

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF NEW GLOUCESTER  
AND THE NEW GLOUCESTER WATER DISTRICT**

This Interlocal Agreement ("Agreement") is made this 16<sup>th</sup> day of FEBRUARY, 2013, by and between the INHABITANTS OF THE TOWN OF NEW GLOUCESTER, a municipal corporation existing under the laws of the State of Maine with a principal place of business at 385 Intervale Road, New Gloucester, ME, 04260 ("Town"), and the NEW GLOUCESTER WATER DISTRICT, a quasi-municipal corporation existing under the laws of the State of Maine with a principal place of business at 385 Intervale Road, New Gloucester, ME 04260 ("District"). The foregoing are also referred to herein collectively as "the Parties" or singly as "Party."

**WHEREAS**, hydrocarbon, salt and chloride contamination has been identified in groundwater of properties located in the Upper Village area of the Town of New Gloucester, Maine; and

**WHEREAS**, the Town has assisted in the provision of a public water supply system through its support of the creation of the District, which Maine's Legislature and the voters of the Upper Village have approved in 2012; and

**WHEREAS**, planning, engineering, construction and installation of a new public water supply system (the "Water System," defined below) by the New Gloucester Water District is estimated to cost between \$2 million and \$3 million dollars; and

**WHEREAS**, a portion of this Water System cost can be obtained through a loan from the U.S. Department of Agriculture Rural Development ("RD"); and

**WHEREAS**, revenue from potential users of the District's new public water system will be sufficient to fund operation and maintenance of the Water System, but not Debt Service (defined below) on the loan from RD; and

**WHEREAS**, the Town has agreed to pay Debt Service for the planning, engineering, construction and installation of the new Water System; and

**WHEREAS**, the Parties to this Agreement have the authority to provide for a public water supply within their respective jurisdictions pursuant to 30-A M.R.S.A. § 5723(3), 35-A M.R.S.A. §§ 6101-6418 and P&S 2011, c. 19, as may be amended, and as may otherwise be provided for by law; and

**WHEREAS**, State law generally encourages interlocal cooperation by local governments in order to establish efficient and effective delivery of municipal services; and

**WHEREAS**, the Parties to this Agreement have determined that it will be a more efficient use of their resources and to their mutual advantage to jointly finance the planning, engineering, construction, installation, operation and maintenance of the Water System; and

**WHEREAS**, the Parties are authorized to contract with each other for such purposes pursuant to the Maine Interlocal Cooperation Act, 30-A M.R.S.A. §§ 2201-2207, as may be amended;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements hereinafter stated, the Parties do hereby promise and agree as follows:

### **SECTION 1. PURPOSE.**

This Agreement provides a mechanism to permit the Town and the District to share in the costs of the planning, engineering, construction, installation, operation and maintenance of a public Water System to serve the Upper Village of New Gloucester, in order for the Town and the District to protect the health, safety and welfare of the residents of New Gloucester.

### **SECTION 2. DEFINITIONS.**

As used in this Agreement:

“Debt Service” shall mean the principal, interest, fees and other charges incurred in connection with repayment of borrowing from RD for the planning, engineering, construction and installation of the Water System.

“Person” shall mean any individual, partnership, corporation, municipal or quasi-municipal agency, state agency, federal agency or other legal entity.

“Water System” shall mean the public water supply system, including but not limited to wells, mains, pipelines, equipment and appurtenances, as well as any replacement or extension thereof, constructed or installed by the District.

### **SECTION 3. ADMINISTRATION.**

#### **(a) Generally.**

This Agreement shall be administered by a “Joint Board” consisting of all of the members of the Board of Selectmen of the Town and of the Board of Trustees of the District, meeting in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. § § 401 *et seq.*, to oversee the carrying out of each Party’s duties under this Agreement and to serve as an advisory board to the Board of Selectmen and Board of Trustees.

#### **(b) Procedure.**

- (1)** A Chair and Vice-Chair of the Joint Board shall be elected at the first meeting of each calendar year by the members of the Joint Board;

- (2) The Chair, and in the Chair's absence, the Vice-Chair, may call meetings of the Joint Board, which shall be no less than quarterly;
- (3) A quorum shall consist of a majority of the Joint Board's members;
- (4) Any action must be approved by a majority of Joint Board members present and voting.

#### **SECTION 4. DUTIES AND RESPONSIBILITIES.**

##### **4.1. District Duties.**

(a) The District shall pay the operating and maintenance costs and expenses for the Water System and shall be responsible for the day-to-day management and operation of the Water System.

(b) The District shall prepare assessments of user rates, tolls, charges and fees as provided by Maine statute.

(c) The District shall promptly transmit its user rate, toll, charge and fee assessments to the Town's Tax Collector for billing and collection by the Town as agent for the District.

(d) The District shall apply user rate, toll, charge and fee revenue to the costs of operation and maintenance of the Water System, with such user rates, tolls, charges and fees being calculated under the District's Rate Tariff and Terms and Conditions on file with and as approved by the Maine Public Utilities Commission.

