (d) WWHA shall maintain in force all existing casualty and liability insurance policies and fidelity bonds relating to the Assets, or policies or bonds providing substantially the same coverage;
- (e) WWHA shall advise Aquarion in writing of any material, adverse change or any event, occurrence or circumstance which is likely to cause a material adverse change in the Assets or liabilities (whether absolute, accrued, contingent or otherwise); and

(f) WWHHA shall operate the Water Distribution System in accordance with general water works standards, maintain the Assets in operating condition, and as good condition as exists as of the effective date of this Agreement, reasonable wear and tear excepted.

4.3 Termination of Agreements

Unless otherwise permitted by Aquarion, WWHHA shall take any and all action as is necessary in order to terminate, prior to the Closing Date, any and all agreements, arrangements or understandings with third parties relating in any manner directly to the Water Distribution System (i) by or on behalf of WWHHA; (ii) by or on behalf of WWHHA relating to matters related to the water utility operations of the Water Distribution System; and (iii) listed in Schedule 2.8, other than those listed on Schedule 1.2.

4.4 Information and Access.

WWHA shall give to Aquarion and to Aquarion's representatives full access at such times and locations as are mutually agreed upon by Aquarion and WWHHA to all the Assets. All of the books, contracts, documents, accounting and financial records, customer records, and files of WWHHA related to the Assets may be inspected by mutual agreement of Aquarion and WWHHA. WWHHA will furnish to Aquarion copies of all such documents and records at Aquarion's expense with respect to the Water Distribution System as Aquarion may reasonably request. Said access shall specifically include access to (i) all contracts and agreements referred to in Section 2.8 hereof, (ii) all files and records described in Section 1.1 relating to the Water Distribution System of this Agreement and (iii) the Water Distribution System.

4.5 Observation.

Until the Closing Date, Aquarion may, but shall not be required to, assign its personnel or other representatives to observe the operations of the Water System or to consult with personnel or agents of WWHA with respect to the conduct of the business of the Water Distribution System. WWHA agrees to cooperate with Aquarion and its representatives to facilitate any such observation in times, places and manners that allow Aquarion to gather necessary or appropriate information without disrupting or increasing the cost of WWHA's ongoing operations.

4.6 Lawsuits.

WWHA shall notify Aquarion promptly of any lawsuit, claim, proceeding or investigation that may be threatened, brought, asserted or commenced (a) involving the transaction contemplated by this Agreement or (b) which might have a material adverse effect on the Assets.

4.7 Compliance with Laws.

With respect to the Water System and the Properties, from the date hereof, WWHA shall use its reasonable efforts to remain in compliance with all federal, state, local and other laws, statutes, ordinances, rules, regulations, orders, judgments, and decrees applicable to WWHA and any operations of the Water Distribution System or of its operations of the Assets.

4.8 Additional Documents.

WWHA shall execute and deliver such other documents as Aquarion may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement.

4.9 Additional Easements.

WWHA and Aquarion will use commercially reasonable efforts both before and after the Closing Date to identify any additional easements or other access rights required in connection with the Assets or the Water Distribution System and to negotiate and enter into mutually acceptable documentation to effect such easements or other access rights. Failure to obtain such additional easements shall be a cause for Aquarion to terminate this agreement.

4.10 Investigation.

Aquarion shall use commercially reasonable efforts to provide notice to WWHA if Aquarion's investigation or examination of the business, property or operations of the Water Distribution System or of the Assets prior to the Closing Date reveals a violation of any representation or warranty by WWHA; provided, however, that such investigation or examination by Aquarion shall not affect the representations and warranties of WWHA herein contained or any right by Aquarion to indemnification.

5. CONDITIONS OF AQUARION'S OBLIGATIONS

The obligations of Aquarion to be performed by it under this Agreement shall be subject to satisfaction on or prior to the Closing Date of the following conditions:

5.1 Required Approvals, Consents and Conditions of Closing.

Prior to Closing, WWHA shall have satisfied the following:

(a) The transactions contemplated by this Agreement shall have been approved by the Property Owners and Board of Directors of WWHA in the manner

required by law and by WWHA's Certificate of Incorporation and Bylaws and by the Board of Directors of Aquarion in manner required by law and by Aquarion's By-laws.

(b) The PUC, DES, Town of Stratham Board of Selectman, and the Town of Stratham Planning Department shall have approved the transfer of the Assets, as contemplated by this Agreement, and provided any other approvals necessary for completion of this transaction in a manner and form acceptable to Aquarion in its sole discretion.

(c) WWHA shall have continued to meet all statutory and regulatory requirements including but not limited to monitoring and reporting requirements of the DES and shall submit results to DES through the Closing Date.

(d) With the exception of the matters set forth in the DES Order, WWHA's 2019 and 2020 Consumer Confidence Reports and 2020 and 2021 Water Quality Monitoring Reports shall indicate that there were and are no water quality parameters in violation of the New Hampshire State Public Health Code for the time periods covered by such reports, except as otherwise disclosed on Schedule 5.1(e).

(e) If the Closing Date does not occur prior to the July 1, 2021 date on which the WWHA Consumer Confidence Report is due, WWHA shall have issued its 2020 Consumer Confidence Report to its customers or provide Aquarion with data needed in order to complete and distribute the 2020 Consumer Confidence Report (the report containing 2020 water quality data) to all of WWHA's consumers in accordance with N.H. Code of Admin. Reg. Env-Dw Part 811, State of New Hampshire Water Quality Drinking Water Rules.

