

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

**DW 10- \_\_\_\_**

**Re: Hanover Water Works**

**VERIFIED PETITION OF HANOVER WATER WORKS FOR  
TERMINATION OF FRANCHISE**

NOW COMES Hanover Water Works Company ("HWW" or the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and engaged in the business of supplying water for use in the Town of Hanover, New Hampshire and submits this petition to the New Hampshire Public Utilities Commission to terminate its franchise to provide service as a public utility in the Town of Hanover. In support hereof, the Company states as follows:

1. HWW is a New Hampshire corporation and a public utility as defined in RSA 362:2, with a principal place of business in Hanover, New Hampshire. HWW is jointly owned by Dartmouth College (52.8%) and the Town of Hanover (47.2%) (the "Town"). Since approximately 1893, when HWW was chartered by the New Hampshire legislature, the Company has provided retail water service in the Town. Currently, the Company serves approximately 1,826 customers, all of whom are within the Town limits. Since 2000, the Town has operated the Company's water treatment and distribution system pursuant to a Contract Operations and Maintenance Agreement (the "O & M Agreement"). A copy of the current O & M Agreement is attached as Exhibit A. Under the O & M Agreement, the Town supplies all of the employees necessary to operate the Company's water treatment plant and its water distribution system, including all customer billing functions associated with the system.

2. Pursuant to RSA 38:4, on May 12, 2009, over two-thirds of all voters present and voting voted to authorize the Town's Select Board to purchase the assets of HWW used to operate the water system and to provide water service within the Town. In accordance with RSA 38:6, the Town notified the Company of the vote. *See* Exhibit B. As indicated in Exhibit B, the Town's interest in acquiring the assets is based on a consensual process between the Company and Town that has been ongoing for some time.

3. Since the vote occurred, the Company and Town have been engaged in discussions regarding the terms and conditions of the sale of the Company's assets necessary for the provision of retail water service within Hanover. These terms and conditions have been memorialized in a Purchase Agreement, a draft of which was made available on the Town's website, along with other information regarding the proposed transaction.<sup>1</sup> A copy of the Purchase Agreement is attached as Exhibit C. The Town plans to hold a public meeting on the transaction in May 2010, after which the Company and Town will sign the Purchase Agreement.

4. Based on the Purchase and Sale Agreement, the Company would convey to the Town real property, equipment, and other tangible assets used to operate the water system and provide water service within the Town, customer accounts and customer account information, accounts receivable for water service provided by the Company, and licenses, permits, consents, legal authorizations and registrations relating to the water system. Exhibit C, Section 2.1. For example, these assets would include the water filtration plant and storage and maintenance buildings and the land on which they are situated, four water storage tanks, two water pump stations, all water distribution lines and fire hydrants, and all of the rolling stock and operational equipment owned by the Company. The three reservoirs used to supply the Company's customers, as well a 250 yard buffer around Reservoirs 1 and 2 and all of the land surrounding

---

<sup>1</sup> *See* [http://www.hanovernh.org/stories/storyReader\\$1182](http://www.hanovernh.org/stories/storyReader$1182).

Reservoir 3, and the reservoir-related dams/earthwork will be transferred to the Town under the Purchase Agreement. *Id.* Some land will continue to be owned by the Company<sup>2</sup> and will remain subject to a local ordinance that was designed to protect the watershed, zoning ordinances, and Department of Environmental Services' regulations. *Id.*, Section 2.22. A copy of a map depicting the land to be transferred to the Town is included as Exhibit D.

5. Pursuant to Section 3.1 of the Purchase Agreement, the Town will pay \$1.00 for the purchased assets. In addition, the Company's Drinking Water Supply loans will be assigned to the Town, *see* Exhibit C, Section 4.3.3, and prior to the closing (scheduled for June 30, 2010), the Town is required to have bonded funds sufficient to pay off the Company's Citizens Bank loan. *Id.*, Section 8.2.8. A further condition to the closing is the passage of special legislation allowing the Town to make payments in lieu of property taxes from a water fund into its General Fund. As of the date of this Verified Petition, special legislation had been introduced into the New Hampshire Senate (SB 391) and was voted "Ought to Pass" by the Senate Public and Municipal Affairs Committee, and was adopted by the Senate on January 27, 2010.

6. The Town has provided significant information to its residents regarding the proposed transaction. For example, on September 23, 2009, it held an informational meeting on the proposed transaction, on September 28, 2009, the Town's Select Board held a Pre-Special Town Meeting Public Hearing, and on October 12, 2009, the Town's Select Board held a public hearing on the proposed issuance of bonds and notes to incur the debt currently held by the Company. The Town also mailed to its residents on September 11 and October 9, 2009 flyers describing the transaction and the process for its approval. *Id.*

---

<sup>2</sup> As provided in Section 8.2.9 of the Purchase Agreement, the Town and Dartmouth College will enter into a Stock Purchase and Restructuring Agreement prior to the Closing, pursuant to which the Town and College will have an equal ownership interest in the Company. As a result of that agreement, there could be no change in use to the land owned by the Company without the Town's consent because the Town will be an equal owner of the Company.

7. On October 27 and 28, 2009, the Town held a Special Town Meeting at which the voters ratified the purchase price to be paid by the Town for the Company's assets, as required by RSA 38:13. In addition, the voters approved two warrant articles authorizing the Town to raise and appropriate the funds necessary for assumption of the Company's State Revolving Fund and Citizens Bank loans. A copy of the warrant articles are attached as Exhibit E.<sup>3</sup> The Town expects to issue bonds for the cost of these loans on or around June 30, 2010.

8. The Company is requesting that the Commission terminate its franchise to provide retail water service in Hanover in light of the Purchase Agreement and public approval by the Town's voters of the acquisition of the Company's assets used to provide water service in Hanover. The termination of the Company's franchise is in the public interest and thus consistent with RSA 374:28 because the Town and Company have agreed upon the terms of the sale, which in turn have been approved by the Town's voters. Further, the Town has operated the Company's water system on a day-to-day basis for the past ten years, and thus is well positioned to continue providing water services but under Town ownership.

9. For these reasons, the Company requests that the Commission terminate its franchise to provide retail water service as of June 30, 2010.

WHEREFORE, Hanover Water Works respectfully requests that the Commission:

A. Issue an Order *Nisi* approving the termination of the Company's franchise to provide retail water service as of June 30, 2010; and

B. Grant such other and further relief as may be just and reasonable.

---

<sup>3</sup> Warrant Article Three, which ratifies the purchase price, contains an inadvertent reference to RSA 38:2-a. This reference will not impair the ability of the Town's counsel to provide the opinion required by Section 8.3.4.

Respectfully submitted,

HANOVER WATER WORKS, INC.

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION


Date: March 8, 2010

By: 

Sarah B. Knowlton  
100 Market Street, P.O. Box 459  
Portsmouth, New Hampshire 03802  
(603) 334-6928  
email: sarah.knowlton@mclane.com

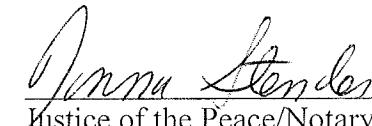
I, Judson T. Pierson, President of Hanover Water Works, Inc., being first duly sworn, hereby depose and say that I have read the foregoing Verified Petition, and the facts alleged therein are true to the best of my knowledge and belief.

Dated: Mar 12, 2010

  
Judson T. Pierson

STATE OF NEW HAMPSHIRE  
COUNTY OF GRAFTON

Sworn to and subscribed before me this 12<sup>th</sup> day of March 2010.

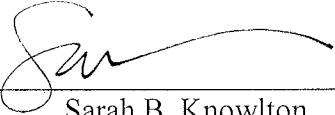
  
Justice of the Peace/Notary Public

My Commission Expires:

**DONNA STENDER**, Notary Public  
**My Commission Expires January 13, 2015**

Certificate of Service

I hereby certify that on March 18, 2010, a copy of the foregoing Verified Petition was sent to Meredith Hatfield, Consumer Advocate, by electronic mail.

  
\_\_\_\_\_  
Sarah B. Knowlton

# **Town of Hanover**

## **OPERATIONS AND MAINTENANCE AGREEMENT**

Dated:  
July 1, 2008

Hanover Water Works Company  
and  
Town of Hanover

# Contract Operations and Maintenance Agreement

This Agreement describes mutual responsibilities, overall objectives, and performance expectations of the operational partnership entered into by the Town of Hanover, herein after referred to as "TOWN," a Municipal Entity, P.O. Box 483, Hanover, New Hampshire 03755, Tax I.D. No. 02-6000371, and Hanover Water Works Company, Inc., herein after referred to as "HWWCo," a corporation, Tax I.D. No. 02-0144680, whose address is 194 Lebanon St, Hanover, New Hampshire 03755.

## RECITALS

WHEREAS, the HWWCo is the owner of a water treatment and distribution System, herein after referred to as "SYSTEM;" and,

WHEREAS, the HWWCo desires to engage the TOWN to operate and maintain the SYSTEM on behalf of the HWWCo and the TOWN desires to accept such engagement, all upon the terms and conditions hereafter set forth; and,

WHEREAS, the TOWN is experienced and capable of providing certain operation and maintenance services for the SYSTEM; and,

WHEREAS, the TOWN utilizes a management system and technical approach together with participative team-based management, to facilitate environmental compliance, maintenance, management, asset protection and enhancement, operational cost effectiveness and regulatory communications; and,

WHEREAS, the HWWCo is authorized by law to enter into this Agreement.

NOW, therefore, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

## ARTICLE I - SCOPE OF SERVICES

- 1.01 Commencing on July 1, 2008, or such other mutually acceptable date agreed to in writing between TOWN and HWWCo (the "Effective date"), TOWN will provide all routine operation and maintenance of the HWWCo's SYSTEM on a seven day per week basis within the budget attached in Exhibit A to this Agreement ("Hanover Water Works Company Operating Budget FY 2008 – 2009").
- 1.02 TOWN will assume complete operation and management of the HWWCo's SYSTEM.
- 1.03 All analyses required for treatment process control that is currently being conducted on-site will continue to be completed in-house. Backup will be provided by outside certified laboratories as required.



- 1.04 TOWN will provide five (5) current full-time employees (one Administrative Assistant, one Water Superintendent, one Water Quality Technician and two Water Distribution Workers) and provide a minimum of two (2) NHDES Grade II Certified Treatment Operators, one Utility Engineer, one Inventory Control/Data Entry Clerk and one General Manager on a part-time basis and provide additional supervision and technical support as necessary to efficiently operate and maintain the SYSTEM within compliance. Backup services will be provided by TOWN personnel. In addition, TOWN will be on call 24 hours per day, 7 days per week for emergency situations. TOWN shall provide employees to perform all services required by this Agreement and in such situation;
- 1.05 TOWN shall communicate with the designated HWWCo liaison as described in Section 2.01(7) of this Agreement, regarding decisions and other matters related to the operation of the SYSTEM. In addition, TOWN shall advise the HWWCo and serve as the HWWCo's liaison to regulatory agencies and consumers in matters related to the operation of the SYSTEM.
- 1.06 TOWN will supervise all regulatory compliance and financial transactions pertaining to the day-to-day operation of the SYSTEM. Subject to the limitations of this Section, TOWN shall operate the SYSTEM in compliance with state and federal regulatory requirements. HWWCo will pay all fines imposed for process upsets and violation of operations permit except if the TOWN fails to fulfill its obligations under this Agreement.
- 1.07 TOWN will provide and maintain at all times during the term of this Agreement the following minimum insurance coverages:

- (1) Workers' compensation coverage in compliance with the statutes of the State of New Hampshire, which has jurisdiction of TOWN employees engaged in the performance of services hereunder;
- (2) Comprehensive General Liability Insurance with a minimum combined single limit of FIVE MILLION DOLLARS (\$5,000,000), including the broad form property damage endorsement; and,
- (3) Automobile Liability (owned or hired units) minimum combined single coverage limit of FIVE MILLION DOLLARS (\$5,000,000).
- (4) Errors and omissions coverage under TOWN's professional liability insurance, with a minimum coverage of one year's fee, and up to TOWN's then current professional liability insurance limit (ONE HUNDRED THOUSAND DOLLARS (\$100,000)).

TOWN will furnish the HWWCo with Certificates of Insurance as evidence that policies providing the required coverage's and limits are in full force and effect. In addition TOWN shall name the HWWCo as an additional insured on the general liability policy and automobile liability policy. Such policies shall provide that no less than thirty (30) days advance notice of cancellation, termination, or alteration shall be sent directly to TOWN and the HWWCo.

- 1.08 Unless covered by insurance carried by the TOWN pursuant to Article 1.07 of this Agreement, in which case the coverage and limits specified to be maintained shall apply, the aggregate

liability of TOWN for any and all claims, damages, costs, or expenses, including attorneys' fees resulting from TOWN's performance or nonperformance of its obligations under this Agreement, whether based in breach of contract, breach of warranty, tort including negligence, strict liability or otherwise, shall not exceed the total compensation paid for the services during the contract year out of which the claim or damage, costs, or expense arose, but in no event shall TOWN be liable for any consequential or special damages such as loss of profits or revenue, or the loss of use.

- 1.09 The TOWN will prepare all reports required by state and federal regulatory agencies and will maintain all records deemed useful by TOWN and HWWCo to monitor and control the operation of the SYSTEM.
- 1.10 SYSTEM records, data, software and information including but not limited to operation reports, laboratory data and budgetary and financial information shall remain the property of the HWWCo. All site-specific operating procedure guidelines, preventive maintenance and safety programs, and plant evaluation reports shall upon termination of this Agreement, remain the property of the HWWCo.
- 1.11 The TOWN shall provide such engineering and technical services required to identify, evaluate, and prepare recommendations and advice necessary to support its staff for the proper operation and maintenance of the SYSTEM, at no added cost to the HWWCo (budgeted in Exhibit A).
- 1.12 The TOWN shall provide design engineering and technical services which are in addition to the services detailed in Section 1.09, as and when requested by the HWWCo. TOWN shall be compensated for such additional engineering and technical services in the manner provided by Section 3.05 of this Agreement. A detailed scope of work and cost estimate will be provided and written authorization to proceed required before work is initiated. Examples of such work would include: engineering and project management for capital replacement needs, assistance with permitting, and any design services.
- 1.13 Pursuant to its roles as contract operator, the TOWN may purchase utilities, materials, chemicals and supplies on behalf of the HWWCo and subcontracted services, which expenses shall be paid for by the HWWCo.
- 1.14 The TOWN shall perform all water meter readings, billing and collection of all fees at the authorized rates.
- 1.15 The TOWN shall comply with all requirements for affirmative action and the Americans with Disabilities Act of 1990.
- 1.16 Additional operational services and flood, fire, Act of God, or other Force Majeure, civil disturbance or other reasons beyond TOWN's control, are not covered within the scope of this Agreement. If requested, TOWN will assist the HWWCo in obtaining or providing these additional services and TOWN will be paid for such assistance in accordance with Section 3.04 of this Agreement.

## ARTICLE II – RESPONSIBILITIES OF THE HWWCo

2.01 As part of this Agreement, the HWWCo agrees to assume the following responsibilities:

- (a) HWWCo shall maintain in full force and effect, in accordance with its respective terms, all guarantees, warranties, easements, permits, licenses, and other similar approvals and consents received or granted to the HWWCo as Owner of the Facility and component parts thereof;
- (b) HWWCo shall be responsible for expenditures for all capital repairs and replacement, provided that TOWN will provide justification and review of the related factors for such expenditures. A capital repair or replacement is defined as a planned, non-routine investment in the HWWCo's operating infrastructure typically budgeted as a capital item by the HWWCo, or any singular repair or replacement of equipment that extends the useful life of equipment or other infrastructure components. Any capital repairs or replacement required as the result of an OSHA inspection or consultation will be implemented immediately;
- (3) HWWCo shall at all times provide access to the SYSTEM for TOWN, its agents and employees;
- (4) HWWCo shall provide TOWN with the use of all existing equipment owned by the HWWCo, necessary for the operation and maintenance of the SYSTEM;
- (5) HWWCo shall be responsible for damage and liability to the SYSTEM or components thereof caused by flood, fire, Acts of God or other Force Majeure, civil disturbance, or misuse of property caused other than solely by the negligent acts and errors, or intentional omissions of the TOWN;
- (6) HWWCo shall be responsible for all fines imposed for process upsets and violations of discharge limits attributable to the operation and maintenance of the Facility to the extent outside TOWN's responsibility as set forth in Section 1.06;
- (7) HWWCo shall designate an individual to act as authorized representative overseeing TOWN in connection with the performance of services by TOWN under this Agreement;
- (8) HWWCo shall provide all criteria and full information as to the HWWCo's requirements for the TOWN's services, including without limitation, objectives, constraints, standards or budgets including any limitations thereof;
- (9) HWWCo shall give prompt written notice to TOWN whenever the HWWCo observes or otherwise becomes aware of any development that affects the scope or timing of TOWN's services or any failure of TOWN to perform in accordance with the terms and conditions of the Agreement.