(e) The District shall promptly transmit any billings or invoices it receives from RD for Debt Service to the Town Treasurer for payment.

##### **4.2. Town Duties.**

(a) The Town shall pay the Debt Service costs associated with the expected RD loan for planning, engineering, construction and installation of the Water System, the principal amount of which RD borrowing shall not exceed \$ 800,000 (Eight Hundred Thousand Dollars) and the term of which RD borrowing is anticipated to be forty (40) years.

(b) The Town agrees to and shall appropriate funds necessary to pay the Debt Service obligations hereunder.

(c) The Town Treasurer shall promptly pay the billings or invoices received by the District from RD for Debt Service and transmitted by the District to the Town for payment.

(e) The Town will provide the amount of up to \$212,000 (Two Hundred and Twelve Thousand Dollars) to pay the cost of water service connections to properties.

- (f) The Town shall provide billing and collection services for the District.
- (e) The Town shall obtain and pay the District for Fire Protection services in an amount as set forth in the District's Rate Tariff and as approved by the Maine Public Utilities Commission, but not to exceed 30% of District annual operating expenses.
- (g) The Town will provide an easement to the District for the well, wellhouse and associated mains, equipment, appurtenances and fixtures.

#### 4.3 District Audit.

The District shall have its financial records audited annually, provided however, that the cost of said audit shall be an expense of the District.

#### SECTION 5. FINANCES.

The Joint Board will generate no shared financial obligation for the Parties; each Party shall bear its own costs and expenses to fund participation by its Selectmen or Trustees in the Joint Board.

#### SECTION 6. INSURANCE.

(a) The District shall procure and maintain at all times during the term of this Agreement insurance coverage or self-insurance for all of its operations, facilities, equipment and personnel recommended by its insurers; provided, however that such insurance coverage shall at a minimum include all risk property insurance, insuring the District equipment, buildings and structures at replacement cost; comprehensive general liability insurance in the amount of not less than Four Hundred Thousand Dollars (\$400,000), combined single limit, or such other amount as may be required under the Maine Tort Claims Act, and public officials insurance covering the actions of the District Board of Trustees and the District's officers, agents and employees in the amount of not less than Four Hundred Thousand Dollars (\$400,000), combined single limit, or such other amount as may be required under the Maine Tort Claims Act; auto insurance, including comprehensive and collision coverage, at agreed replacement cost and liability coverage with a minimum policy limit of not less than Four Hundred Thousand Dollars (\$400,000), combined single limit, or such other amount as may be required under the Maine Tort Claims Act; boiler and machinery insurance; and fidelity bonds covering the actions of District personnel. Each Party specifically waives any right against any other Party under its workers' compensation insurance.

(b) A copy of an insurance certificate showing the above coverages shall be provided to the Town upon request.

## **SECTION 7. INDEMNIFICATION.**

Each Party shall defend, indemnify and hold the other Party hereto harmless from any claim, cause of action, liability or expense, including without limitation, costs and reasonable attorney's fees, caused by, arising out of or resulting from the acts or omissions of the indemnifying Party or its officers, agents or employees. This section shall not be interpreted to waive the monetary limits or substantive areas of immunity under the Maine Tort Claims Act (14 M.R.S.A. §§ 8101 *et seq.*) or any other immunities or defenses under that Act or other applicable law.

## **SECTION 8. PERSONNEL.**

At all times, the employees of each Party shall be and remain the employees of that Party. At no time shall they hold themselves out as, nor shall they be deemed to be, the employees of any other Party by reason of this Agreement.

## **SECTION 9. REMEDIES.**

### **9.1. Breach.**

A Party shall be deemed to be in breach of this Agreement if it fails to appropriate or make timely payment of its share of Water System costs and expenses or of Debt Service as provided in Section 4 hereto, or if it fails to perform or comply with any of the terms, provisions, or conditions of this Agreement. A Party shall give the other Party written notice of specific acts or omissions which constitute breach. The Party so notified shall have ten (10) days to cure the breach. If the Party fails to cure the breach within the above-mentioned time period, or if that Party waives the time period, then the other Party shall have the power, in its sole discretion, to submit the question of breach to the dispute resolution procedure established in Section 9 or to terminate this Agreement under Section 11.4.

### **9.2. Dispute Resolution.**

The Parties have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. With that same spirit of cooperation, the Parties agree to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, except in the event of an emergency requiring immediate injunctive or other relief, the Parties shall endeavor to enter into good faith negotiations and non-binding mediation through a neutral mediator within thirty (30) days (or such greater period as may be agreed to by the Parties) of notice of any dispute from the other Party in order to attempt to resolve their differences, prior to any litigation. Each Party shall bear its own costs and attorney's fees and shall share equally the costs of the mediator. This Agreement is made and shall be construed under the laws of the State of Maine except any choice of law rule that may direct the application of the laws of any other jurisdiction.