(f) Aquarion shall have completed the installation of piping for the Water Distribution System to bypass the pumping station and the documented expense thereof, not to exceed Twenty Thousand Dollars (\$20,000), shall be reimbursed to Aquarion by WWHHA at Closing. The parties agree that said bypass construction shall not commence until the PUC has approved the terms of the transaction embodied by this Agreement.

(g) WWHHA shall take actions to complete the plumbing requirements to accommodate new Aquarion meters at each of its Members' homes subject to Aquarion's specifications and inspection by and completion to the satisfaction of Aquarion.

(h) Within five business days of receipt of the last of the relevant decisions, orders or other communications from all applicable regulatory authorities and Governmental Authorities, Aquarion shall advise WWHHA in writing as to whether such decisions, orders and other communications comply with the requirements of this Section 5.1, and, if such communications do not comply with such requirements, whether or not Aquarion intends to proceed with the transactions contemplated herein.

(i) WWHHA shall have paid Aquarion all unpaid charges through the Date of Closing, including the interconnection charges that were incurred by Aquarion in 2016 and the reimbursement of expenses for the Bypass, for the provision of water service as detailed under Schedule 1.1.3 hereto.

(j) WWHHA shall have obtained the signature of the owners of Map 10, Lots 129, 130, 131 and 132 to a new twenty (20) foot wide easement for a water main to accomplish a bypass of the existing pump house between Wiggin Way and the existing

easement upon Lots 131 and 132, consistent with a sketch Plan entitled “Plan 2” Wiggin Farm Easements.

(k) WWHHA shall have obtained the signature of the owners of Map 10 Lots 136, 137, 138 and 139 to a new access and utility easement for existing utility mains located thereon in substantially the same form as attached hereto as Exhibit IV.

5.2 Customer Information.

WWHA shall have provided Aquarion with the names and billing addresses of each of the Customers. WWHHA shall have informed each of the Customers of those Customers’ obligations to apply for water service from Aquarion as required by Aquarion’s “Tariff for Water Service”

5.3 Performance by WWHHA.

All representations and warranties of WWHHA contained in this Agreement or in any document delivered by or on behalf of WWHHA to Aquarion pursuant to this Agreement shall be true and correct in all material respects at and as of the Closing Date, except for changes permitted by this Agreement, and WWHHA shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

5.4 Due Diligence. Aquarion shall have completed its due diligence review of the Water System, including without limitation all real property rights and permits associated with the Water Distribution System and any environmental conditions associated with the Water System, and the results of such review shall be acceptable to Aquarion in its sole discretion.

5.5 Adverse Change.

Since the date of this Agreement, there shall have been no material adverse change in the Assets or in the business, results of operations, or condition, financial or otherwise, of the Water Distribution System.

5.6 Instruments of Transfer.

All such assignments and instruments of conveyance and transfer necessary, including but not limited to the Bill of Sale and Assignment of Easements in substantially the same form as attached hereto as Exhibits II and III, in the reasonable opinion of counsel for Aquarion, to convey the Assets to be transferred hereunder shall have been duly executed by WWHA in such form as to be effective under New Hampshire law to convey to Aquarion good and marketable title and all rights of WWHA in and to the Assets.

5.7 Form of Documents.

All actions, proceedings, instruments and documents required to carry out this Agreement or incidental thereto and all other related matters shall have been approved by Aquarion and WWHA.

5.8 Litigation.

No suit, action, proceeding or governmental investigation shall be threatened, pending or reasonably believed by Aquarion to be in prospect before or by any court or governmental agency which, in the reasonable opinion of Aquarion, renders completion of the transfer contemplated hereby economically or commercially impractical.

5.9 Opinion of Counsel for WWHA.

Aquarion shall have received an opinion, dated the Closing Date, satisfactory in form and substance to Aquarion, from BCM Environmental & Land Law, PLLC as counsel for WWHA (or other counsel as approved by Aquarion), with respect to the matters set forth in Schedule 5.9 of this Agreement. Such opinion shall also include such other matters as may reasonably be requested by Aquarion or its counsel.

5.10 Asset List.

WWHA shall have provided to Aquarion, at least 30 days prior to the Closing Date, an updated asset list for the Water Distribution System. The representations and warranties contained in Section 2 shall be applicable to the asset list provided prior to Closing Date in the same manner as applicable to the original asset list referred to in Section 2.10.

5.11 Schedules.

The Schedules to this Agreement shall have been updated by WWHA to Aquarion's satisfaction as described in Section 9.8, and the relevant representations and warranties of WWHA in Section 2 of this Agreement, as supplemented by such schedules, shall be true and correct in all material respects.

5.12 Termination of Agreements.

Any agreements affecting the Water Distribution System of the type described in Section 4.3 shall have been terminated, and evidence of such termination, in form and substance reasonably satisfactory to Aquarion, shall have been delivered to Aquarion.

6. CONDITIONS OF THE OBLIGATIONS OF WWHA

The obligations of WWHA to be performed by it under this Agreement shall be subject to satisfaction, on or prior to the Closing Date, of the following conditions:

6.1 Required Approvals.

The transactions contemplated by this Agreement shall have been approved by the Property Owners, the Board of Directors of WWHA, the PUC, the Stratham Board of Selectmen, and the Stratham Planning Department as contemplated by this Agreement.