2.02 HWWCo will purchase and maintain at its sole expense property and structure liability insurance and fire insurance policies, including extended coverage, plus coverage for vandalism and

malicious mischief for the full and insurable value of the SYSTEM and insurance for bodily injury or death to the HWWCo's employees agents or invitees. In addition, the HWWCo will name TOWN as additionally insured on the above policies.

- 2.03 HWWCo agrees to compensate TOWN in a timely way as provided in Article III.

### **ARTICLE III - COMPENSATION**

- 3.01 TOWN will provide monthly billings to the HWWCo for services rendered and actual costs incurred. The monthly bills will be presented to the HWWCo within 15 days from the end of the previous month during which the expenses were incurred. The HWWCo will have 30 days in which to pay the TOWN invoice. If after 30 days, the TOWN has not received payment, interest will be charged to the HWWCo at an annual rate of 12.0%. Should payments fall 45 days or more overdue, TOWN reserves the right to suspend performance of services pursuant to Article V.
- 3.02 TOWN will assume responsibility for all labor, over time, benefits and overhead expenses incurred in the routine operation and maintenance of the Facility. HWWCo shall pay for all unanticipated expenses over the budget.
- 3.03 The TOWN will provide all service, labor and benefits (including FICA, Medicare, retirement, Short and long term disability, health insurance and works compensation insurance), minor repair, fuel and parts for routine operation of the HWWCo vehicle fleet. Fee is based upon budget as outlined in Exhibit A. All unanticipated costs which exceed budget shall be paid by HWWCo. At its option the TOWN will provide lease vehicles through a lease program. HWWCo authorizes the TOWN to negotiate lease terms and conditions and further authorizes the TOWN to include existing vehicles as trade in for replacement vehicles. In the event of a termination in this contract HWWCo shall pay the balance of the lease term in exchange for a buy out of \$1 at the end of the term.
- 3.04 Costs for additional personnel or services required for operation and maintenance, but which are outside the scope of this contract, provided by TOWN pursuant to Section 1.04 shall be billed separately at the actual cost to TOWN of labor, including overhead, overtime and materials, plus benefits.
- 3.05 Costs for additional engineering and other technical services requested by the HWWCo pursuant to Section 1.11, shall be billed separately at the actual cost to TOWN of labor, plus overhead, overtime and materials, plus benefits.
- 3.06 HWWCo will provide the TOWN with quarterly and year-end financial reports showing actual and projected year-end costs for these services versus the previously established budget for each year.

### **ARTICLE IV – TERM OF AGREEMENT**

- 4.01 This Agreement shall remain in full force and effect for one (1) year from the Effective Date.
- 4.02 The term of this Agreement may be extended for consecutive terms as mutually agreed by the HWWCo and the TOWN.

## **ARTICLE V – TERMINATION**

- 5.01 This Agreement may be terminated by either TOWN or the HWWCo for any reason by giving ninety (90) days written notice to the other party.
- 5.02 This Agreement may be terminated upon thirty (30) days written notice given by TOWN to the HWWCo for default by the HWWCo and the HWWCo's failure to appropriately cure the default within an additional thirty (30) day period.

## **ARTICLE VI – QUALITY GUARANTEE**

- 6.01 The TOWN's objective is to provide HWWCo with the highest quality operational services. To that end, TOWN seeks an operational partnership with the HWWCo to achieve the highest level of performance possible and expects to be held accountable for delivering performance against standards mutually developed between TOWN and HWWCo. If at any time the HWWCo is less than fully satisfied, this should be communicated to TOWN, and if the HWWCo is ultimately not satisfied with TOWN's performance, the HWWCo may terminate this Agreement with proper notice (Section 5.01).

## **ARTICLE VII - CHANGES**

- 7.01 There shall be no changes to this agreement except by written change order agreed to by both parties.
- 7.02 In an emergency affecting the safety of persons or property, TOWN may act at its discretion, to prevent threatened damage, injury or loss. Any increase in the monthly fee or extension of time claimed by TOWN on account of acts taken in connection with such emergencies shall be paid to TOWN in accordance with Section 3.04 and 3.05 above.

## **ARTICLE VIII – INDEMNIFICATION**

- 8.01 The TOWN agrees to indemnify and hold the HWWCo harmless from any liability, claim, demand or cause of action resulting from bodily injury to or illness or death of any person or destruction or damage to any property to the extent caused by the negligence of TOWN or its employees or agents in the performance of the services of this Agreement.
- 8.02 HWWCo agrees to indemnify and hold TOWN harmless from any liability claim, demands or cause of action resulting from bodily injury to or illness or death of, any person or destruction of or damage to any property to the extent caused by the negligence of the HWWCo or its employees or agents in the performance of the services under this Agreement.
- 8.03 In the event that both TOWN and the HWWCo are found by a finder of fact to be negligent and the negligence of both contributes to the proximate cause of the claim, damage, cost or expense, then in such event, each party shall be responsible for the portion of the liability equal to its comparative

share of the total negligence.

- 8.04 HWWCo acknowledges that, in seeking services of TOWN in this Agreement, the HWWCo is requesting the TOWN to undertake uninsurable environmental and other operational obligations for the HWWCo's benefit. Therefore, the HWWCo agrees that, except to the extent such liability may arise solely out of the negligence or willful misconduct of TOWN or its employees under this Agreement, the HWWCo shall defend, indemnify and hold harmless TOWN, its officers and employees from and against any and all claims, losses, damages and liabilities, including but not limited to cost of defense and reasonable attorneys' fees, arising under local, state, or federal laws or regulations including but not limited to, the Clean Air Act, the Clean Water Act, CERCLA, RCRA, or analogous state or local laws directly or indirectly connected with the alleged or threatened discharged, dispersal, release, migration of pollutants, contaminants, or chemicals which may be present at or beneath the HWWCo's premises. Notwithstanding anything to the contrary in this section, the HWWCo shall not be under obligation to defend or indemnify TOWN, its officers or employees from any criminal proceedings, fines, or sanctions unless they are attributable to those causes deemed as exceptions (1.07 1 through 4) to TOWN's compliance obligations.

## ARTICLE IX – MISCELLANEOUS

- 9.01 Any temporary or portable equipment which is provided by TOWN during the term of this Agreement and which is not deemed part of the SYSTEM shall remain the property of TOWN upon termination of this Contract. TOWN shall not make any capital replacements of the SYSTEM or any component thereof without the prior written approval of the Board of Directors of the HWWCo.
- 9.02 This Agreement represents the entire Agreement of the parties and may only be modified or amended in writing, signed by both parties.
- 9.03 Written notices required to be given under this Agreement shall be deemed given when mailed by first class mail, to TOWN, Attention: Julia Griffin, Town Manager, and to the HWWCo, Attention: Jay Pierson, President at the addresses set forth for each in the opening paragraph of this Agreement.
- 9.04 No waiver, discharge, or renunciation of any claim or right of TOWN arising out of breach of this Agreement by the HWWCo shall be effective unless signed in writing by TOWN and supported by separate consideration.
- 9.05 This Agreement shall be deemed to have been made in the state of New Hampshire and shall be governed by and construed in accordance with the laws of the State of New Hampshire.
- 9.06 If a dispute arises pursuant to this Agreement and is not resolved by mutual agreement within sixty (60) calendar days of written notice of the Dispute, a mutually acceptable third party (Mediator) having expertise in the subject matter of the dispute will be engaged to mediate the Dispute. The expense of the Mediator will be shared equally by the parties involved in the Dispute. The parties may present evidence or arguments to the Mediator. This mediation process will involve a minimum of two face-to-face meetings within a sixty (60) calendar day period beginning on the

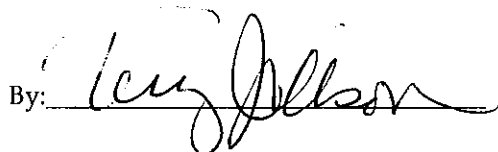
date of the Mediator's assignment to the Dispute. Any Dispute not resolved by mutual agreement or mediation as described above would be decided by binding arbitration in accordance with the rules of the American Arbitration Association, the award of the arbitrator to be final and binding on the parties.

IN WITNESS THEREOF, TOWN, by its duly authorized Officer, and the HWWCo, by its duly authorized Officer, have executed this Agreement as to the date and year first above written.

DATED July 1, 2008

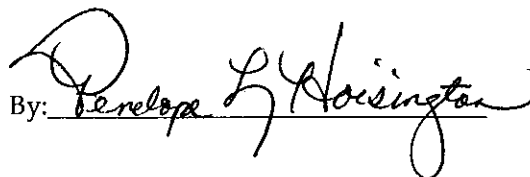
Attested to:

By:



Attested to:


By:



Approved By:

HWWCo

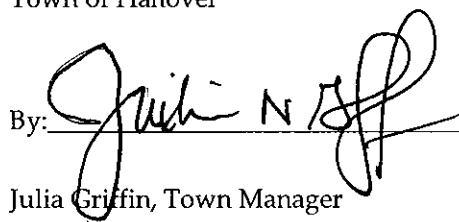
By:



Judson T. Pierson, President

Town of Hanover

By:



Julia Griffin, Town Manager



**RECEIVED**

**JUN 12 2009**

**OFFICE OF THE  
GENERAL COUNSEL**

June 11, 2009

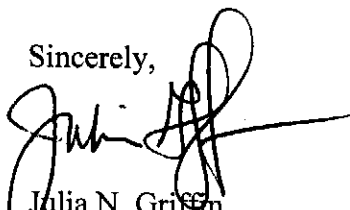
Robert B. Donin  
General Counsel  
Dartmouth College  
HB 6002  
Hanover, NH 03755

Dear Bob:

This letter serves as formal notification, pursuant to RSA 38:6, of the Town of Hanover's intention to pursue municipalization of the water utility portion of the Hanover Water Works Company. Town Meeting overwhelmingly approved this initial step by written ballot on May 12, 2009.

We acknowledge that RSA 38 was drafted to address a hostile takeover of a utility by a municipality. This action, however, is by no means hostile. The Town and the College have been working jointly on this proposal as co-owners of the Hanover Water Works Company for a number of years, and in earnest for the past 12 months. The Town of Hanover will only go forward to obtain final approval to acquire the hard assets of the Water Company and to assume the liabilities of the Company if the final proposal can be satisfactorily finalized to the satisfaction of both parties.

Sincerely,



Julia N. Griffin  
Town Manager



## **PURCHASE AGREEMENT**

### **(Hanover Water Works Company to Town of Hanover)**

PURCHASE AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 2010, by and among Hanover Water Works Company ("HWW"), a New Hampshire corporation with offices at 41 Grasse Road, Hanover, New Hampshire (hereinafter also sometimes referred to as the "Seller"), and the Town of Hanover ("Hanover"), a municipality incorporated under the laws of the State of New Hampshire with offices at 41 South Main Street, Hanover, New Hampshire (the "Buyer") (the Seller and Buyer are sometimes collectively referred to herein as the "Parties").

#### **RECITALS:**

WHEREAS, the Seller, pursuant to Chapter 290 of the New Hampshire Revised Statutes Annotated, was incorporated and empowered to construct and maintain water works for the purpose of bringing water to Hanover for domestic, fire and other purposes;

WHEREAS, the Seller's authorized capital stock consists of 1,550 shares, 818 of such shares being held by the Trustees of Dartmouth College, a private non-profit corporation and institution of higher learning duly created by Royal Charter and existing under the laws of the State of New Hampshire and located in the Town of Hanover, New Hampshire ("Dartmouth"); and 732 of such shares being held by Hanover;

WHEREAS, the Seller is a regulated public utility pursuant to the rules and regulations of the New Hampshire Public Utilities Commission (the "Commission"), and is authorized to provide water service within the Town of Hanover (the "Territory");

WHEREAS, HWW's water works, which include water supply reservoirs, and the water treatment and distribution system (collectively, the "System") have been operated by Hanover since July 1, 2000 pursuant to operations and maintenance agreements which have been entered into annually each July 1 by Hanover and HWW (collectively, "Operating Agreements"). The System is currently being operated by Hanover pursuant to the Operations and Maintenance Agreement by and between HWW and Hanover dated July 1, 2009 (the "2009 Operating Agreement");

WHEREAS, the Parties believe it is in their mutual best interests to municipalize HWW's water works and, accordingly, pursuant to RSA 38:8, the Seller has agreed to sell, and the Buyer has agreed to purchase, subject to the terms and conditions set forth herein, certain assets used by HWW to provide water service in the Territory;

WHEREAS, at Hanover's Annual Town Meeting held on May 12, 2009, the voters of Hanover authorized the purchase of the assets of HWW pursuant to RSA Chapter 38, and authorized the Select Board to negotiate the terms of the purchase of said assets, subject to

approval by the voters at a Special Town Meeting of the final purchase price pursuant to RSA 38:13;

WHEREAS, on October 27 and 28, 2009 pursuant to RSA 38:13, Hanover held the Special Town Meeting at which it presented a special warrant article to see whether the citizens of Hanover would ratify the final purchase price contemplated herein, and to see whether the voters would raise and appropriate the funds necessary for the payoff of the Citizens Loan (hereinafter defined); and

WHEREAS, the special warrant articles were duly approved by the required two thirds vote of the voters present at the Special Town Meeting.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I DEFINITIONS

For the purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Article I.

“2009 Operating Agreement” as defined in the fourth paragraph of the recitals;

“Assets” as defined in Section 2.1;

“Assumed Liabilities” as defined in Section 2.3;

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980;

“Citizens Loan” means the loan pursuant to the Amended and Restated Loan Agreement between Seller and Citizens Bank New Hampshire dated June 14, 2005;

“Claims” as defined in Section 9.2;

“Closing” as defined in Section 4.1;

“Closing Date” as defined in Section 4.1;

“Code” means the Internal Revenue Code of 1986, as amended;

“Encumbrance” means any charge, claim, community or other marital property interest, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first refusal, or similar restriction.