**SECTION 10. NOTICES.**

Every notice, request, demand, approval, consent or other communication authorized or required by this Agreement shall not be effective unless the same shall be in writing and either hand delivered or mailed by United States first class, postage prepaid mail directed to the other Party at its address set forth below, or such other address as either Party may designate by notice given from time to time in accordance with this Section. All such notices and other communications initially shall be delivered or addressed to the Parties at the addresses set forth below.

Board of Selectmen, Town of New Gloucester  
385 Intervale Road  
New Gloucester, ME 04260

With a copy to:

Patrick J. Scully, Esq.  
Bernstein Shur  
PO Box 9729  
Portland, ME 04104-5029

New Gloucester Water District  
385 Intervale Road  
New Gloucester, ME 04260

With a copy to:

James N. Katsiaticas, Esq.  
Perkins Thompson  
PO Box 426  
Portland, ME 04112-0426

**SECTION 11. TERM, ADOPTION, AMENDMENT, TERMINATION, DISSOLUTION.**

**11.1. Term.**

This Agreement shall continue in full force and effect for the forty (40) year term of Debt Service hereunder unless sooner terminated under Section 11.4.

**11.2. Adoption and Effect.**

This Agreement shall not take effect until it has been approved in its entirety by the legislative or governing body of each Party, signed by a majority of the municipal officers or

trustees of each Party, and filed with the New Gloucester Town Clerk and with the Maine Secretary of State.

### **11.3. Amendment.**

Subject to the requirements of the Maine Interlocal Cooperation Act, 30-A M.R.S.A. §§ 2201 *et seq.*, as may be amended, this Agreement may be modified or amended by mutual agreement of the Parties, evidenced by a duly executed instrument in writing attached hereto. The Agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the Parties.

### **11.4. Termination.**

**11.4.1. Termination upon Early Repayment of Debt Service.** The Town, by appropriate action of its Board of Selectmen, may sooner terminate this Agreement upon the Town's repayment in full of all Debt Service amounts, provided that Town shall give written notice of its intent to the District on or prior to June 30<sup>th</sup> of any year; with the effective date of such withdrawal to be July 1<sup>st</sup> of the following year. The Parties shall continue to make any payments due during the notice period.

**11.4.2. Termination for Breach.** Further, so long as all Debt Service amounts have been repaid in full, either Party may terminate this Agreement without prior written notice in the event the other Party breaches this Agreement as stated in Section 9.1 above and fails to cure that breach.

### **11.5. Disposition of Water System Property.**

At all times during the term of this Agreement and upon its termination, unless otherwise provided by Private and Special Law or amendments thereto, all Water System property shall be and remain the property of the District. The Joint Board shall hold no assets or property.

## **SECTION 12. ENTIRE AGREEMENT, SEVERABILITY, BENEFITS, AUTHORITY, CONSTRUCTION.**

### **12.1 Entire Agreement.**

This Interlocal Agreement constitutes the entire agreement between the Parties.

### **12.2 Severability.**

If any clause, section or provision is held to be invalid or unenforceable, the remainder of the Agreement shall not be affected and the Parties agree to meet and negotiate a new clause, section or provision.

**12.3 Benefits.**

This Agreement is entered into for the benefit of the Parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons, firms or entities.

**12.4 Authority.**

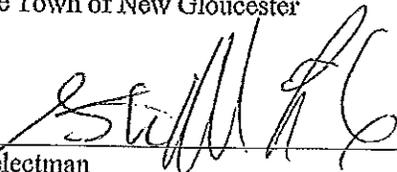
Each Party represents that it has the authority to enter into this Interlocal Agreement and that this Interlocal Agreement is being executed by its duly authorized representatives.

**12.5 Construction**

This Interlocal Agreement is made and shall be construed under the laws of the State of Maine except any choice of law rule that may direct the application of the laws of any other state or jurisdiction.

IN WITNESS WHEREOF, the Parties have by their duly authorized municipal officers caused this Agreement to be executed as of the date noted above.

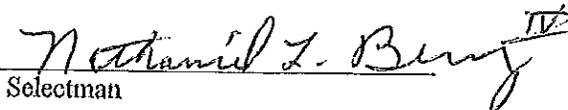
For the Town of New Gloucester

By:   
Selectman

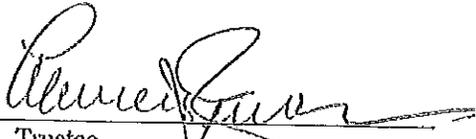
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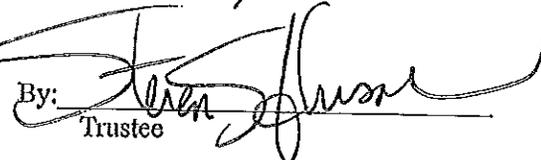
By:   
Selectman

By:   
Selectman

For the New Gloucester Water District

By:   
Trustee

By:   
Trustee

By:   
Trustee