6.2 Performance by Aquarion.

All representations and warranties (if any) of Aquarion contained in this Agreement or in any document delivered by or on behalf of Aquarion to WWHA pursuant to this Agreement shall be true and correct in all material respects at and as of the Closing Date, except for changes permitted by this Agreement, and Aquarion shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

7. TERMINATION

7.1 Termination Events.

This Agreement may be terminated and abandoned at any time prior to the Closing Date:

(a) by mutual agreement of Aquarion and WWHA;

(b) by Aquarion or WWHA, if the approvals set forth in Section 5.1 hereof shall have not been obtained on or before a date twelve (12) months from the effective date of this Agreement;

(c) by Aquarion if the conditions set forth in Section 5.1 shall not have been complied with or completed or performed in any material respect and such noncompliance, nonperformance or failure to complete shall not have been cured or

eliminated by WWHA to Aquarion's satisfaction on or before the Closing Date or such compliance or performance shall not have been waived by Aquarion in its sole discretion;

(d) by Aquarion if WWHA does not cure title defects or remove liens or encumbrances on the Property as requested by Aquarion, within the timeframe as set forth in Section 1.3;

(e) by WWHA, if the conditions set forth in Section 6.2 shall not have been complied with or performed in any material respect, and such noncompliance or nonperformance shall not have been cured or eliminated by Aquarion on or before the Closing Date or such compliance or performance shall not have been waived by WWHA in its sole discretion; or

(f) by Aquarion pursuant to Section 1.3 or Section 9.8.

(g) by Aquarion or WWHA in the event the PUC decision is materially different from the application for approval of the transaction or if said decision contains conditions that are not reasonably acceptable to Aquarion or WWHA.

(h) by Aquarion if the results of the environmental due diligence conducted pursuant to Section 5.1 is not acceptable to Aquarion.

(i) by Aquarion as set forth in Section 4.9 for failure to obtain additional easements.

7.2 Effect of Termination; Return of Materials; Expenses, Etc.

(a) If this Agreement is terminated pursuant to Section 8.1, each party shall return to the other party all written material obtained in connection with the transactions contemplated hereby, whether obtained before or after the execution of this Agreement.

(b) Regardless of whether or not the transactions contemplated by this Agreement are consummated, each party shall pay its own expenses (including, without limitation, the fees and expenses of its agents, representatives, counsel, and accountants) incurred in connection therewith.

8. AMENDMENT AND WAIVER

This Agreement may be amended in writing at any time prior to the Closing Date by the mutual written consent of WWHA and Aquarion.

9. OTHER PROVISIONS

9.1 Governing Law.

This Agreement shall be construed and interpreted according to the laws of the State of New Hampshire.

9.2 Assignment.

This Agreement may not be assigned by any party hereto without the prior written consent of the parties, and any attempt to assign without such consent shall be voidable by any party.

9.3 Notices.

All notices, waivers, and consents under this Agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class mail, postage prepaid, addressed as follows:

If to WWHHA to:

Steven Roy
President, Wiggin Way/Winterberry Homeowners Association
14 Christie Lane
Stratham, NH 03885

with a copy to:

Jason Reimers
BCM Environmental & Land Law, PLLC
3 Maple Street
Concord, NH 03301

If to Aquarion to:

Donald J. Morrissey
President and Chief Operating Officer
Aquarion Water Company of Connecticut
835 Main Street
Bridgeport, Connecticut 06606

with a copy to:

Law Department
Eversource Energy Service Company
Attn: Erik Newman
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330

9.4 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be treated as an original, but all of which, collectively, shall constitute only one instrument.

9.5 Survival of Representations and Warranties.

Aquarion and WWHHA agree that the representations and warranties contained in this Agreement or in any instrument delivered hereunder shall survive the Closing Date

for a period of six (6) years. The representations and warranties contained herein shall not survive beyond said six (6) year period.

9.6 Waiver.

Waiver of any term or condition of this Agreement by any party shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other term or condition of this Agreement.

9.7 Successor and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties hereto.

9.8 Schedules.

WWHA shall update schedules 1.1.3; 1.2; 1.3; 2.11(a); 2.11(b); 2.13; 5.1(e) referenced herein, or certify in writing that there have been no changes, at least 30 days prior to the Closing Date, which updated schedules shall be acceptable to Aquarion in its sole discretion. Aquarion shall have 15 days after receipt of the updated schedules to object to their content or execute an amendment revising the Agreement to include such schedules. If WWHHA is unable to update such schedules, or Aquarion objects to such schedules as updated by WWHHA, Aquarion shall have the right to terminate this Agreement with no further obligations hereunder.

9.9 Severability.

In case one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, rule or regulation, the

validity, legality, and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

[Signature Page Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
duly executed as of this day of , 2020.

Witness

AQUARION WATER COMPANY OF
NEW HAMPSHIRE

By _____
Donald J. Morrissey
Its President and Chief Operating Officer

Witness

WIGGIN WAY/WINTERBERRY
HOMEOWNERS' ASSOCIATION

By Steven P. Roy 10/16/2020
Steven Roy
Its President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly
executed as of this 28 day of Oct, 2020.

Witness

Joy Hyde
Joy Hyde

AQUARION WATER COMPANY OF
NEW HAMPSHIRE, INC.