“Excluded Assets” as defined in Section 2.2;

“Indemnified Party” as defined in Section 9.2.1;

“Indemnifying Party” as defined in Section 9.2.1;

“IRS” means the Internal Revenue Service;

“Operating Agreements” as defined in the fourth paragraph of the recitals;

“Permitted Encumbrances” as defined in Section 5.7;

“Proration Date” as defined in Section 3.3.1

“Purchase Price” as defined in Section 3.1;

“Purchased Assets” as defined in Section 2.1;

“Real Property” as defined in Section 2.1;

“SRF Loans” means the State Drinking Water Revolving Loan Fund Loans to the Seller, pursuant to the Loan Agreement dated May 3, 1999, and the Loan Agreement dated April 6, 2005, each between the State of New Hampshire and the Seller;

“System” as defined in the third paragraph of the recitals;

“Termination Date” as defined in Section 10.1.1;

“Territory” as defined in the third paragraph of the recitals;

“Watershed Property” as defined in Section 2.2.2;

## ARTICLE II PURCHASE AND SALE

2.1 The Purchased Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing the Seller will sell, convey, assign, transfer and deliver to Buyer, and Buyer will purchase and acquire from the Seller, free and clear of any Encumbrances, except Permitted Encumbrances, all of the Seller’s right, title and interest in and to the assets, real, personal or mixed, tangible and intangible, of every kind and description, comprising the System and used to provide water service in the Territory, including without limitation, the following (but excluding the Excluded Assets):

2.1.1 The real property which is owned by the Seller, easements and other rights in real property in the Territory and the Town of Hanover as described in Schedule 2.1.1 and all rights arising out of the ownership thereof or appurtenant thereto (the “Real Property”);

2.1.2 all equipment, specifications, diagrams, materials, and other tangible assets used to operate the System and provide water service to the Territory as set forth on Schedule 2.1.2;

2.1.3 all of the Seller’s customer accounts and customer account information for customers served by Seller in the Territory as set forth on Schedule 2.1.3;

2.1.4 all accounts receivable for water service provided by the Seller to customers in the Territory as set forth in Schedule 2.1.4, which schedule shall be updated by Seller as of the Closing (the “Receivables”);

2.1.5 all of the intangible rights and property of Seller, including warranties, guarantees, intellectual property assets, software, proprietary or licensed methods and processes, going concern value, goodwill, telephone, telecopy and email addresses and listings and those items described in Schedule 2.1.5;

2.1.6 all data and records related to the operations of Seller, including research reports, production reports, service and warranty records, equipment logs, operating guides and manuals, financial and accounting records, promotional materials, studies, reports, correspondence and similar records and documents;

2.1.7 all licenses, permits, consents, legal authorizations and registrations (to the extent transferable to the Buyer) relating to the System;

2.1.8 all rights of the Seller related to deposits and prepaid expenses, claims for refunds and rights to offset related directly to the provision of water service in the Territory.

All of the assets to be transferred to Buyer hereunder (other than the “Real Property”) are herein referred to collectively as the “Assets.” The Assets, together with the Real Property, are referred to collectively as the “Purchased Assets.”

2.2 Excluded Assets. The Assets shall not include any rights and assets of the Seller other than those described in Section 2.1 and shall specifically exclude the following:

2.2.1 Cash and cash equivalents in the amount of \$10,000.00;

2.2.2 the real property consisting of approximately [ ] non-contiguous acres surrounding the 3 reservoirs (together with the riparian buffer zone) from which water is supplied to the Territory, all as further described on Schedule 2.2.2 (the “Watershed Property”)

2.2.3 all minute books, stock records and corporate seals; and

2.2.4 such other rights and assets described in Schedule 2.2.4.

The assets excluded from the purchase and sale contemplated hereunder are collectively referred to as the "Excluded Assets."

2.3 Assumed Liabilities. The Buyer shall assume and agree to discharge the liabilities and obligations of the Seller set forth on Schedule 2.3 (the "Assumed Liabilities"). Buyer will not assume any other liabilities of the Seller, except as provided in Schedule 2.3. All liabilities associated with the Seller or with the Purchased Assets and not expressly assumed by the Buyer shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by the Seller.

ARTICLE III  
PURCHASE PRICE

3.1 Purchase Price. The purchase price for the Purchased Assets shall be One Dollar (\$1.00) plus the amount of the Assumed Liabilities, subject to the adjustments set forth in Section 3.3 hereof (the "Purchase Price").

3.2 Allocation. The Purchase Price shall be allocated among the Purchased Assets in accordance with Schedule 3.2. After the Closing, the parties shall make consistent use of the allocation, fair market value and useful lives specified in Schedule 3.2 for all tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Buyer shall prepare and deliver IRS Form 8594 to Seller within forty-five (45) days after the Closing Date to be filed with the IRS. In any proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that such allocation is not a correct allocation.

3.3 Closing Costs and Prorations. The net amount of apportionments made under this Section 3.3 if due to Seller shall be added to the amount payable under Section 3.1 and if due to Buyer shall be subtracted from such amount. To the extent that the final amount of any apportionments to be made under this Section 3.3 may not reasonably be determined on the Closing Date, they shall be estimated at Closing, and an adjustment made to correct the same after Closing pursuant to this Section 3.3.

3.3.1 Utilities. Water, sewer, electricity, gas, steam, and other utility charges shall be apportioned on the basis of the amounts fixed with respect thereto in an official reading made as of the day immediately prior to the Closing Date (the "Proration Date"), except that if such reading is not obtained for such date, then the unfixed utility charges, if any, for the period since the last bill therefor shall be apportioned on the basis of that prior bill (or otherwise reasonably estimated by Seller and Buyer if such bill is more than six months old) with the apportionment to be readjusted when the actual bill for the period encompassing the Proration Date is received.

3.3.2 Real Estate Taxes and Assessments. Real estate taxes shall be prorated based on the actual current tax bill, but if such tax bill has not yet been received by Seller by the Closing Date, then Seller and Buyer shall make any necessary adjustment after the Closing by cash payment to the party entitled thereto so that Seller shall have borne all real estate taxes allocable to the period prior to the Closing and Buyer shall bear all real estate taxes allocable to the period from and after the Closing. All municipal assessments or betterments assessed prior to the Closing shall be paid in full at or prior to the Closing; provided, however, that if, on the Closing Date, the Real Property (or any part thereof), is affected by a betterment or assessment that is payable in installments, then for the purpose of this Agreement, all unpaid installments of such betterment or assessment that are due and payable after the Closing Date shall be assumed by Buyer without abatement of the Purchase Price, and any unpaid installments that are due and payable in the tax year in which the Closing occurs shall be subject to apportionment in the same manner as real estate taxes for the tax year in which the Closing occurs. If any assessments for public improvements shall arise subsequent to the date of this Agreement and prior to the Closing, and if an election must be made before the Closing Date, then Seller will elect to cause the same to be paid over the longest period allowed by law.

3.3.3 Personal Property Taxes. Any and all taxes and assessments on or against the Assets shall be apportioned on the basis of the tax year for which the personal property is assessed and within which the Closing Date occurs.

3.3.4 Recorded Instruments. Except as otherwise specifically addressed in any of the other provisions of this Section 3.3, assessments and other charges, if any, imposed pursuant to any recorded declaration of covenants or other recorded instruments, the non-payment of which creates a charge or lien upon the Real Property, shall be apportioned as of 11:59 p.m. (Hanover, New Hampshire time) on the Proration Date on the basis of a 365-day year.

3.3.5 Recording Costs. Buyer shall pay all costs of any financing documents related to Buyer's financing of the Property. Buyer shall pay all costs of recording (i) the quitclaim deeds; and (ii) the Assignment of Easements. Seller shall pay all costs of recording documents necessary to remove any Encumbrances that are not Permitted Encumbrances. In addition, Buyer and Seller shall each pay fifty percent (50%) of any and all state or local conveyance taxes on the Purchased Assets, including, without limitation, all transfer taxes payable in connection with the conveyance of the Purchased Assets pursuant to this Agreement.

3.3.6 Title Insurance; Survey. Buyer and Seller shall each pay fifty percent (50%) of all title insurance premiums, and costs and expenses associated with the transaction contemplated by this Agreement, including costs and expenses associated with obtaining a survey of the Real Property, except that Seller shall pay costs and expenses to the extent incurred in connection with the removal of any Encumbrances that are not Permitted Encumbrances.

3.3.7 Attorneys' Fees and Costs. Except for those provisions of this Agreement that expressly provide for one party to reimburse the other party's attorneys' fees and costs, each party agrees to bear its own attorneys' fees and costs with respect to this transaction.

3.3.8 Other Prorations. Except as otherwise expressly provided in this Agreement, other expenses that relate to the Purchased Assets shall be prorated by Seller and Buyer at the Closing as such expenses are customarily prorated in New Hampshire.

3.3.9 Delayed Adjustments. If at any time following the Closing Date, the amount of an item listed in any provision of this Section 3.3 shall prove to be incorrect by more than \$100, (whether as a result of an error in calculation or a lack of complete and accurate information as of the Closing) the party in whose favor the error was made shall promptly pay to the other party the sum necessary to correct such error upon receipt of proof of such error, provided that such proof is delivered to the party from whom payment is requested on or before the expiration of the period commencing on the Closing Date and ending on the last day of the eighteenth (18th) full calendar month following the Closing Date.

#### ARTICLE IV THE CLOSING

4.1 Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in ARTICLE VIII of this Agreement, the closing of the sale of the Purchased Assets contemplated by this Agreement (the "Closing") will take place at the offices of McLane, Graf, Raulerson & Middleton, Professional Association, 900 Elm Street, Manchester, New Hampshire, at 10:00 A.M. June 30, 2010, or at such other time and place as the parties may agree. The date and time at which the Closing actually occurs is referred to herein as the "Closing Date."

4.2 Payment of Purchase Price. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the sale, assignment, conveyance, transfer and delivery of the Purchased Assets, at the Closing, the Buyer will pay the Purchase Price, or cause the same to be paid to Seller.

4.3 Deliveries by Seller. At the Closing, the Seller will deliver to the Buyer the following items:

4.3.1 One or more New Hampshire quitclaim deeds in recordable form for the Real Property;

4.3.2 the Bill of Sale and Assumption Agreement in substantially the form attached as Exhibit 4.3.2 executed by the Seller for the Assets;

4.3.3 the Assignment and Assumption Agreement in substantially the form attached as Exhibit 4.3.3 for the assumption of the SRF Loans;

4.3.4 the discharge of the Mortgage dated July 15, 1993, as amended pursuant to the First Amendment to Mortgage dated June 14, 2005, together with termination statements and mortgage discharges necessary for Seller to deliver title to the Purchased Assets free and clear of any security interests related to the Citizens Loan;

4.3.5 the Assignment of Easements in substantially the form attached as Exhibit 4.3.5;

4.3.6 all necessary consents, waivers or approvals to be obtained by the Seller with respect to the Purchased Assets or the consummation of the transactions contemplated hereby, as the case may be, including, but not limited to the approval of the New Hampshire Public Utilities Commission to terminate the Seller's franchise and such other consents and approvals listed on Schedule 4.3.6;

4.3.7 a certificate executed by the Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing;

4.3.8 a certificate of the Secretary of Seller certifying, as complete and accurate as of the Closing, attached copies of the charter and bylaws of Seller, certifying and attaching all requisite resolutions or actions of Seller's board of directors and shareholders approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and certifying to the incumbency and signatures of the officers of Seller executing this Agreement;

4.3.9 all such other instruments of assignment or conveyance as shall, in the reasonable opinion of the Buyer and its counsel, be necessary to transfer the Purchased Assets, free and clear of Encumbrances (except Permitted Encumbrances, to Buyer in accordance with this Agreement and where necessary or desirable, in recordable form); and

4.3.10 such other agreements, documents, instruments and writings as are required to be delivered by the Seller at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

4.4 Deliveries by the Buyer. At the Closing, the Buyer will deliver to the Seller the following items:

4.4.1 The Purchase Price;

4.4.2 the Bill of Sale and Assumption Agreement in substantially the form of Exhibit 4.3.2;

4.4.3 the Assignment and Assumption Agreement in substantially the form attached as Exhibit 4.3.3 for the assumption of the SRF Loans;

4.4.4 evidence that the Buyer has effected the full payoff of the Citizens Loan;

4.4.5 a Water Service Agreement between the Buyer and Dartmouth, in substantially the form of Exhibit 4.4.5, pursuant to which the Buyer agrees to provide water



service to Dartmouth at a rate no less favorable than the most favorable rate applied to other retail water service customers of Hanover;

4.4.6 a certificate executed by the Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing;

4.4.7 all necessary consents, waivers or approvals to be obtained by the Buyer with respect to the consummation of the transactions contemplated hereby, including, but not limited to, the subdivision approvals required in connection with the conveyance of the Real Property, the consents and approvals required pursuant to RSA Chapter 38, and such other consents and approvals listed on Schedule 4.4.7; and

4.4.8 Such other agreements, documents, instruments and writings as are required to be delivered by the Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Buyer as follows:

5.1 Organization; Qualification. Seller is a New Hampshire corporation duly incorporated, validly existing and in good standing under the laws of the State of New Hampshire, and Seller has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

5.2 Authority Relative to this Agreement. The Seller has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of the Seller and no other corporate proceedings on the part of the Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and, assuming this Agreement constitutes a valid and binding agreement of the Buyer, constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

5.3 Consents and Approvals; No Violation. Except for such notices or approvals set forth on Schedule 4.3.6, neither the execution and delivery of this Agreement by Seller, nor the sale by Seller of the Purchased Assets pursuant to this Agreement, will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws (or other similar

governing documents) of the Seller, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the Seller or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

5.4 No Breach of Statute or Regulation. Neither the execution and delivery of this Agreement by Seller, nor compliance with the terms and provisions of this Agreement on the part of Seller, will breach any statute or regulation of any governmental authority.

5.5 Liens and Security Interests. Except as set forth in Schedule 5.5, the Purchased Assets are not subject to claims, liens, security interests, conditional sales contracts, or other encumbrances.

5.6 Environmental Matters. Except as disclosed in Schedule 5.6:

5.6.1 Seller has not received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar State law with respect to the Purchased Assets which has not been resolved or otherwise remedied;

5.6.2 The Seller has not entered into or agreed to any consent decree or order, and is not subject to any judgment, decree, or judicial order relating to compliance with any environmental law or to investigation or cleanup of hazardous substances under any environmental law with respect to the Purchased Assets which has not been resolved or otherwise remedied;

5.7 Real Estate. Schedule 2.1.1 to this Agreement contains a description of all of the real estate, easements and other real property rights owned by the Seller and included in the Purchased Assets. Seller owns good and marketable title to the Real Property, free and clear of any Encumbrances, other than liens for taxes for the current tax year which are not yet due and payable, and those encumbrances described in Schedule 5.7 (the "Permitted Encumbrances").

5.8 Certain Contracts and Arrangements. Except as listed in Schedule 5.8, or in any other Schedule to this Agreement, the Seller is not a party to any written contract, agreement, real estate lease, personal property lease, commitment, understanding or instrument with regard to the Purchased Assets and with respect to which there has occurred a default or event which, with notice or lapse of time or both, would constitute a default on the part of the Seller, except such events of default and other events as to which requisite waivers or consents have been obtained or which are described in Schedule 5.8.

5.9 Legal Proceedings. Except as set forth in Schedule 5.9, there are no claims, actions, proceedings or investigations pending or, to the Seller's knowledge, threatened against or relating to the Purchased Assets before any court, governmental or regulatory authority or body acting in an adjudicative capacity. Except as set forth in Schedule 5.9, the Seller is not

subject to any outstanding judgment, rule, order, writ, injunction or decree of any court, governmental or regulatory authority which is likely to have a material adverse effect on the Purchased Assets.

5.10 Taxes. All tax returns required to be filed by the Seller in respect of the Purchased Assets have been filed, and all taxes shown to be due on such tax returns have been paid in full. Except as set forth in Schedule 5.10, no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for taxes of the Seller in respect of the Purchased Assets, which have not been fully paid or finally settled, and any such deficiency shown in such Schedule 5.10 is being contested in good faith through appropriate proceedings. Except as set forth in Schedule 5.10 there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for taxes of the Seller associated with the Purchased Assets for any period.

5.11 Express Representations. Buyer specifically acknowledges that it has been operating the System pursuant to the terms of the Operating Agreement, is fully familiar with the Purchased Assets comprising the System, and agrees that Seller is selling and Buyer is purchasing the Purchased Assets on an "AS IS WITH ALL FAULTS" basis and that Buyer is not relying on any oral or written representations or warranties of any kind whatsoever (except for such representations and warranties as set forth herein), express or implied, from Seller, its employees, directors, officers, agents, consultants, contractors, subcontractors or brokers as to any matters concerning the Purchased Assets including, without limitation, any information contained in any report, plan, specification, study, analysis, document, or other written material given by or on behalf of Seller to Buyer with respect to the Purchased Assets.

Buyer acknowledges that it has had (or will have pursuant to the provisions of this Agreement) access to and sufficient time to review all information, documents, agreements, studies and tests relating to the Purchased Assets which it deems necessary or desirable and that it has conducted or will conduct to its satisfaction a complete and thorough inspection, testing, analysis and evaluation of the Purchased Assets, including but not limited to environmental issues, if any. Buyer is fully aware of, or will investigate, pursuant to the provisions of this Agreement, the condition of the Purchased Assets as well as all facts, circumstances and information which may affect the development, use, operation or profitability of the Purchased Assets, and has relied and will rely on its own due diligence investigation in determining to purchase the Purchased Assets rather than on any information that may have been provided by Seller. To the extent that Seller, or its employees, directors, officers, agents, consultants, contractors, subcontractors or brokers, has provided to Buyer or hereafter provides to Buyer any reports, plans, specifications, studies, analyses, documents or other materials, or any other information whatsoever, relating to the Purchased Assets, Seller has made and hereby makes no representations or warranties with respect to the accuracy or completeness of the same or otherwise concerning such documents, materials or information. All violations of, and/or any enforcement action of any kind whatsoever taken by any federal, state or municipal government to enforce any federal, state or municipal laws, statutes, regulations, ordinances, orders or requirements, whether or not noted or issued by any governmental authorities having jurisdiction of any type or character whatsoever, applicable to the Purchased Assets or any part thereof, with respect to events that occur following the Closing shall be the sole responsibility of Buyer.

Without in any way limiting the generality of the preceding paragraph, in entering into this Agreement and purchasing the Purchased Assets, Buyer hereby acknowledges that, except as set forth in this Article V, Seller, its employees, directors, officers, agents, consultants, contractors, subcontractors and brokers has not made, does not hereby make and will not hereafter be deemed to have made any representations or warranties or guarantees, whether express or implied, with respect to the Purchased Assets or the physical condition or profitability thereof, including without limitation:

- i. THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PURCHASED ASSETS, INCLUDING, BUT NOT LIMITED TO, THE ELECTRICAL, MECHANICAL, AND STRUCTURAL ELEMENTS, THE FOUNDATION, AND THE APPURTENANCES, ACCESS, AND LANDSCAPING.
- ii. THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER.
- iii. THE DEVELOPMENT POTENTIAL OF THE PURCHASED ASSETS, AND THE PURCHASED ASSETS' USE, HABITABILITY, MERCHANTABILITY, FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE.
- iv. THE ZONING OR OTHER LEGAL STATUS OF THE PURCHASED ASSETS OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PURCHASED ASSETS.
- v. THE COMPLIANCE OF THE PURCHASED ASSETS OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY.
- vi. THE PRESENCE OF HAZARDOUS SUBSTANCES ON, UNDER, IN, OR ABOUT THE PURCHASED ASSETS OR THE ADJOINING OR NEIGHBORING PURCHASED ASSETS OR THE EXISTENCE OF ANY UNDERGROUND TANKS, CONTAINERS, OR CONDUITS IN, ON, OR ABOUT THE PURCHASED ASSETS.
- vii. THE EXPENSES AND POTENTIAL RENTAL INCOME ASSOCIATED WITH THE OWNERSHIP, OPERATION AND MAINTENANCE OF THE PURCHASED ASSETS.

- viii. THE QUALITY OF CONSTRUCTION OF ANY IMPROVEMENTS ON THE PURCHASED ASSETS.
- ix. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IN SECTION 5.7 HEREOF, AND THE QUITCLAIM COVENANTS TO BE CONTAINED IN THE DEEDS TO BE DELIVERED AT THE CLOSING, THE QUALITY OF SELLER'S TITLE TO THE PURCHASED ASSETS, AND THE EXISTENCE OF ANY LIENS, ENCUMBRANCES, CHARGES, ASSESSMENTS, RESTRICTIONS OR CLAIMS RELATING THERETO.

The provisions of this Section 5.11 shall survive the Closing or the earlier termination of this Agreement indefinitely.

#### ARTICLE VI REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows:

6.1 Organization. The Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of New Hampshire and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

6.2 Authority Relative to this Agreement. The Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Buyer and no other corporate or municipal proceedings on the part of the Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby, except as set forth in Schedule 6.2. This Agreement has been duly and validly executed and delivered by the Buyer and, assuming this Agreement constitutes a valid and binding agreement of the Seller, is enforceable against the Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

6.3 Consents and Approvals; No Violation. Except as set forth in Schedule 4.4.7, neither the execution and delivery of this Agreement by the Buyer nor the purchase by the Buyer of the Purchased Assets pursuant to this Agreement will (i) conflict with or result in any breach of any provision of the charter (or other similar governing documents) of the Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the

Buyer is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

6.4 No Breach of Statute or Contract. Neither the execution and delivery of this Agreement by Buyer, nor compliance with the terms and provisions of this Agreement on the part of Buyer, will breach any statute or regulation of any governmental authority.

## ARTICLE VII COVENANTS OF THE PARTIES

7.1 Conduct of Business of the Company. Except as otherwise contemplated in this Agreement, prior to the Closing Date, the Purchased Assets and the System shall be operated by the Buyer in accordance with the terms of the Operating Agreement, and the respective rights, obligations and liabilities of the parties with respect to the Purchased Assets and the operation of the System prior to the Closing Date shall continue to be governed by the terms of the Operating Agreement.

7.2 Access to Information. Between the date of this Agreement and the Closing Date, the Seller will, during ordinary business hours and upon reasonable notice give the Buyer and its representatives reasonable access to the Purchased Assets and furnish the Buyer with such operating data and other information in the Seller's possession with respect to the Purchased Assets (and not otherwise in Buyer's possession pursuant to the Operating Agreement) as the Buyer may from time to time reasonably request. Buyer shall likewise provide Seller with such access to information and data which is in Buyer's possession pursuant to Buyer's operation of the System under the Operating Agreement.

7.3 Expenses. Except to the extent specifically provided herein or in related written agreements, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

7.4 Further Assurances. Subject to the terms and conditions of this Agreement, each of the parties hereto will use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets pursuant to this Agreement. From time to time after the date hereof, without further consideration, the Seller will, at its own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order to more effectively vest in the Buyer the Seller's title to the Purchased Assets. From time to time after the date hereof, the Buyer will, at its own expense, execute and deliver such documents to the Seller as the Seller may reasonably request in order to more effectively consummate the sale of the Purchased Assets pursuant to this Agreement.

7.5 Permits and Approvals. The Seller and the Buyer shall cooperate with each other and promptly prepare and file all necessary documentation, effect all necessary applications,

notices, petitions and filings and execute all agreements and documents, use all commercially reasonable efforts to obtain the transfer or re-issuance to the Buyer of all necessary transferable permits, if any, consents, approvals and authorizations of all governmental bodies (including, but not limited to, the New Hampshire Public Utilities Commission) and shall use all commercially reasonable efforts to obtain all necessary consents, approvals and authorizations of all other parties necessary or advisable to consummate the transactions contemplated by this Agreement or required by the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which the Seller or the Buyer is a party or by which any of them is bound.

7.6 Fees and Commissions. The Seller and the Buyer each represent and warrant to the other that no broker, finder or other person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the party making such representation. The Seller and the Buyer will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than as described above) incurred by reason of any action taken by such party.

7.7 Tax Matters. Any New Hampshire transfer taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party responsible pursuant to statute or regulation for such tax or portion thereof, including as set forth in RSA 78-B, and the Seller, at its own expense, will file, to the extent required by applicable law, all necessary tax returns and other documentation with respect to all such transfer taxes, and, if required by applicable law, the Buyer will join in the execution of any such tax returns or other documentation.

7.8 Supplements to Schedules. Prior to the Closing Date the Seller shall supplement or amend the Schedules to this Agreement with respect to any matter relating to the Purchased Assets hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No supplement or amendment of any Schedule made pursuant to this Section 7.8 shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the parties agree thereto in writing.

7.9 Trescott Company. Upon consummation of the Closing and the transactions contemplated hereby, the Seller shall:

7.9.1 Enter upon its stock records the transfer of 43 shares of its capital stock owned by Dartmouth to Hanover, pursuant to the terms of a Stock Transfer and Restructuring Agreement dated as of the Closing Date and attached as Exhibit 7.9.1, so that after such transfer, Hanover and Dartmouth shall each own 775 shares of HWW's capital stock (or 50% of such outstanding capital stock);

7.9.2 change HWW's name to "Trescott Company,";

7.9.3 adopt the Amended and Restated Articles of Incorporation in the form attached as Exhibit 7.9.3; and

7.9.4. adopt the Amended and Restated Bylaws in the form attached as Exhibit

## ARTICLE VIII CLOSING CONDITIONS

8.1 Conditions to Each Party's Obligations to Effect the Transactions. The respective obligations of each party to effect the sale of the Purchased Assets shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

8.1.1 No preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the sale of the Purchased Assets contemplated hereby shall have been issued and remain in effect (each party agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or governmental agency in the United States which prohibits the consummation of the sale of the Purchased Assets;

8.1.2 All federal, state and local government consents and approvals required for the consummation of the sale of the Purchased Assets shall have been obtained, (including, but not limited to, the real estate subdivision approvals, and the approval of the New Hampshire Public Utilities Commission to the termination of Seller's franchise), unless the failure to obtain such consent or approval would not result in a material adverse effect;

8.1.3 All consents and approvals for the consummation of the sale of the Purchased Assets contemplated hereby required under the terms of any note, bond, mortgage, indenture, contract or other agreement to which the Seller or the Buyer are a party shall have been obtained, other than those which if not obtained, would not, in the aggregate, have a material adverse effect.

8.2 Conditions to Obligations of the Buyer. The obligation of the Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

8.2.1 The Seller shall have performed and complied with the covenants and agreements contained in this Agreement which relate to the Purchased Assets and are required to be performed and complied with by the Seller on or prior to the Closing Date;

8.2.2 The representations and warranties of the Seller contained herein shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date;

8.2.3 Unless waived by the Buyer, the Purchased Assets shall be in substantially the same condition on the Closing Date as on the date hereof, reasonable wear and tear excepted and except for any damage by fire or other casualty that has been restored by the Seller;



8.2.4 All consents and approvals required of the Seller to consummate the transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect;

8.2.5 The Buyer shall have received an opinion from McLane, Graf, Raulerson & Middleton, Professional Association, counsel for the Seller, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that:

- i. the Seller is a New Hampshire corporation duly incorporated, existing, and in good standing under the laws of the State of New Hampshire and has the power to execute and deliver this Agreement and to consummate the transactions contemplated hereby; and the execution and delivery of this Agreement and the consummation of the sale of the Purchased Assets contemplated hereby have been duly authorized by all requisite action taken on the part of the Seller;
- ii. this Agreement has been executed and delivered by Seller and is the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefore may be brought;
- iii. the execution, delivery and performance of this Agreement by Seller will not (i) constitute a violation of its Articles of Incorporation or Bylaws (or other similar governing documents) and (ii) to such counsel's knowledge, violate or conflict with, or result in a default under, any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Seller or any of the Purchased Assets is bound;
- iv. no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for the consummation by Seller of the Closing other than as described in Schedule 4.3.7.

Such opinion may expressly rely as to matters of facts upon certificates furnished by appropriate officers and directors of the Buyer and its subsidiaries and by public officials.

8.2.6 The Buyer shall have received confirmation of the passage and enactment of certain special legislation in substantially the form attached as Exhibit 8.2.6 allowing Hanover to make payments in lieu of property taxes from the water funds into the General Fund;

8.2.7 The Buyer shall have completed the issuance of a general obligation bond in an amount not less than \$550,000.00 to fund the payoff of the Citizens Loan; and

8.2.8 The Buyer shall have entered into the Stock Purchase and Restructuring Agreement with Dartmouth College in the form attached as Exhibit 7.9.1, and shall have received a fully-executed unanimous written consent of the directors and shareholders of HWW authorizing the adoption of the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws.

8.3 Conditions to Obligations of the Seller. The obligation of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

8.3.1 The Buyer shall have performed its covenants and agreements contained herein and required to be performed on or prior to the Closing Date;

8.3.2 The representations and warranties of the Buyer set forth herein shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date;

8.3.3 All consents and approvals required of the Buyer to consummate the transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect; and

8.3.4 The Seller shall have received an opinion from Mitchell Municipal Group, P.A., counsel for the Buyer, dated the Closing Date and satisfactory in form and substance to the Seller and their counsel, substantially to the effect that:

- i. the Buyer is a municipality organized, existing and in good standing under the laws of the State of New Hampshire and has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; and the execution and delivery of this Agreement and the consummation of the sale of the Purchased Assets contemplated hereby have been duly authorized by all requisite action taken on the part of the Buyer;
- ii. this Agreement has been executed and delivered by the Buyer and is the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter

in effect relating to creditors' rights and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefore may be brought;

- iii. the execution, delivery and performance of this Agreement by the Buyer will not, to such counsel's knowledge, violate or conflict with, or result in a default under, any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Buyer or any of the Purchased Assets is bound; and
- iv. no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for the consummation by the Buyer of the Closing, other than as described in Schedule 4.4.7.

Such opinion may expressly rely as to matters of facts upon certificates furnished by appropriate officers and directors of the Buyer and its subsidiaries and by public officials.

## ARTICLE IX INDEMNIFICATION

### 9.1 Indemnification - Seller.

9.1.1 The Seller will indemnify, defend and hold harmless the Buyer from and against any and all claims, demands or suits, losses, liabilities, damages, obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) ("Buyer Losses") asserted against or suffered by the Buyer relating to, resulting from or arising out of (i) any breach by the Seller of any covenant, representation, warranty, or agreement of the Seller contained in this Agreement, or (ii) Seller's ownership or operation of the Purchased Assets prior to the Closing Date (other than Assumed Liabilities).

9.1.2 Notwithstanding the provisions of Section 9.1.1 hereof, the Parties acknowledge that the Buyer has been operating the System since July 1, 2000 pursuant to the terms of the Operating Agreements, and the Seller's obligation to indemnify Buyer against Buyer Losses relating to, resulting from or arising out of Seller's ownership or operation of the Purchased Assets prior to the Closing Date shall be governed by the terms of the 2009 Operating Agreement relating to the Parties' respective obligations and responsibilities thereunder, including Article VIII thereof relating to indemnification. The terms and provisions of the 2009 Operating Agreement shall survive the Closing to the extent necessary to give effect to this Section 9.1.2.

## 9.2 Indemnification – Buyer.

9.2.1 The Buyer will indemnify, defend and hold harmless the Seller from and against any and all claims, demands or suits, losses, liabilities, damages, obligations, payments, costs and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) ("Seller Losses") asserted against or suffered by the Seller relating to, resulting from or arising out of (i) any breach by the Buyer of any covenant, representation, warranty, or agreement of the Buyer contained in this Agreement; (ii) the Buyer's ownership and operation of the Purchased Assets after the date of Closing; or (iii) Assumed Liabilities.

9.2.2 Notwithstanding the foregoing, the Parties acknowledge that the Buyer has been operating the System since July 1, 2000 pursuant to the terms of the Operating Agreements, and the Buyer's obligation to indemnify Seller against Seller Losses relating to, resulting from or arising out of Buyer's operation of the System and the Purchased Assets prior to the Closing Date shall be governed by the terms of the 2009 Operating Agreement relating to the Parties' respective obligations and responsibilities thereunder, including Article VIII thereof relating to indemnification. The terms and provisions of the 2009 Operating Agreement shall survive the Closing to the extent necessary to give effect to this Section 9.2.2.

9.3 Notice Prior to Expiration. The expiration, termination or extinguishment of any covenant, representation, warranty, or agreement shall not affect the parties' obligations under this Article IX if the indemnitee provided the person required to provide indemnification under this Agreement with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

9.4 Exclusive Remedy. Except as otherwise provided in this ARTICLE IX, the rights and remedies of the Seller and the Buyer under this ARTICLE IX are exclusive and in lieu of any and all other rights and remedies which the Seller and the Buyer may have under this Agreement or otherwise for monetary relief with respect to any breach of any covenant, representation, warranty, or agreement set forth in this Agreement.

9.5 Indemnification Procedures. The procedure set forth below shall be followed with respect to every claim for indemnification under this Article IX ("Claims").