By Donald J. Morrissey
Donald J. Morrissey
Its President and Chief Operating Officer

Witness

WIGGIN WAY/WINTERBERRY
HOMEOWNERS' ASSOCIATION

By _____
Steven Roy
Its President

SCHEDULE 1.1.1

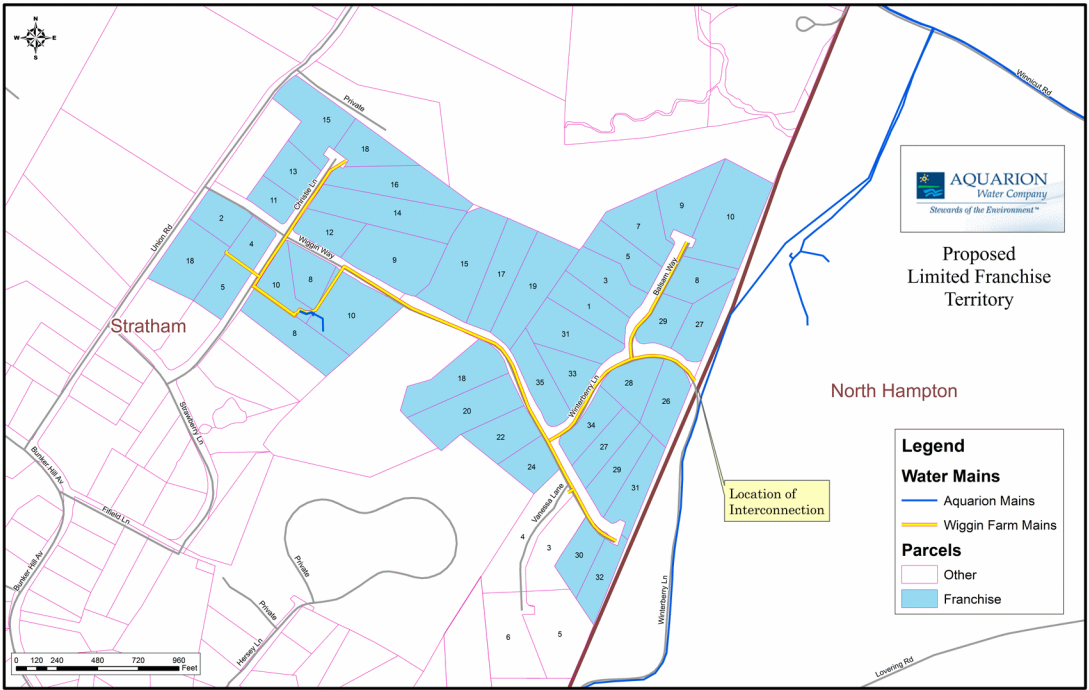
List of Easements

Easement from the owners of Tax Map 10, Lots 129, 130, 131 & 132 for the bypass, in substantially the same form as Exhibit IV hereto.

Easement from the owners of Tax Map 10, Lots 136, 137, 138 & 139 for the existing mains, in substantially the same form as Exhibit IV hereto.

Assignment to Aquarion of easements from Ivory Coast, LLC and Sandy Brook Corporation to Wiggin Way Home Owners' Association dated February 16, 2000 and recorded on July 14, 2000 in the Rockingham County Registry of Deeds at Book 3488, Page 2858, of easements arising under Paragraphs 1 & 2, but excepting easements arising under Paragraphs 3 & 4, in substantially the same form as attached hereto as Exhibit III.

SCHEDULE 1.1.2
Maps of Water System



SCHEDULE 1.1.3

Description of Assets and Adjusted Book Value Through Date of Closing

.

Mains - 6,718-ft, 1.5-in to 4-in, PVC @\$90/ft Net Book Value as of June, 2020 = \$267,905, includes:

431-ft, 4-inch PVC main Winterberry Ln: town line to Balsam Way
 781-ft, 3-inch PVC main Balsam Way
 714-ft, 4-inch PVC main Winterberry Ln: Balsam Way to Wiggin Way
 415-ft, 3-inch PVC main Wiggin Way: Vanessa Ln to end
 312-ft, 3-inch PVC main Wiggin Way: Vanessa Ln to Winterberry Ln
 2,095-ft, 4-inch PVC main Wiggin Way: pumphouse to Winterberry Ln
 37-ft, 1.5-inch PVC main Vanessa Ln
 1,322-ft, 1.5-inch PVC main pumphouse to Christie Ln
 336-ft, 1.5-inch PVC main pumphouse to Christie Ln
 275-ft, 1.5-inch PVC main stub off Christie Ln

Valves

5 distribution main gate valves
 5 blow off valves

Service lines and curb boxes, 43

Interconnection	\$26,797
Pumphouse Bypass	\$20,000.00 *Actual documented expense to be reimbursed, not to exceed \$20,000

SCHEDULE 1.2

Contracts To be Assumed by Aquarion

None

SCHEDULE 1.3

Exceptions to Good Title

5 Christie Lane, Stratham, NH – Map 10 Lot 136 - Lot 13 on Plan D-24196 – Kevin E. Godfrey & Mary Koenig Godfrey

Mortgage – 4991-506 – Kevin E. Godfrey and Mary K. Godfrey to RBS Citizens, N.A., One Citizens Plaza, Providence, RI 02903 - dated March 13, 2009 - \$251,000 – recorded March 19, 2009 – *Require subordination to new access and utility easement accommodating existing main.*