9.5.1 Notice. The party seeking indemnification (the "Indemnified Party") shall give to the party from whom indemnification is sought (the "Indemnifying Party") written notice of any Claims for which indemnity may be sought under this ARTICLE IX promptly but in any event within 30 calendar days after the Indemnified Party receives notice thereof; provided, however, that failure by the Indemnified Party to give such notice shall not relieve the Indemnifying Party from any liability it shall otherwise have pursuant to this Agreement, except to the extent that the Indemnifying Party is actually prejudiced by such failure. Such notice shall set forth in reasonable detail the basis for such potential Claims and shall be given in accordance with Section 11.3 below. The indemnification period provided for herein shall be tolled for a

particular claim for the period beginning on the date that the Indemnified Party receives written notice of such Claims until the final resolution thereof;

9.5.2 **Defense and Control of Third Party Claims.** The Indemnifying Party shall have the right, at its option, to be represented by counsel of its choice and to assume the defense or otherwise control the handling of any third party Claims for which indemnity is sought by notifying the Indemnified Party in writing to such effect within ten days of receipt of such notice. If the Indemnifying Party does not give timely notice in accordance with the preceding sentence, the Indemnifying Party shall be deemed to have given notice that it does not wish to control the handling of such third party Claims for which indemnity is sought. In the event the Indemnifying Party elects (by written notice within such ten-day period) to assume the defense of or otherwise control the handling of any such third party Claims for which indemnity is sought, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party from and against all Claims suffered therefrom, notwithstanding the fact that the Indemnifying Party may not have been so liable to the Indemnified Party had it not elected to assume the defense of or to otherwise control the handling of such third party Claims. In the event that the Indemnifying Party does not assume the defense or otherwise control the handling of third party Claims for which the Indemnified Party is entitled to indemnification hereunder, the Indemnified Party may retain counsel, as an indemnifiable expense, to defend such third party Claims. Any such expense shall be borne by the Indemnifying Party and the Indemnified Party shall have final authority with respect to any such matter; and

9.5.3 **Cooperation.** The parties shall cooperate in the defense of any third party Claims and each shall make available all books and records which are relevant in connection with such third party Claims. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to any matter which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld.

## 9.6 Time Limitations.

9.6.1 **Seller Liability.** If the Closing occurs, Seller will have liability under this ARTICLE IX only if, on or before the close of business on the last day of the 12 month period following the Closing Date, Buyer notifies Seller of a claim specifying the factual basis of such claim in reasonable detail to the extent then known by Buyer. This limitation shall not apply to claims for breach of Sections 5.1 or 5.2, or claims governed by the terms and provisions of the Operating Agreement pursuant to Section 9.1.2 hereof.

9.6.2 **Buyer Liability.** If the Closing occurs, Buyer will have liability under this ARTICLE IX only if, on or before the close of business on the last day of the 12 month period following the Closing Date, Seller notifies Buyer of a claim specifying the factual basis of such claim in reasonable detail to the extent then known by Seller. This limitation shall not apply to claims for breach of Sections 6.1 or 6.2, or claims governed by the terms and provisions of the Operating Agreement pursuant to Section 9.2.2 hereof.

## ARTICLE X TERMINATION AND ABANDONMENT

10.1 Termination. This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of the Seller and the Buyer, provided, however, that:

10.1.1 This Agreement may be terminated by any one of the parties hereto if the Closing has not occurred on or before June 30, 2010 (the "Termination Date"); provided that the right to terminate this Agreement under this Section 10.1.1 shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or has resulted in, the failure of the Closing to occur on or before such date;

10.1.2 This Agreement may be terminated by any one of the parties if (i) any governmental or regulatory body, the consent of which is a condition to the obligations of the Seller or the Buyer to consummate the Closing shall have determined not to grant its or their consent and all appeals of such determination shall have been taken and have been unsuccessful, (ii) one or more courts of competent jurisdiction in the United States or any State shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and non-appealable, or (iii) any statute, rule or regulation shall have been enacted by any State or federal government or governmental agency in the United States which prohibits the consummation of the Closing;

10.1.3 This Agreement may be terminated by the Buyer if there has been a material violation or breach by the Seller of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of the Buyer to effect the Closing impossible and such violation or breach has not been waived by the Buyer; and

10.1.4 This Agreement may be terminated by the Seller if there has been a material violation or breach by the Buyer of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of the Seller to effect the Closing impossible and such violation or breach has not been waived by the Seller.

10.2 Procedure and Effect of Termination. In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by any of the parties pursuant to Section 10.1, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein:

10.2.1 Said termination shall be in addition to, and shall not prevent the parties from seeking, other remedies that may be available at law or in equity with respect to breaches of any agreement, representation or warranty contained in this Agreement, provided, however, that

in no event shall either party be liable to the other for special or consequential damages; and

10.2.2 all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other person to which they were made.

## ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of the Seller and Buyer.

11.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, representation, warranty, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, representation, warranty, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

11.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission, telexed or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

11.3.1 If to the Seller, to:

Hanover Water Works Company  
41 Grasse Road  
P.O. Box 1006  
Hanover, NH 03755  
Attn. Judson T. Pierson, President

Tel.: (603) 643 3439  
Fax: (603)

With a copies to:

Sarah B. Knowlton, Esq.  
McLane, Graf, Raulerson & Middleton,  
Professional Association  
100 Market Street  
Suite 301  
Portsmouth, NH 03802-0459

Tel.: (603) 334 6928  
Fax: (603) 436 5672

Michael B. Tule, Esq.  
McLane, Graf, Raulerson & Middleton  
Professional Association  
900 Elm Street  
P.O. Box 326  
Manchester, NH 03105-0326

Tel: (603) 628 1290  
Fax: (603) 625 5650

11.3.2 If to the Buyer to:

Town of Hanover  
41 South Main Street  
P.O. Box 483  
Hanover, NH 03755  
Attn. Julia N. Griffin, Town Manager

Tel.: (603) 643 0701  
Fax: (603) 398 9899

With a copy to:

Walter L. Mitchell, Esq.  
Mitchell Municipal Group, P.A.  
25 Beacon Street East  
Suite 2  
Laconia, NH 03246

Tel.: (603) 524 3885  
Fax: (603) 524 0745



11.4 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law without the prior written consent of the other party, nor is this Agreement intended to confer upon any other person except the parties hereto any rights or remedies hereunder.

11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

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

11.7 Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

11.8 Schedules and Exhibits. All Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

11.9 Entire Agreement. This Agreement, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. Except as otherwise provided herein, this Agreement supersedes all prior agreements and understandings between the parties with respect to such transactions.

*[Signature page follows]*

IN WITNESS WHEREOF, the Seller and the Buyer have caused this agreement to be signed as of the date first above written.

**SELLER**

HANOVER WATER WORKS COMPANY

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Judson T. Pierson  
President

**BUYER**

TOWN OF HANOVER

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Brian Walsh, Chairman  
Board of Selectmen

*HWW – Hanover Purchase Agreement Signature Page*

**SCHEDULES**  
**TO**  
**PURCHASE AGREEMENT**  
**By and Between**  
**THE HANOVER WATER WORKS COMPANY**  
**and**  
**THE TOWN OF HANOVER**  
**dated \_\_\_\_/\_\_\_\_/2010**

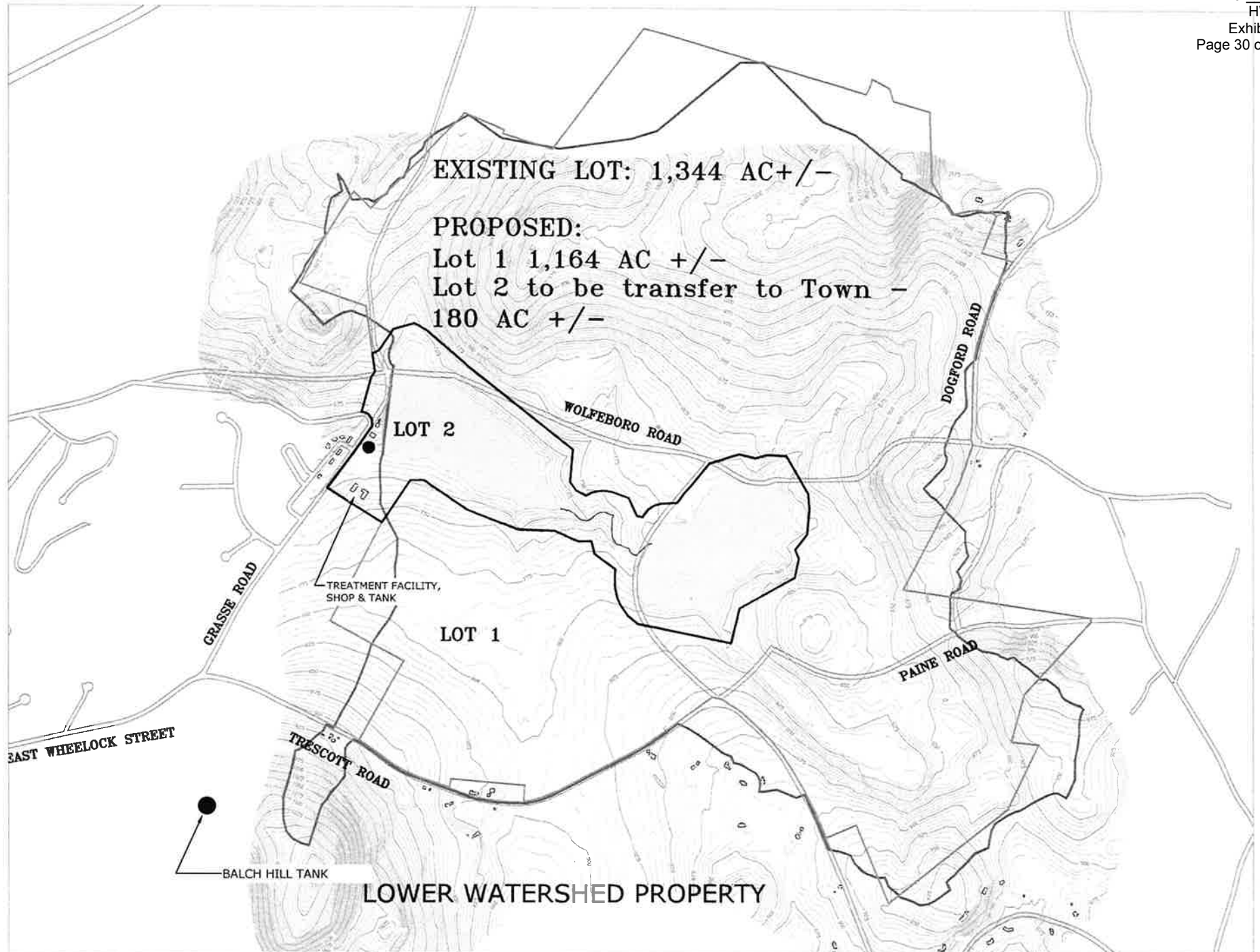
List of Schedules

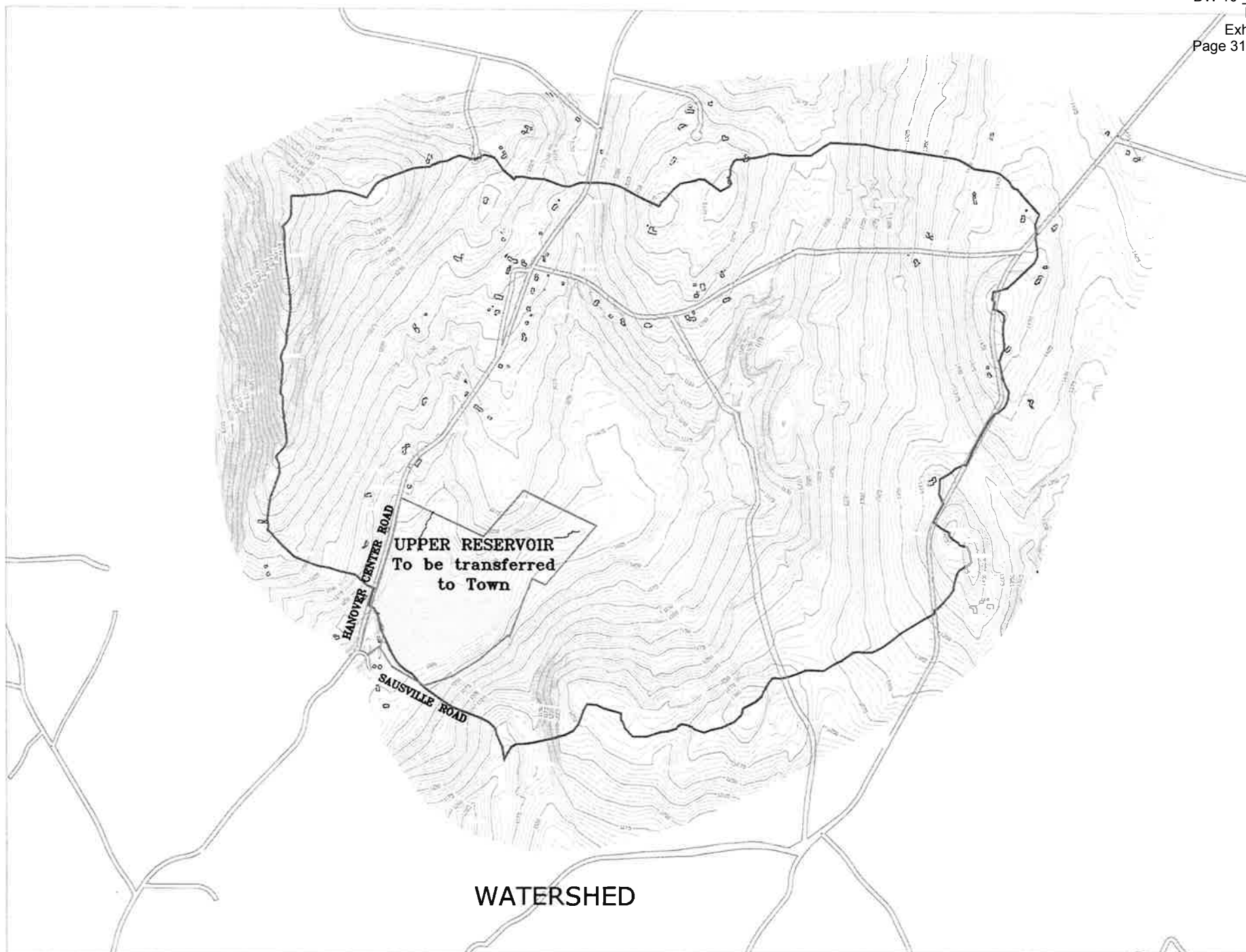
Schedule 2.1.1	Real Property
Schedule 2.1.2	Equipment
Schedule 2.1.3	Vehicles
Schedule 2.1.4	Customer Accounts
Schedule 2.1.5	Receivables
Schedule 2.2.2	Watershed Property
Schedule 2.2.4	Other Excluded Assets
Schedule 2.3	Assumed Liabilities
Schedule 3.2	Purchase Price Allocation
Schedule 4.3.6	Utility Easements
Schedule 4.3.7	Consents and Approvals - Seller
Schedule 4.4.7	Consents and Approvals – Buyer
Schedule 5.5	Liens and Security Interests
Schedule 5.6	Environmental Matters
Schedule 5.7	Permitted Encumbrances
Schedule 5.8	Contract Defaults
Schedule 5.9	Legal Proceedings
Schedule 5.10	Taxes
Schedule 6.2	Corporate Or Municipal Approvals Needed

Schedule 2.1.1

Real Property

(See Attached - Property Survey In Process)





Schedule 2.1.2

Equipment

(List Provided - To Be Updated At Closing)



Schedule 2.1.3

Vehicles

(See Schedule 2.1.2)

Schedule 2.1.4

Customer Accounts

(To Be Provided At Closing)

Schedule 2.1.5

Receivables

(To Be Provided At Closing)

Schedule 2.2.2

Watershed Property

(See Schedule 2.1.1 - Property Survey In Process)

Schedule 2.2.4

Other Excluded Assets

(None)

Schedule 2.3

Assumed Liabilities

1. The Citizens Loan
2. The SRF Loans

(Further Items To Be Provided At Closing)

Schedule 3.2

Purchase Price Allocation

(To Be Provided At Closing)

Schedule 4.3.6

Utility Easements

(See Schedule 2.1.2)



Schedule 4.3.7

Consents and Approvals – Seller

1. New Hampshire Public Utilities Commission – Petition for Termination of Franchise

Schedule 4.4.7

Consents and Approvals – Buyer

(None)

Schedule 5.5

Liens and Security Interests

(See Schedule 3.1)

Schedule 5.6

Environmental Matters

(None)

Schedule 5.7

Permitted Encumbrances

(To Be Provided Upon Completion of Property Survey)

Schedule 5.8

Contract Defaults

(None)

Schedule 5.9

Legal Proceedings

(None)

Schedule 5.10

Taxes

(No Exceptions)



Schedule 6.2

Corporate Or Municipal Approvals Needed

(No Exceptions)

**EXHIBITS**  
**TO**  
**PURCHASE AGREEMENT**  
**By and Between**  
**HANOVER WATER WORKS COMPANY**  
**and**  
**THE TOWN OF HANOVER**  
**dated \_\_\_\_/\_\_\_\_/2009**

Exhibits List

Exhibit 4.3.2	Bill of Sale, Assignment and Assumption
Exhibit 4.3.3	Assignment of SRF Loans
Exhibit 4.3.5	Assignment of Easements
Exhibit 4.4.5	Letter Agreement – Dartmouth – Hanover
Exhibit 7.9.1	Stock Transfer and Restructuring Agreement
Exhibit 7.9.3	Amended and Restated Articles of Incorporation of Trescott Company, Inc.
Exhibit 7.9.4	Amended and Restated Bylaws of Trescott Company, Inc.
Exhibit 8.2.6	Special Legislation

Exhibit 4.3.2

Bill of Sale, Assignment and Assumption

(See Attached)

## **BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT**

### **(Hanover Water Works Company to Town of Hanover)**

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT ("Bill of Sale and Assumption") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010 by and between Hanover Water Works Company, a New Hampshire corporation (the "Seller"), and the Town of Hanover, a New Hampshire municipality (the "Assignee").