8 Christie Lane, Stratham, NH – Map 10 Lot 132 – Lot 26 on Plan D-24196 – Charles Thomas Buban, III & Jessica T. Buban

MORTGAGE – 5717-1245 – May 24, 2016 – Charles Thomas Buban, III and Jessica Buban to MERS, as nominee for American Neighborhood Mortgage Acceptance Company, LLC, 700 East Gate Drive, Suite 400, Mt. Laurel, NJ 08054 *Require subordination to new easement accommodating Bypass*

10 Christie Lane, Stratham, NH – Map 10 Lot 131 – Lot 27 on Plan D-24196 – Brian M. Orlandi & Jennifer K. Gifford

Mortgage – 6038-2785 - From Brian M. Orlandi and Jennifer K. Gifford to Cambridge Trust Company, 1336 Massachusetts Avenue, Cambridge, MA 02138 – dated September 17, 2019, recorded September 23, 2019 *Require subordination to new easement accommodating Bypass*

18 Union Road, Stratham, NH – Map 10 Lot 139 – Lot 6 on Plan D-24196 – Robert Allen Cartwright and Michele A. Cartwright

Mortgage – 5748-2822 – Robert Allen Cartwright and Michele A. Cartwright to MERS, as nominee for TD Bank, N.A., 2035 Limestone Road, Wilmington, Delaware 19808 – dated August 15, 2016 - \$437,974 – recorded September 1, 2016 - *Require subordination to new access and utility easement accommodating existing main.*

2 Wiggin Way, Stratham, NH – Map 10 Lot 138 - Lot 24-28 on Plan D-27563 – Kevin J. Gray, Sr. and Deborah A. Gray

Mortgage – 4102-1796 – Kevin J. Gray, Sr. and Deborah A. Gray to Chase Manhattan Mortgage Corporation, 343 Thornall Street, Edison, NJ 08837 – dated July 22, 2003 - \$437,000 – recorded July 29, 2003 *Require subordination to new access and utility easement accommodating existing main.*

4 Wiggin Way, Stratham, NH – Map 10 Lot 137 - Lot 24-28 on Plan D-27563 – Huan Huan Lin & Huai Ying Zheng

Mortgage – 5710-2776 – Huan Huan Lin and Huai Ying Zheng to MERS, as nominee for Residential Mortgage Services, Inc. – dated April 29, 2016 *Require subordination to new access and utility easement accommodating existing main.*

SCHEDULE 2.8

Contracts, Agreements, Leases, Franchise Rights, Service Area Grants Instruments
and Similar or Other Documents

SCHEDULE 2.11(a)

Licenses Related to Water System

DES Permit to Operate 21-2232180 dated 6/29/2020.

SCHEDULE 2.11(b)

Additional Permits Required

Compliance with NHDES Administrative Order No. 170006 WD

SCHEDULE 2.13

Condition of Assets

The Assets are good working order and not subject to any administrative action other than the NHDES Order and impending PUC process. To the best of WWHA's knowledge, the Assets are all in good condition.

SCHEDULE 2.14(b)

TCJA Tax Gross-up

ITEM	VALUE	TCJA TAX GROSS-UP DUE
Interconnection	\$26,797	
Pumphouse Bypass	\$20,000*	
Water Distribution System (Net Book Value as of 8/31/20)	\$267,211	
Capital Costs Net Book Value	\$314,008.00	
Less TCJA Excluded Reimbursable Expenses	\$6,072	
Taxable Net Book Value	\$307,936	X 0.0967
ESTIMATED TOTAL TCJA TAX GROSS UP		\$29,777

*Not to exceed amount. Final tax calculation to be based on documented expenses incurred.

SCHEDULE 3.2(ii)

Liens to be Released

SCHEDULE 5.1(e)

WATER QUALITY VIOLATIONS

There are no water quality violations to report.

SCHEDULE 5.9

Opinion of Counsel to WWHHA

- Wiggin Way/Winterberry Homeowners' Association ("WWHA") is a New Hampshire Home Owners' Association formed to operate a community well and water system in Wiggin Farm Winterberry Subdivision in Stratham, New Hampshire
- WWHHA has good and marketable title to all of the Water System Assets, each as referred to in Section 1.1 of this Agreement other than those liens and encumbrances accepted by Aquarion in its sole discretion, which shall be set forth in an updated Schedule 1.3
- WWHHA possesses full legal authority to enter into and carry out the provisions of this Agreement.
- The execution, delivery and performance of this Agreement by WWHHA will have been duly and validly authorized by all requisite action on the part of WWHHA. This Agreement has been duly executed and delivered by WWHHA and constitutes a valid and legally binding obligation of WWHHA, enforceable against WWHHA in accordance with its terms. Approval of the transfer of the Assets by the NH PUC are the only actions required by a governmental authority in order to authorize WWHHA to consummate the transactions contemplated by this Agreement.
- The consummation of the transaction contemplated hereby will not violate any provision of the Certificate of Incorporation or By-laws of WWHHA.
- The consummation of the transaction contemplated hereby will not constitute a violation by WWHHA of any law or regulation of any jurisdiction as such law or regulation relates to WWHHA, the Water System or the Assets.
- That the consummation of the transactions contemplated hereby will not (a) violate, conflict with or result in the breach or termination of, or constitute a default under the terms of, any agreement or instrument to which WWHHA is a party or by which it or any of the Assets may be bound; (b) result in the creation of any lien, charge or encumbrance upon the Assets pursuant to the terms of any such agreement or instrument; (c) violate any judgment, order, injunction, decree, license, permit, award, rule or regulation against, or binding upon, WWHHA or upon the Assets; or (d) constitute a violation by WWHHA of any law or regulation of any jurisdiction as such law or regulation relates to Seller, the Water Systems or the Assets.
- Counsel, after the appropriate due diligence, opines that it has no actual knowledge of any actions, suits, proceedings or governmental investigations pending or in prospect or threatened, against or relating to WWHHA, the Assets or the transactions contemplated by this Agreement in or before any court, regulatory commission, board, administrative body, arbitration board or tribunal or other federal, state or municipal government instrumentality except as described in Schedule 3.7.

- Counsel, after the appropriate due diligence, opines that it has no actual knowledge that the Water Systems, and WWHA in its capacity as owner and operator of the Water System, are subject to or in violation of any judgment, order, decree, injunction or award of any court, regulatory commission, board, administrative body, arbitration board or tribunal or other federal, state or municipal government instrumentality entered in any proceeding to which they were a party or of which they had knowledge.
- Counsel, after the appropriate due diligence, opines that it has no actual knowledge of any proceeding pending or threatened against the rates now being charged by WWHA in the Water System.
- The assignments and instruments of conveyance and transfer necessary to convey the Assets to be transferred hereunder have been duly executed by WWHA in such form as to be effective under New Hampshire law to convey to Aquarion all rights of WWHA and in and to the Assets.

SCHEDULE 6.0

Certificates of Authorization and Incumbency

Exhibit I

**JOINDER OF WIGGIN WAY / WINTERBERRY SUBDIVISION PROPERTY
OWNER**

The undersigned _____ (“Owner”), owner(s) of _____ [Street Address] _____, Stratham, New Hampshire, _____ assessor Map __, Lot __ in the Wiggin Way / Winterberry subdivisions, does join herein for purpose of consenting to the terms of that certain Asset Transfer Agreement dated _____ (“Agreement”) by and among the Wiggin Way / Winterberry Homeowners’ Association (“Association”), formerly known both as Wiggin Way Home Owners Association and Wiggin Farm Home Owners Association, and Aquarion Water Company of New Hampshire, Inc. (“Aquarion”), a copy of which Agreement Owner hereby agrees was made available to Owner by the Association, and agrees to be bound by the terms of the asset transfer documentation contemplated by said Agreement with the same force and effect as if Owner were a signatory thereto, including but not limited to a Transfer Agreement and Bill of Sale for the Association and its members’ right title and interest in the tangible and intangible assets of the water distribution system serving the Association contracted for under the Agreement as such assets are identified under the Agreement. A copy of this Joinder may be recorded in the Rockingham County Registry of Deeds.

Attached to and made a part of the Agreement and the asset transfer documentation contemplated by said Agreement, encompassing a Bill of Sale and Assignment of Easements, among the Association and Aquarion.

Witness

By: _____

Date: _____

Exhibit II

BILL OF SALE

KNOWN ALL MEN BY THESE PRESENTS, that Wiggin Way/Winterberry Homeowners' Association, a New Hampshire nonprofit corporation, having an address of 14 Christie Lane, Stratham, New Hampshire and its member owners (collectively, "**Seller**"), for the consideration of ONE DOLLAR AND OTHER VALUABLE CONSIDERATION, received from **AQUARION WATER COMPANY OF NEW HAMPSHIRE**, a New Hampshire public service company, hereinafter called the "**Purchaser**", does hereby bargain, sell, transfer and convey unto the said Purchaser all of those items of personal property as are set forth in Schedule A attached hereto and made a part hereof.

To have and to hold the same to the said Purchaser, its successors and assigns, forever to its proper use and behoof. The Seller, its successors and assigns covenant and agree with the said Purchaser to warrant and defend the title to said personal property to the said Purchaser against all claims and demands.

In Witness Whereof, _____ the signatories below, and the member owners, as evidenced by their joinder hereto recorded in the Rockingham County Registry of Deeds at Book _____, Page _____, have caused this instrument to be duly executed as of the date first set forth above.

Signed, Sealed and Delivered
In the presence of:

Authorized

By: _____
Its President, Duly

STATE OF)
COUNTY OF) ss:

Personally appeared _____, President of _____, a _____, Signer and Sealer of the foregoing instrument, who acknowledged the same to be his free act and deed as President, and the free act and deed of said _____ Corporation, before me.

Commissioner of the Superior Court
Notary Public
My Commission Expires

SCHEDULE A

All assets of the Seller pertaining to the operation of the Seller's Water System known as the Wiggin Way Water System, located in Stratham, including, without limitation the transmission and distribution mains, hydrants, and personal property described on Schedule 1, and all of the Seller's right, title and interest in and to the curb stops, service connections (to the extent curb stops and service connections may be owned by the Seller) and easements, rights of way and leases which pertain to the operation of the Seller's Water System, and any and all franchise rights relating to the operation of all or any portion of the Seller's Water System, including without limitation all Licenses, and to the extent available and in the possession of Seller, all documents, reports, maps and customer records pertaining to the Seller's Water System, including, but not limited to, all engineering, laboratory and operating reports, customer service records including meter readings and fixture surveys, utility plant records, accounts receivable records, property maps, distribution maps, gate drawings, main laying specifications and tap and service cards.