WHEREAS, Seller and Assignee are parties to a Purchase Agreement dated \_\_\_\_\_, 2010 (the "Purchase Agreement"), pursuant to which, and subject to the terms and conditions set forth therein, Seller agreed to sell to Assignee the Assets (as defined in the Purchase Agreement) and assign certain rights and agreements to the Assignee, and Assignee has agreed to assume the Assumed Liabilities (as defined in the Purchase Agreement).

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.
2. Sale and Conveyance of Assets. Effective as of the date hereof, Seller hereby irrevocably sells, assigns, transfers and sets over to Assignee all of Seller's right, title, benefit, privileges and interest in and to the Assets.
3. Assignment and Assumption. Effective as of the date hereof, Seller hereby sells, assigns, transfers and sets over all of its right, title and interest in and to, and all of Seller's burdens, obligations, and liabilities in connection with each of the Assumed Liabilities. Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, and covenants of Seller to be observed, performed, paid or discharged from and after the Closing, in connection with the Assumed Liabilities (the sale and conveyance of the Assets, and the assignment and assumption of the Assumed Liabilities is hereinafter collectively referred to as the "Assignment".)
4. Further Action. The Seller and Assignee each covenants and agrees to execute and deliver, at the request of the other party to this Bill of Sale and Assumption, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to further document the assignment and assumption contemplated by this Bill of Sale and Assumption.
4. Counterparts. This Bill of Sale and Assumption may be executed in two or more counterparts and by different parties in separate counterparts. All counterparts will constitute one

and the same agreement and will become effective when one or more counterparts have been signed by each party and delivered to the other party. A facsimile signature page will be deemed an original.

IN WITNESS WHEREOF, the Seller and Assignee have executed this Agreement as of the day and year set forth above.

WITNESS:

SELLER:

Hanover Water Works Company

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

WITNESS:

ASSIGNEE:

Town of Hanover

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

3869938\_1

March 16, 2010 12:58:19 PM

Exhibit 4.3.3

Assignment of SRF Loans

(See Attached)

## ASSIGNMENT AND ASSUMPTION AGREEMENT

### (State Revolving Fund Loans – Hanover Water Works Company to Town of Hanover)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between Hanover Water Works Company, a New Hampshire corporation (the "Seller"), and the Town of Hanover, a New Hampshire municipality (the "Assignee").

WHEREAS, Seller and Assignee are parties to a Purchase Agreement dated \_\_\_\_\_, 2010 (the "Purchase Agreement"), pursuant to which, and subject to the terms and conditions set forth therein, Seller agreed to sell to Assignee the Assets (as defined in the Purchase Agreement) and assign certain rights and agreements to the Assignee, and Assignee has agreed to assume the Assumed Liabilities (as defined in the Purchase Agreement); and

WHEREAS, the Assumed Liabilities include certain Drinking Water State Revolving Fund loans described on Exhibit A attached hereto and made a part hereof (the "SRF Loans").

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.
2. Assignment and Assumption. Effective as of the Effective Date, Seller hereby assigns, sells, transfers and sets over (collectively, the "Assignment"), without recourse, to Assignee all of Seller's right, title, benefit, privileges and interest in and to, and all of Seller's burdens, obligations and liabilities arising under or relating to the SRF Loans. Assignee hereby accepts the Assignment, without recourse against the Seller, and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants arising under or relating to the SRF Loans.
3. Further Actions. Seller and Assignee each covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment Agreement.



4. Counterparts. This Assignment and Assumption Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

IN WITNESS WHEREOF, the Seller and Assignee have executed this Assignment Agreement as of the date set forth above.

WITNESS:

SELLER:

Hanover Water Works Company

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

WITNESS:

ASSIGNEE:

Town of Hanover

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

3869935\_1

March 16, 2010 12:59:10 PM

*[Signature Page – Assignment and Assumption Agreement –  
Hanover Water Works and Town of Hanover]*

**EXHIBIT A**

**to**

**Assignment and Assumption Agreement**

**(Hanover Water Works to Town of Hanover)**

SRF Loans to be assumed:

1. Loan Agreement dated May 3, 1999, as amended, between the State of New Hampshire and Hanover Water Works Company. The original principal amount of the loan was for \$4,035,000.
2. Loan Agreement dated April 26, 2005, as amended, between the State of New Hampshire and Hanover Water Works Company. The original principal amount of the loan was for \$6,500,000.

Exhibit 4.3.5

Assignment of Easements

(See Attached)

## ASSIGNMENT AGREEMENT

### (Utility Easements – Hanover Water Works Company to Town of Hanover)

THIS ASSIGNMENT AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010 by and between Hanover Water Works Company, a New Hampshire corporation (the "Seller"), and the Town of Hanover, a New Hampshire municipality (the "Assignee").

WHEREAS, Seller and Assignee are parties to a Purchase Agreement dated \_\_\_\_\_, 2010 (the "Purchase Agreement"), pursuant to which, and subject to the terms and conditions set forth therein, Seller agreed to sell to Assignee the Real Property (as defined in the Purchase Agreement) and assign certain rights and agreements to the Assignee; and

WHEREAS, the Real Property includes certain utility easements described on Exhibit A attached hereto and made a part hereof (the "Easements").

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.
2. Assignment. Effective as of the Effective Date, Seller hereby assigns, sells, transfers and sets over (collectively, the "Assignment"), to Assignee all of Seller's right, title, benefit, privileges and interest in and to, and all of the Easements.
3. Further Actions. Seller and Assignee each covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment Agreement.
4. Counterparts. This Assignment and Assumption Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

IN WITNESS WHEREOF, the Seller and Assignee have executed this Assignment Agreement as of the date set forth above.

WITNESS:

SELLER:

Hanover Water Works Company

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

WITNESS:

ASSIGNEE:

Town of Hanover

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

3869940\_1  
March 16, 2010 12:58:05 PM

*[Signature Page – Assignment and Assumption Agreement –  
Hanover Water Works and Town of Hanover]*

**EXHIBIT A**

**to**

**Assignment of Easements**

**(Hanover Water Works to Town of Hanover)**

Exhibit 4.4.5

Letter Agreement – Dartmouth – Hanover

(See Attached)

DRAFT: 8-19-09 (rbd)

[date]

Board of Selectmen  
Att'n: Brian Walsh (Chair)  
Town of Hanover  
Hanover, NH 03755

Re: Hanover Water Works Company, Inc. Municipalization

Dear Brian:

This letter sets forth the agreement ("Agreement") between the Town of Hanover ("the Town") and Trustees of Dartmouth College ("Dartmouth") concerning the supply of water and the rates to be charged Dartmouth by the Town for water service upon the municipalization of the Hanover Water Works Company, Inc. water service assets by the Town.

In consideration for Dartmouth's consent, as the majority shareholder of Hanover Water Works Company, Inc. ("HWW"), to the municipalization of HWW's water system assets, and other good and valuable consideration, the Town and Dartmouth agree as follows:

1. Water Rates. As at present, (a) the water rates for all customers of the Town-operated water system, established in accordance with RSA 38:28 (as it may be amended or replaced) (the "Water Rates"), shall be based upon the consumption of water at premises connected to the system; and (b) the Water Rates to be charged Dartmouth by the Town-operated water system shall be no less favorable than the most favorable Water Rates that the Town charges any other water customer. The foregoing represents a continuation of the current basis of payment by Dartmouth for water provided by HWW and is a material part of the consideration for this Agreement. Whether a Water Rate charged Dartmouth is less favorable than a rate charged another customer shall be determined on a unit price basis for water consumed without differentiation among categories of users or the purpose for which water is purchased, and without consideration of: i) the size of the water system connection(s) at premises owned or occupied by Dartmouth or, ii) the aggregate quantity of water consumed at any individual premises or at all premises owned or occupied by Dartmouth.
2. Assessments for Water Supply. Any and all assessments upon persons served by the Town-operated water system for the costs of constructing, acquiring and operating the system or paying any capital debt or interest incurred for the system, assessed in accordance with RSA 38:28 (as it may be amended or replaced), shall be determined on an equitable basis. Dartmouth's share of any such assessment(s) shall be no greater than the pro-rata share of the quantity of water consumed at all premises owned or operated by Dartmouth in comparison to the aggregate quantity of water supplied by the Town-operated water system over a specified period of one or more full calendar years.
3. Term. The term of this agreement shall be perpetual. This Agreement may be amended, modified or supplemented only by written agreement of the Town and Dartmouth.



4. Authority. The parties represent that they have full corporate power and authority to execute and deliver this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Selectmen of the Town and the Board of Trustees of Dartmouth and no other corporate proceedings on the part of the Town or Dartmouth are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Town and Dartmouth and constitutes a valid and binding agreement of the Town and Dartmouth, enforceable against the parties in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.
5. Consents and Approvals; No Violation. This Agreement constitutes a discrete and non-severable portion of the consideration to be paid by the Town in connection with the HWW municipalization. The execution and delivery of this Agreement will not (i) conflict with or result in any breach of any provision of law or any governing document of the parties, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, or (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which either the Town or Dartmouth is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
6. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law without the prior written consent of the other party, nor is this Agreement intended to confer upon any other person except the parties hereto any rights or remedies hereunder.
7. Entire Agreement. This Agreement, together with the documents executed by the parties in connection with the municipalization of HWW, constitutes the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement, together with the documents executed by the parties in connection with the municipalization of HWW, supersedes all prior agreements and understandings between the parties with respect to such transactions.
8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

If the foregoing terms correctly reflect our Agreement, please indicate the Town's agreement by signing the two enclosed copies of this Agreement in the space indicated below and returning one fully executed copy of to me.

Thank you.

3

TRUSTEES OF DARTMOUTH COLLEGE

By: \_\_\_\_\_  
Adam Keller, Executive Vice President for Finance  
and Administration

AGREED: \*

TOWN OF HANOVER

By: \_\_\_\_\_  
Brian Walsh, Chairman  
Board of Selectmen

Date: \_\_\_\_\_

Exhibit 7.9.1

Stock Transfer and Restructuring Agreement

(See Attached)

## **STOCK TRANSFER AND CORPORATE RESTRUCTURING AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Town of Hanover, a municipality incorporated under the laws of New Hampshire ("Hanover") and Trustees of Dartmouth College, a private non-profit corporation and institution of higher learning duly created by Royal Charter and existing under the laws of New Hampshire ("Dartmouth").

WHEREAS, Dartmouth is the owner of 818 shares of capital stock of Hanover Water Works Company, a New Hampshire corporation with offices at 41 Grasse Road, Hanover, New Hampshire (the "Company"), equal to 52.8% of the outstanding shares of capital stock of the Company;

WHEREAS, Hanover is the owner of 732 shares of capital stock of the Company, equal to 47.2% of the outstanding shares of capital stock of the Company;

WHEREAS, pursuant to the Purchase Agreement by and between the Company and Hanover dated of even date herewith (the "Purchase Agreement"), the Company has agreed to sell, and Hanover has agreed to purchase, the reservoirs, water treatment, and water distribution system of the Company;

WHEREAS, after the consummation of the transactions contemplated by the Purchase Agreement, the Company will continue to hold certain lands surrounding the water supply reservoirs, which comprise a part of the watershed for the water supply reservoirs;

WHEREAS, as a condition to the closing of the transactions contemplated by the Purchase Agreement, Hanover has agreed to deliver a certain agreement to Dartmouth in substantially in the form attached as Exhibit A (the "Water Service Agreement"), pursuant to which Hanover will agree to provide water service to Dartmouth at rates no less favorable than the rates charged to similarly situated customers;

WHEREAS, as a condition to the closing of the transactions contemplated by the Purchase Agreement, the Company shall be reorganized so that Dartmouth and Hanover shall each hold 50% of the outstanding shares of capital stock of the Company after the Closing, as that term is defined in the Purchase Agreement; and

WHEREAS, in order to facilitate the transactions contemplated by the Purchase Agreement, and in consideration of Hanover's undertaking to provide Dartmouth with water service in accordance with the Water Service Agreement, Dartmouth desires to sell to Hanover, and Hanover desires to purchase from Dartmouth, 43 shares of capital stock of the Company, upon the terms and subject to conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

## ARTICLE I

### TRANSFER OF SHARES

1.1 Shares to be Transferred. Upon the terms and subject to the conditions contained herein, at the Closing (as hereinafter defined), Dartmouth shall sell and transfer to Hanover, and Hanover shall purchase and accept from Dartmouth, 43 shares of the Company's capital stock (the "Shares").

1.2 Consideration. Upon the terms and subject to the conditions contained herein and in consideration of, and in full payment for, the aforesaid sale and transfer of the Shares, at the Closing, Hanover shall deliver or cause to be delivered to Dartmouth the Water Service Agreement.

1.3 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur simultaneously with the closing of the transaction contemplated by the Purchase Agreement and will take place at the offices of McLane, Graf, Raulerson & Middleton, Professional Association, 900 Elm Street, Manchester, New Hampshire at 10:00 A.M., local time, on June 30, 2010 or at such other time and place as the parties may agree. The date and time at which the Closing actually occurs is referred to herein as the "Closing Date."

1.4 Deliveries by Dartmouth. On the Closing Date, Dartmouth shall deliver or cause to be delivered the following:

(a) One or more stock certificates evidencing the Shares duly endorsed in blank or accompanied by stock powers duly executed in blank, in proper form for transfer and with all requisite stock transfer stamps attached;

(b) The Amended and Restated Articles of Incorporation of the Company, and the Amended and Restated Bylaws of the Company, in the form attached as Exhibit B and Exhibit C, together with the appropriate resolutions permitting the adoption of the same, and Articles of Amendment in form sufficient for filing with the New Hampshire Secretary of State;

(c) Such other instruments or documents as may be reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Deliveries by Hanover. On the Closing Date, Hanover shall deliver or cause to be delivered the following:

(a) The letter agreement in the form attached as Exhibit A;

(b) The Amended and Restated Articles of Incorporation of the Company, and the Amended and Restated Bylaws of the Company, in the form attached as Exhibit B and

Exhibit C, respectively, together with the appropriate resolutions permitting the adoption of the same, and Articles of Amendment in form sufficient for filing with the New Hampshire Secretary of State; and

(c) Such other instruments or documents as may be reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF DARTMOUTH

Dartmouth hereby represents and warrants to Hanover as follows:

2.1 Organization. Dartmouth is a private non-profit corporation duly created by Royal Charter, and is validly existing under the laws of the State of New Hampshire. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire and has the corporate power and authority to own or lease its properties and to carry on its business as it is presently being conducted.