Capitalized terms not otherwise defined herein have the meanings given to them in the Asset Transfer Agreement effective as of _____, among the Seller and the Purchaser.

Schedule 1

Exhibit III

ASSIGNMENT OF EASEMENTS

This ASSIGNMENT OF EASEMENTS is made the _____ day of _____, 2020, between Wiggin Way/Winterberry Homeowners' Association, a New Hampshire nonprofit corporation, having an address of 14 Christie Lane, Stratham, New Hampshire and its member owners (collectively, "**Assignor**"), and AQUARION WATER COMPANY OF NEW HAMPSHIRE, a New Hampshire public utility company having an address of 7 Scott Road, Hampton, New Hampshire 03842 ("**Assignee**").

RECITALS:

A. Assignor acquired rights to certain easements which are more particularly described in **Schedule A**, attached hereto and made a part hereof (the "**Easements**") in connection with its public water supply system in Stratham, New Hampshire ("**Assets**").

B. Assignor desires to assign to Assignee all of its rights and obligations in the Easements in connection with transfer of ownership of the Assets to Assignee, and Assignee desires to assume the same under the terms hereinafter described.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Assignment and Assumption.

(a) Effective as of the date hereof (the "**Effective Date**"), Assignor hereby assigns, transfers and sets over unto Assignee, all right, title and interest which Assignor has, or ought to have, in or to the Easements.

(b) As of the Effective Date, Assignee hereby accepts the foregoing assignment and assumes and agrees to pay, perform and discharge, at its sole cost and expense, all obligations and liabilities of Assignor under the Easements, which first accrue, or which are first required to be paid, performed or discharged on or after the Effective Date.

2. Indemnification.

(a) Assignor shall indemnify and hold Assignee harmless from any and all claims, demands, causes of action, costs (including, without limitation, reasonable court costs and attorneys' fees), or damages of any kind or nature whatsoever that Assignee may sustain by any failure of Assignor to perform or fulfill any of (i) the obligations of Assignor under the Easements, arising or accruing prior to the Effective Date, or (ii) Assignor's other obligations under this Agreement.

(b) Assignee shall indemnify and hold Assignor harmless from any and all claims, demands, causes of action, costs (including, without limitation, reasonable

court costs and attorneys' fees), or damages of any kind or nature whatsoever that Assignor may sustain by any failure of Assignee to perform or fulfill any of (i) the obligations of Assignee under the Easements arising after the Effective Date, or (ii) Assignee's other obligations under this Agreement.

(c) The indemnification obligations under this Section shall be conditional upon the party to be indemnified giving notice to the indemnifying party within 30 days after the party to be indemnified receives notice of a claim.

3. Miscellaneous.

(d) All obligations, covenants and undertakings contained in this Agreement shall bind and be enforceable against, and shall inure to the benefit of, Assignor and Assignee, and their respective successors and assigns.

(e) Headings contained herein are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

(f) In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by applicable law.

(g) No breach of any provision hereof may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended or modified only by a written agreement executed by the parties in interest at the time of the amendment or modification.

(h) This Agreement shall be governed in all respects by the laws of the State of New Hampshire.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the signatories below, and the member owners, as evidenced by their joinder hereto recorded in the Rockingham County Registry of Deeds at Book _____, Page _____, have caused this instrument to be duly executed as of the date first set forth above.

WITNESSES:

**ASSIGNOR: Wiggin Way/Winterberry
Homeowners' Association**

By:

Name:
Title:

ASSIGNEE:

**AQUARION WATER COMPANY OF
CONNECTICUT**

By:

Name: Donald J. Morrissey
Title: President and COO

Exhibit IV

Return to:
Aquarion Water Company
835 Main Street
Bridgeport, CT 06604
Attn.: Shawna Salato

RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned,
_____, whose mailing address is
_____ (hereinafter called "Grantor"), for
the consideration of ONE DOLLAR (\$1.00) and other valuable consideration received to
its full satisfaction, which is hereby acknowledged, does hereby give, grant, bargain, sell
and confirm unto AQUARION WATER COMPANY OF NEW HAMPSHIRE, a New
Hampshire public utility company, with an office at 7 Scott Road, Hampton, NH 03482
(hereinafter called "Grantee"), the perpetual right, privilege and authority to lay,
construct, maintain, operate, alter, inspect, repair, remove, change the size of and replace
pipes and pipe lines and associated valves, fittings, and appliances appurtenant thereto for
the transportation of water by a route under, upon, over and through land of Grantor,
situated in the Town of Stratham, County of Rockingham, and State of New Hampshire,
and more particularly described as follows:

A 20' wide portion of the Grantor's property shown and
designated as ['Term Used to Define Easement Area on
plan] on a plan of land entitled "[Map Reference]," which
plan is recorded with the Strafford County Registry of
Deeds on or about even date herewith.

Grantee's rights described herein shall apply to the water distribution system
serving Grantor's property. and delivery of water to third party customers of Grantee
outside of Grantor's property.