2.2 Authorization. Dartmouth has the requisite power and authority (corporate and otherwise) to enter into this Agreement and the other agreements, documents and instruments to be executed and delivered by Dartmouth pursuant hereto (the "Additional Dartmouth Documents") and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Additional Dartmouth Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Board of Trustees of Dartmouth, and no other corporate or other proceedings on the part of Dartmouth is necessary to authorize this Agreement and the Additional Dartmouth Documents and the transactions contemplated hereby and thereby. When fully executed and delivered, this Agreement and each of the Additional Dartmouth Documents will constitute the valid and binding agreements of Dartmouth, enforceable against Dartmouth in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

2.3 Capitalization. The authorized capital stock of the Company consists of 1,550 Shares, all of which are issued and outstanding. All such outstanding Shares have been validly issued, are fully paid, nonassessable and free of any preemptive rights with respect thereto.

2.4 Ownership of Shares. Dartmouth has, and at the Closing, after making the required deliveries hereunder, Hanover will acquire, good and valid title to the Shares, free and clear of any lien, charge, encumbrance, security interest, claim or right of others of whatever nature.

2.5 Consents and Approvals; Non-Contravention. Neither the execution, delivery or perform of this Agreement or any of the Additional Dartmouth Documents nor the consummation by Dartmouth and the Company of the transactions contemplated hereby or thereby nor compliance by Dartmouth and the Company with any of the provisions hereof or thereof will

(a) violate any provision of the charter or other organizational documents of Dartmouth or the Company, (b) require any filing with, or permit, authorization, consent or approval of, any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency (a "Governmental Entity"), (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Dartmouth or the Company or any of their respective properties or assets, or (d) result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration or any loss of a material benefit) under, or result in the creation or imposition of (or the obligation to create or impose) any security interest, lien or other encumbrance upon any property or assets of the Company under, any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which the Company is a party or by which the Company or any of its properties or assets may be bound.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF HANOVER

Hanover hereby represents and warrants to Dartmouth hereof as follows:

3.1 Organization. Hanover is a municipal corporation duly organized and validly existing under the laws of the State of New Hampshire.

3.2 Authorization. Hanover has the requisite power and authority (corporate, municipal and otherwise) to enter into this Agreement and the other agreements, documents and instruments to be executed and delivered by Hanover pursuant hereto (the "Additional Hanover Documents") and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Additional Hanover Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by Hanover, and no other corporate, municipal or other proceedings on the part of Hanover are necessary to authorize this Agreement and the Additional Hanover Documents and transactions contemplated hereby and thereby. When fully executed and delivered, this Agreement and each of the Additional Hanover Documents will constitute the valid and binding agreements of Hanover, enforceable against Hanover in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

3.3 Consents and Approvals; Non-Contravention. Neither the execution, delivery or performance of this Agreement or any of the Additional Hanover Documents by Hanover nor the consummation by Hanover of the transactions contemplated hereby or thereby nor compliance by Hanover with any of the provisions hereof or thereof will (a) violate any provision of the Charter or other organizational documents of Hanover, (b) require any filing with, or permit, authorization, consent or approval of, any Governmental Entity or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Hanover or any of its properties or assets.

## ARTICLE IV

### ADDITIONAL AGREEMENTS

4.1 Consents and Approvals. Each of Hanover and Dartmouth shall, and Dartmouth shall cause the Company to, take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on itself with respect to the transactions contemplated hereby (which actions shall include, without limitation, furnishing all information required in connection with approvals of or filings with any other Governmental Entity) and will promptly cooperate with and furnish information to each other in connection with any such requirements imposed on any of them in connection with the transactions contemplated hereby. Hanover and Dartmouth shall, and Dartmouth shall cause the Company to, take all reasonable actions necessary to obtain (and shall cooperate with each other in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity or other public or private third party, required to be obtained or made by Hanover, Dartmouth or the Company in connection with the transactions contemplated hereby.

4.2 Further Assurances. From time to time after the Closing Dartmouth will execute and deliver such further documents and instruments, and use all reasonable efforts to obtain any licenses, permits, waivers, consents, authorizations, qualifications and orders of Governmental Entities or other persons or entities as Hanover shall reasonably request to vest good and valid title in the Shares to Hanover.

## ARTICLE V

### CONDITIONS PRECEDENT TO HANOVER'S OBLIGATIONS

All obligations of Hanover to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver prior to or at the Closing of the following conditions:

5.1 Performance of Obligations; Representations and Warranties. Dartmouth and the Company shall have performed all obligations contained herein to be performed by Dartmouth and the Company at or prior to the Closing and the representations and warranties of Dartmouth contained herein shall be true and accurate on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date.

5.2 No Pending Action. No action, suit, inquiry, proceeding or investigation shall be pending or threatened by or before any Governmental Entity to restrain, prohibit, collect damages arising out of or otherwise challenge the legality of this Agreement or the transactions contemplated hereby.

5.3 Regulatory Approvals. All authorizations, approvals, consents and waivers of any Governmental Entity, the lack of which prior to the Closing, under applicable law, rule or regulation, would render legally impermissible the transactions contemplated by this Agreement



or which might result in a limitation of the benefit expected to be derived by Hanover as a result of the transactions contemplated hereby or might adversely affect the Company or Hanover or any of Hanover's affiliates, shall have been obtained and shall not be terminated, suspended or withdrawn.

5.4 Delivery of Reorganization Documents. Dartmouth shall have executed and delivered the following documents:

5.5 Joint Unanimous Written Consent of the Shareholders and Directors of the Company in the form attached as Exhibit D authorizing the adoption of Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Company;

5.6 Amended and Restated Articles of Incorporation of the Company in the form attached as Exhibit B;

5.7 Amended and Restated Bylaws of the Company in the form attached as Exhibit C; and

5.8 Articles of Amendment to be filed with the New Hampshire Secretary of State adopting the Amended and Restated Articles of Incorporation (the documents described in sections 6.4.1 through 6.4.4 are referred to herein as the "Reorganization Documents").

5.9 The transactions contemplated by the Purchase Agreement shall have been completed in accordance with the terms thereof.

## ARTICLE VI

### CONDITIONS PRECEDENT TO DARTMOUTH'S OBLIGATIONS

All obligations of Dartmouth to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver prior to or at the Closing of the following conditions:

6.1 Performance of Obligations; Representations and Warranties. Hanover shall have performed all obligations contained herein to be performed by Hanover at or prior to the Closing and the representations and warranties of Hanover contained herein shall be true and accurate on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date.

6.2 No Pending Action. No action, suit, inquiry, proceeding or investigation shall be pending or threatened by or before any Governmental Entity to restrain, prohibit, collect damages arising out of or otherwise challenge the legality of this Agreement or the transactions contemplated hereby.

6.3 Regulatory Approvals. All authorizations, approvals, consents and waivers of any Governmental Entities, the lack of which prior to the Closing, under applicable law, rule or regulation, would render legally impermissible the transactions contemplated by this Agreement

or which might result in a material limitation of the benefit expected to be derived by Dartmouth as a result of the transactions contemplated hereby, shall have been obtained and shall not be terminated, suspended or withdrawn.

6.4 Hanover shall have executed and delivered the Reorganization Documents.

6.5 Hanover shall have executed and delivered the Water Service Agreement.

6.6 The transactions contemplated by the Purchase Agreement shall have been completed in accordance with the terms thereof.

## ARTICLE VII

### SURVIVAL

All representations and warranties contained in this Agreement shall survive the Closing.

## ARTICLE VIII

### TERMINATION OF PRIOR CLOSING

8.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated by notice to the other party prior to the Closing Date, as follows:

(a) By mutual written consent of Hanover and Dartmouth;

(b) By Dartmouth or Hanover (the "Terminating Party") in the event any of the conditions precedent to the obligation of the Terminating Party set forth in this Agreement are not fulfilled in any material respect as of the Closing Date specified in Section 1.03; or

(c) By Dartmouth or Hanover, if the Closing has not occurred on or before June 30, 2010 and this Agreement has not previously been terminated; provided, however, that the right to terminate the Agreement under this Section 9.01(c) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in the failure of the Closing to occur on or before such date.

8.2 Effect of Termination. In the event this Agreement is terminated pursuant to Section 9.01 hereof, this Agreement shall become wholly void and of no force or effect, without any liability or further obligation on the part of Dartmouth or Hanover.

## ARTICLE IX

### GENERAL PROVISIONS

9.1 Amendment and Waiver. No amendment of any provision of this Agreement shall in any event be effective, unless the same shall be in writing and signed by the

parties hereto. Any failure of any party to comply with any obligation, agreement or condition hereunder may only be waived in writing by the other party but such waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. No failure by any party to take any action against any breach of this Agreement or default by the other party shall constitute a waiver of such party's right to enforce any provision hereof or to take any such action.

9.2 Expenses. Each of the parties hereto agrees to pay all costs and expenses incurred by it in connection with this Agreement and the transactions contemplated hereby, including without limitation the fees of its counsel, consultants and accountants.

9.3 Broker's and Finder's Fees. Dartmouth hereby represents and warrants to Hanover with respect to Dartmouth and the Company, and Hanover hereby represents and warrants to Dartmouth with respect to Hanover, that no person or entity is entitled to receive from Dartmouth or the Company, on the one hand, or from Hanover, on the other hand, any investment banking, brokerage or finder's fee or fees for financial consulting or advisory services in connection with this Agreement or the transactions contemplated hereby.

9.4 Notices. All notices, requests and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Hanover:

Town of Hanover  
41 South Main Street  
Hanover, NH 03755  
Attention: Julia N. Griffin, Town Manager

Tel.: (603) 643 0701  
Fax: (603) 398 9899

With a copy to:

Walter L. Mitchell, Esq.  
Mitchell Municipal Group, P.A.  
25 Beacon Street East  
Suite 2  
Laconia, NH 03246

Tel.: (603) 524 3885  
Fax: (603) 524 0745

(b) If to Dartmouth:

Dartmouth College  
14 South Main Street  
Suite 2-C  
Hanover, NH 03755  
Attention: Robert B. Donin, General Counsel

Tel.: 603 646-2444  
Fax: 603 646-2447

And in each case, with additional copies to:

Sarah B. Knowlton, Esq.  
McLane, Graf, Raulerson & Middleton,  
Professional Association  
100 Market Street  
Suite 301  
Portsmouth, NH 03802-0459

Tel.: (603) 334 6928  
Fax: (603) 436 5672

Michael B. Tule, Esq.  
McLane, Graf, Raulerson & Middleton  
Professional Association  
900 Elm Street  
P.O. Box 326  
Manchester, NH 03105-0326

Tel: (603) 628 1290  
Fax: (603) 625 5650

9.5 Miscellaneous. This Agreement and the documents referred to herein (a) constitute the entire agreement and supersede all other agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof [(provided that the Confidentiality Agreement shall survive the execution of this Agreement)], (b) shall not be assigned by either party (by operation of law or otherwise) without the prior written consent of the other party, except that Hanover may assign, in its sole discretion, any of its rights, interests and obligations hereunder to any affiliate of Hanover; provided, however, that no such assignment shall relieve Hanover of its obligations hereunder, and (c) shall be governed by and be construed in accordance with the laws of the State of Delaware, without giving effect to the principles thereof relating to conflicts of laws.

9.6 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.8 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.9 Severability. In case any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining terms, provisions, covenants or restrictions, or of such term, provision, covenant or restriction in any other jurisdiction, shall not in any way be affected or impaired thereby.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

TOWN OF HANOVER, NEW HAMPSHIRE

By: \_\_\_\_\_  
Name:  
Title:

DARTMOUTH COLLEGE

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page - Stock Transfer and Corporate Reorganization Agreement]*

Exhibit 7.9.3

Amended and Restated Articles of Incorporation of Trescott Company, Inc.

(See Attached)

## AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

### TRESCOTT COMPANY, INC.

These Amended and Restated Articles of Incorporation of Trescott Company, Inc. (the “*Company*”) have been duly adopted by its board of directors and shareholders in accordance with the provisions of Section 10.07 of the New Hampshire Business Corporation Act (the “*NHBCA*”). The Company was originally formed by special legislative act as The Hanover Water Works Company pursuant to Chapter 290 of the 1893 Session Laws, on March 31, 1893. The Company’s legislative charter was amended pursuant to the Business Corporation Law, RSA Chapter 294, on June 7, 1960, and said charter is hereby further amended and restated as follows:

FIRST. Name. The name of the Company is Trescott Company, Inc.

SECOND. Registered Agent. The address of the registered office of the Company is [ ], Hanover, New Hampshire 03755, and the name of its registered agent at such address is [ ].

THIRD. Purposes. The purposes of the Company are to hold certain lands within the Town of Hanover, New Hampshire, a portion of which is within the watershed of the three reservoirs that supply the Town of Hanover with water for drinking, domestic, fire and other purposes; to regulate and manage the use of such watershed land; and to protect and promote the sustainable growth and management of the forest on said lands for timber production.

In conducting its activities, the Company shall comply with all applicable federal, state and local laws and regulations pertaining to water quality and watershed protection, as the same may be amended from time to time:

FOURTH. Shares.

1. The total number of shares of capital stock which the Company shall have authority to issue is 1550 shares of voting Capital Stock (the “*Capital Stock*”). The total number of shares of outstanding Capital Stock is 1550 shares, held by the following entities:

Trustees of Dartmouth College	775 shares
Town of Hanover, NH	775 shares

2. No holder of shares of Capital Stock shall transfer, and the Company shall not register (and shall not permit the transfer agent for the Capital Stock to register) the transfer of, any shares of Capital Stock or any interest therein, whether by



sale, assignment, gift, bequest, pledge, hypothecation, encumbrance, or any other disposition, unless the holder proposing such transfer shall have obtained the written consent of each non-transferring holder to such proposed transfer. If a holder of shares of Capital Stock transfers any such shares to any person or entity without complying with this Article FOURTH, Section 2, such transfer, without any further action of any party or the Company, shall be void *ab initio*.

FIFTH. Incorporator. The name and mailing address of the incorporator are as follows:

[ ]

SIXTH. Period. The Company is to have perpetual existence.

SEVENTH. Directors.

1. The number of Directors of the Company shall be 6. The number of directors may be fixed or changed from time to time by the affirmative vote of the holders of two thirds (66 2/3%) of the outstanding shares of Capital Stock. No decrease in the number of directors shall shorten the term of any incumbent director.

2. The initial Board of Directors shall consist of the following individuals, who shall serve until the next annual meeting of the shareholders, or until their respective successors shall be duly elected and qualified:

[ ] [ ]  
[ ] [ ]  
[ ] [ ]

3. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in these Amended and Restated Articles of Incorporation, the vote of a majority of such quorum shall be required in order for the Board of Directors to act.

4. Any director may be removed from office as a director, but only for cause, by the affirmative vote of the holders of two thirds (66 2/3%) of the outstanding shares of Capital Stock.

5. Each shareholder shall vote, or cause to be voted, all shares of Capital Stock owned by such shareholder, or over which such shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of shareholders at which an election of directors is held or pursuant to any written consent of the shareholders, the following persons shall be elected to the Board:

a. The 3 nominees designated by Dartmouth College, or its permitted successors or assigns, and constituting one-half of the 6 board seats; and

b. the remaining 3 nominees designated by the Town of Hanover, New Hampshire, or its permitted successors or assigns, and constituting the remaining one-half of the 6 board seats.

6. In the absence of any designation from the persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible to serve as provided herein.

7. Any vacancies caused by the removal, resignation or death of a director shall be filled by the nominee of the shareholder entitled to designate that person pursuant to section 5.a or 5.b above, and each shareholder shall vote, or cause to be voted, all shares of Capital Stock owned by such shareholder, or over which such shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that such nominee is elected to fill such vacancy.

EIGHTH. By-Laws. The Board of Directors shall have the power to adopt, amend or repeal the By-Laws of the Company; provided, however, the Board of Directors may not repeal or amend any by-law that the shareholders have expressly provided may not be amended or repealed by the Board of Directors. The shareholders shall also have the power to adopt, amend or repeal the By-Laws. The Board of Directors shall not adopt any form of emergency by-laws.