With respect to the pipe and pipe lines and connections and appurtenances hereof
accepted and reserved to Grantee herein as above set forth, the same are and shall be and
remain the property of said Grantee. Grantee shall have all other rights and benefits
necessary or convenient for the full enjoyment or use of the rights herein granted,
including, but without limiting the same, the right at any reasonable time or times to enter
upon the Easement Area at such point or points as Grantee may deem expedient or
necessary for the purpose of construction, inspection, maintenance and repair of the
same, and of installing additional pipe lines, reconstruction and/or replacement of any or
all of the same by other pipes of the same or different size. Grantee covenants that said
rights of entry, inspection, installation, maintenance, repair and replacement shall be
exercised, so far as practicable and, except in the case of emergency, in accordance with
the reasonable convenience of Grantor and without doing any damage, and Grantee will,
upon completion of any such work, promptly replace and restore the Easement Area, as

nearly as may be feasible, to the same condition as existed before the undertaking of said work.

Grantor reserves for itself its successors and assigns, the right to fully use and enjoy Grantor's premises, subject to the rights, privileges and authority herein granted and confirmed; provided, however, that Grantee shall have the right from time to time to cut and remove all trees, undergrowth, and other obstructions in the Easement Area that threaten to injure, endanger or interfere with the construction and use of Grantee's property therein, including without limitation said pipe line or fittings and appliances appurtenant to said line. In the event of damage to or destruction of any of Grantee's improvements in the Easement Area by Grantor or its contractors, agents, employees or invitees, all costs of repair or replacement shall be borne by Grantor.

Grantor covenants, for itself and its successors and assigns, that it will not, at any time without the written consent of Grantee, disturb or damage said pipe line or any part thereof, or excavate, fill, grade or build or permit to be built any construction of any description which will obstruct or hinder Grantee in the aforesaid easements or entry, inspection, maintenance, repair and replacement, or will impair the free and unrestricted exercise thereof.

The term of and the parties' rights and obligations under this Easement shall be construed in accordance with the laws of the State of New Hampshire. Any disputes arising out of or relating to the parties' rights and obligations under this Easement shall be submitted for resolution to the courts, and the parties agree to be subject to the personal jurisdiction of such courts only for such limited purpose. The venue of any action between the parties seeking to interpret and/or enforce their rights hereunder shall be Rockingham County. If any action, suit or proceeding is commenced under or in connection with this Easement, the losing party shall pay to the prevailing party, and the prevailing party shall be entitled to an award for reasonable attorneys' fees, court costs, and other litigation expenses incurred by the prevailing party in connection with such action, suit or proceeding.

This Easement shall run with the land and shall be binding upon and inure to the benefit of Grantor and Grantee and each of their respective successors and assigns forever. Any obligations contained herein with regard to the Easement granted hereby shall be construed as covenants and not as conditions, and any violation of any such covenants shall not result in a forfeiture or reversion of the Easement granted herein or any property interest conveyed hereby.

This Easement sets forth the entire agreement of the parties concerning the matters set forth herein. There are no additional oral or written representations or agreements. This instrument may be amended only in writing signed by the parties or their successors in interest.

TO HAVE AND TO HOLD the said granted rights, privileges, and authority unto
Grantee, its successors and assigns, to it own proper use and behoof.

IN WITNESS WHEREOF, Grantor has caused to be executed this ____ day of
_____, 20_____.

STATE OF NEW HAMPSHIRE)
COUNTY OF ROCKINGHAM)

The foregoing instrument was acknowledged before me, this ____ day of
_____, 2020 by _____, _____ of
_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

Agreed To & Approved By:

THE TOWN OF _____

BY: _____

Its

STATE OF NEW HAMPSHIRE)
COUNTY OF ROCKINGHAM)

The foregoing instrument was acknowledged before me, this ____ day of
_____, 2020 by _____, _____ of
_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

STATE OF)
)
COUNTY OF) ss:

 The foregoing instrument was acknowledged before me this _____ day of
_____, 2020, by
 on behalf of the company.

Commissioner of the Superior Court
Notary Public
My commission expires:

STATE OF)

Commissioner of the Superior Court
Notary Public
My commission expires:

000102

ATTACHMENT F
SAMPLE JOINDER TO ASSET TRANSFER AGREEMENT

JOINDER OF WIGGIN WAY / WINTERBERRY SUBDIVISION PROPERTY OWNER

The undersigned _____ (“Owner”), owner(s) of
_____[Street Address]_____, Stratham, New Hampshire, _____
assessor Map __, Lot __ in the Wiggin Way / Winterberry subdivisions, does join herein for
purpose of consenting to the terms of that certain Asset Transfer Agreement dated _____
(“Agreement”) by and among the Wiggin Way / Winterberry Homeowners’ Association
(“Association”), formerly known both as Wiggin Way Home Owners Association and Wiggin
Farm Home Owners Association, and Aquarion Water Company of New Hampshire, Inc.
(“Aquarion”), a copy of which Agreement Owner hereby agrees was made available to Owner by
the Association, and agrees to be bound by the terms of the asset transfer documentation
contemplated by said Agreement with the same force and effect as if Owner were a signatory
thereto, including but not limited to a Transfer Agreement and Bill of Sale for the Association and
its members’ right title and interest in the tangible and intangible assets of the water distribution
system serving the Association contracted for under the Agreement as such assets are identified
under the Agreement. A copy of this Joinder may be recorded in the Rockingham County Registry
of Deeds.

Attached to and made a part of the Agreement and the asset transfer documentation contemplated
by said Agreement, encompassing a Bill of Sale and Assignment of Easements, among the
Association and Aquarion.

Witness

By: _____

Date: _____