NINTH. Limitation of Director Liability. To the full extent that the NHBCA, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of directors, a director of the Company shall not be liable to the Company or its shareholders for monetary damages for breach of fiduciary duty as a director or for any action or failure to take action as a director or officer. Any amendment to or repeal of this Section 9 shall not adversely affect any right or protection of a director of the Company for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Company has caused these Amended and Restated Articles of Incorporation to be signed by its duly authorized officer this \_\_\_\_ day of \_\_\_\_\_, 2010.

TRESCOTT COMPANY, INC.

By \_\_\_\_\_  
[ ], Secretary

*[Signature Page – Trescott Company, Inc.  
Amended and Restated Articles of Incorporation]*

Exhibit 7.9.4

Amended and Restated Bylaws of Trescott Company, Inc.

(See Attached)

AMENDED AND RESTATED  
BYLAWS  
OF  
TRESCOTT COMPANY, INC.

ARTICLE I

Offices

Section 1.1 Business Office. The principal office of the corporation, and such other offices as the board of directors may designate, shall be located in Hanover, New Hampshire.

Section 1.2 Registered Office. The registered office of the corporation required by the New Hampshire Business Corporation Act shall be located in Hanover, New Hampshire and may but need not be identical with the corporation's principal office. The registered office of the Corporation shall be the business office or residence of the registered agent.

ARTICLE II

Shareholders

Section 2.1 Annual Meeting. The annual meeting of the shareholders shall be held on the date fixed by the Board of Directors between July 1 and September 30 each year, at the hour of 7 o'clock, p.m. in the Town of Hanover, New Hampshire. Members of the public may attend the corporation's annual meeting of shareholders, and the corporation shall provide public notice of such meeting, together with information on the time and place of such meeting, in a newspaper of general circulation within Hanover, New Hampshire, not fewer than ten (10) nor more than sixty (60) days prior to the date of the annual meeting of shareholders. The annual meeting shall include the following business: (a) election of directors; (b) president's report on the results of the previous year's operations, including land management practices; (c) president's report on plans for the forthcoming year's operations, including land management practices; (d) opportunity for public comment; and (e) such other business as may properly come before the meeting.

Section 2.2 Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, the chairman, or the board of directors and shall be called upon written demand of the holders of not less than two-thirds (66 2/3%) of all outstanding votes of the corporation entitled to be cast at the meeting,

which demand shall be delivered to the corporation's secretary and shall describe the purpose or purposes for which the meeting is to be held.

Section 2.3 Notice of Meeting.

(a) **Required Notice.** In addition to the public notice of the Annual Shareholders Meeting described in Section 2.1 above, written notice stating the place, day and hour of the meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall unless otherwise prescribed by statute be delivered not fewer than ten (10) nor more than sixty (60) days prior to the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or other persons calling the meeting, to each shareholder of record entitled to receive notice of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

(b) **Adjourned Meeting.** If any shareholder meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, and place if the same is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed (see Section 2.4 of this Article II) then notice must be given pursuant to the requirements of paragraph (a) of this Section 2.3 to those persons who are shareholders as of the new record date.

(c) **Waiver of Notice.** A shareholder may waive notice of the meeting, or any other notice required by the New Hampshire Business Corporation Act, Amended and Restated Articles of Incorporation, or bylaws, by a writing signed by the shareholder entitled to the notice, which writing shall be delivered to the corporation either before or after the date and time stated in the notice for inclusion in the minutes or filing with the corporate records.

A shareholder's attendance at a meeting:

- (1) waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;
- (2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(d) **Contents of Notice.** The notice of each special shareholder meeting shall include a description of the purpose or purposes for which the meeting is called and shall be accompanied by such other materials as are required by the New Hampshire Business Corporation Act. Except as provided in the New Hampshire Business Corporation Act, the notice of an annual shareholder meeting need not include a description of the purpose or purposes for which the meeting is called.

Section 2.4 Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or at any adjournment thereof, or for determining shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors may, in advance, fix a date as the record date, which date in any case shall be not more than seventy (70) days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or for the determination of shareholders entitled to receive payment of a dividend, the record date for the determination of such shareholders shall be:

- (a) with respect to an annual shareholder meeting or any special shareholder meeting called by the board or any person authorized to call the meeting, the day before the first notice is delivered to shareholders;
- (b) with respect to a special shareholder meeting demanded by the shareholders, the date the first shareholder signs the demand;
- (c) with respect to actions taken in writing without a meeting pursuant to RSA 293-A:7.04, the date the first shareholder signs a consent; and
- (d) with respect to a distribution to shareholders (other than one involving a repurchase or reacquisition of shares), the date the board authorizes the distribution.

Section 2.5 Shareholder List. The officer or agent having charge of the stock transfer books for shares of the corporation shall make a complete record of the shareholders entitled to vote at each meeting of shareholders or at any adjournment thereof, arranged in alphabetical order, with the address of each shareholder and the number of shares held by each. The list must be arranged by voting group, if applicable, and within each voting group by class or series of shares, if applicable. The shareholder list must be available for inspection by any shareholder beginning two (2) business days after the giving of notice of the meeting for which the list was prepared and continuing through the meeting. The list shall be available at the corporation's principal office or at a place identified in the meeting notice in the city or town where the meeting is to be held. A shareholder or his agent or attorney is entitled upon written demand to inspect and, subject to the requirements of the New Hampshire Business Corporation Act, to copy the shareholder list during regular business hours and at his expense during the period the list is available for inspection.

Section 2.6 Quorum. If the corporation's Amended and Restated Articles of Incorporation or the New Hampshire Business Corporation Act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group.

Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the corporation's Amended and Restated Articles of Incorporation, these bylaws, or the New Hampshire Business Corporation Act provide otherwise, a majority of the votes entitled to be

cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

If the corporation's Amended and Restated Articles of Incorporation or the New Hampshire Business Corporation Act provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in RSA 293-A:7.25. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on that matter.

Once a share is represented for any purpose at a meeting it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for such adjourned meeting.

If a quorum exists, a matter (other than the election of directors) is approved by a voting group if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the corporation's Amended and Restated Articles of Incorporation, these bylaws, or the New Hampshire Business Corporation Act require a greater number of affirmative votes.

Section 2.7 Proxies. At all meetings of shareholders a shareholder may vote in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

Section 2.8 Voting of Shares. Each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of shareholders.

Section 2.9 Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by an officer, agent, or proxy of such corporation as its bylaws may prescribe or, in the absence of any such provision, as its board of directors may determine.

Shares of the corporation's stock are not entitled to vote if they are owned, directly or indirectly, by another corporation, whether domestic or foreign, and the corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of such other corporation; provided, however, that the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity shall not be limited by the foregoing restriction.

Redeemable shares of the corporation's stock are not entitled to vote after notice of redemption has been mailed to the stockholders and a sum sufficient to redeem said shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the redemption price to the holders upon surrender of their shares.



Section 2.10 Corporation's Acceptance of Votes.

(a) If the name signed on a vote, consent, waiver, or proxy corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy and give it effect as the act of the shareholder if:

- (1) the shareholder is an entity as defined in the New Hampshire Business Corporation Act and the name signed purports to be that of an officer or agent of the entity; or
- (2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy; or
- (3) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy; or
- (4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy; or
- (5) two or more persons are shareholders as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-tenants and the person signing appears to be acting on behalf of all of the co-tenants.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on such vote, consent, waiver, or proxy, or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy in good faith and in accordance with the standards of this section are not liable for damages to the shareholder for the consequences of acceptance or rejection.

(e) Corporate action based upon the acceptance or rejection of a vote, consent, waiver, or proxy under this section is valid unless a court of competent jurisdiction determines otherwise.

## ARTICLE III

### Board of Directors

Section 3.1 General Powers. The business and affairs of the corporation shall be managed under the direction of the board of directors.

Section 3.2 Number, Tenure and Qualifications. The number of directors of the corporation shall be as set forth in the corporation's Amended and Restated Articles of Incorporation. Each director shall hold office until the next annual meeting of shareholders and until his successor shall have been elected and qualified. Directors need not be residents of the State of New Hampshire or shareholders of the corporation.

Section 3.3 Regular Meetings. The board of directors may provide by resolution the time and place for the holding of regular meetings without notice other than such resolution. Board of directors meetings shall be held in Hanover, New Hampshire.

Section 3.4 Special Meetings. Special meetings of the board of directors may be called by or at the request of the president/chairman, or any two directors.

Section 3.5 Notice. Effective notice of any special meeting shall be given at least two (2) days prior to the meeting by written notice to each director unless oral notice is reasonable under the circumstances. Such notice may be communicated in person, by telephone, telegraph, teletype, FAX, or other form of wire or wireless communication; by mail or by private carrier; or by such other means as are allowed by the New Hampshire Business Corporation Act. Written notice is effective at the earlier of: receipt, five (5) days after deposit in the U.S. mail, or, if sent by certified mail, on the date shown on the return receipt. Oral notice is effective when communicated. Any director may waive notice of any meeting by signing a written waiver of notice which shall be filed with the corporation's minutes or corporate records. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business thereat and at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and thereafter does not vote for or assent to any action at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 3.6 Telephone Participation and Meeting. All directors may participate in a regular or special meeting or may hold such meetings by means of a conference telephone or

similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence at the meeting.

Section 3.7 Quorum. Except as otherwise provided in the Company's Amended and Restated Articles of Incorporation, a majority of the directors in the manner prescribed by Section 3.2 shall constitute a quorum for the transaction of business at any meeting of the board of directors.

Section 3.8 Manner of Acting. Except as otherwise provided in the Company's Amended and Restated Articles of Incorporation, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

Section 3.9 Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors and filed with the corporate records.

Section 3.10 Vacancies. If a vacancy occurs on the board of directors, such vacancy shall be filled in accordance with the procedures set forth in ARTICLE SEVENTH, Section 7 of the Company's Amended and Restated Articles of Incorporation

A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

The term of a director elected to fill a vacancy expires at the next shareholder meeting at which directors are elected. If the term expires, however, such director shall continue to serve until his successor is elected and qualified or until there is a decrease in the number of directors.

Section 3.11 Compensation. Directors shall serve without compensation, but may be paid their expenses, if any, of attendance at each meeting of the board of directors.

Section 3.12 Presumption of Assent. A director who is present when corporate action is taken at a meeting of the board of directors or a committee of the board of directors is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding such meeting or to transacting business thereat, or (2) his dissent or abstention from the action taken is entered in the minutes of the meeting, or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 3.13 Director Committees.

(a) **Creation of Committees**. Unless the corporation's Amended and Restated Articles of Incorporation provide otherwise, the board of directors may create one or more

committees and appoint members of the board of directors to serve on them. Each committee must have two or more members who shall serve at the pleasure of the board of directors.

(b) **Selection of Members.** The creation of a committee and the appointment of members to it must be approved by the two-thirds (66 2/3%) of all the directors in office when the action is taken.

(c) **Required Procedures.** Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 of these bylaws, which govern meetings, action without meetings, notice and waiver of notice and quorum and voting requirements of the board of directors, apply to committees and their members.

(d) **Authority.** To the extent specified by the board of directors or in the Amended and Restated Articles of Incorporation or bylaws, each committee may exercise the authority of the board of directors pursuant to RSA 293-A:8.01; provided, however, that a committee may not:

- (1) authorize distributions;
- (2) approve action that the New Hampshire Business Corporation Act requires be approved by shareholders;
- (3) fill vacancies on the board of directors or on any of its committees;
- (4) amend the articles of incorporation pursuant to Section 10.02 of the New Hampshire Business Corporation Act;
- (5) adopt, amend, or repeal bylaws;
- (6) approve a plan of merger not requiring shareholder approval;
- (7) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors;
- (8) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors; or
- (9) assign or discharge mortgages; execute leases, contracts or similar documents; enter into agreements for the purchase, sale, development, or mortgaging or other encumbrances of real estate; execute deeds, notes, or mortgages; or complete or file applications for permits, approvals, exemptions, condominium registrations or other authorizations with local, state, federal or other regulatory authorities.

## ARTICLE IV

### Officers

Section 4.1 Number. The officers of the corporation shall be a president/chairman and a secretary, both of whom shall be appointed by the board of directors. Such other officers and assistant officers as may be deemed necessary may be appointed by the board of directors. Any two or more offices may be held by the same person.

Section 4.2 Appointment and Term of Office. The officers of the corporation shall be appointed annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the shareholders. If the appointment of officers shall not be made at such meeting, such appointment shall be made as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly appointed and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 4.3 Removal. Any officer or agent may be removed by the board of directors whenever, in its judgment, the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer or agent shall not in and of itself create contract rights.

Section 4.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 4.5 President/Chairman of the Board. A single officer shall be appointed to perform the duties of chairman of the board of directors and president of the corporation.

(a) As chairman of the board of directors, he shall be the principal officer of the board of directors and shall in general supervise and control the business and affairs of the board. He shall, when present, preside at all meetings of the board of directors. He may sign with the secretary or with any other proper officer of the corporation thereunto authorized by the board of directors: certificates for shares of the corporation, deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the corporation, or which is required by law to be otherwise signed or executed.

(b) As president, he shall be the principal executive officer of the corporation and, subject to the control of the board of directors, shall in general supervise and control all of the business and affairs of the corporation. He shall, when present, preside at all meetings of the shareholders and, unless the board has elected a chairman, at meetings of the board of directors.

He may sign with the secretary or with any other proper officer of the corporation thereunto authorized by the board of directors, certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the board, deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the corporation, or which is required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

Section 4.6 The Vice-President. The board of directors shall appoint a vice president to perform the duties of the president/chairman of the board in the event of his absence, death, inability, or refusal to act. , When so acting, the vice-president shall have all the powers of and be subject to all the restrictions upon the president/chairman of the board. The vice-president may sign, with the secretary or with an assistant secretary, certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the board and shall perform such other duties as from time to time may be assigned to him by the president/chairman of the board or by the board of directors.

Section 4.7 The Secretary. The secretary shall: (a) keep the minutes of the proceedings of the shareholders and of the board of directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records of the corporation; (d) keep a register of the post office address of each shareholder which shall be furnished to the secretary by such shareholder; (e) sign with the president or vice-president certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the board of directors; (f) have general charge of the stock transfer books of the corporation; and (g) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president/chairman of the board or by the board of directors.

Section 4.8 The Treasurer. The treasurer if any is appointed and, if none, then the president/chairman of the board shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for monies due and payable to the corporation from any source whatsoever and deposit all such monies in the name of the corporation in such banks, trust companies, or other depositories as may be authorized by the board of directors; (c) sign with the president or vice president certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the board of directors; and (d) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the board of directors.

Section 4.9 Assistant Secretaries and Assistant Treasurers. The board of directors may appoint assistant secretaries or assistant treasurers to perform such duties as shall be assigned to them by the president/chairman of the board or the board of directors.

Section 4.10 Salaries. Officers shall serve without compensation, provided, however, that officers shall not be precluded from serving the corporation in any other capacity and receiving compensation therefor.

## ARTICLE V

### Certificates for Shares and Their Transfer

Section 5.1 Certificates for Shares. Certificates representing shares of the corporation shall be in such form as shall be determined by the board of directors. Such certificates shall be signed by the president or a vice-president, or chairman or vice chairman of the board of directors, and by the secretary or an assistant secretary, or the treasurer or an assistant treasurer, and may be sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the corporation itself or one of its employees. Each certificate for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. All certificates surrendered to the corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in case of a lost, destroyed, or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the board of directors may prescribe.

Section 5.2 Shares Without Certificates. The board may authorize the issuance of some or all of the shares or of any or all of its classes or series without certificates. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information that is otherwise required to be included in a share certificate under the New Hampshire Business Corporation Act and a statement of any restrictions upon transfer of the shares, if applicable.

Section 5.3 Transfer of Shares. Transfer of shares of the corporation shall be made only on the stock transfer books of the corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and upon surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes.

Section 5.4 Restrictions on Transfer of Shares. The transfer of shares of stock in the corporation, whether by sale, assignment, gift, bequest, pledge, hypothecation, encumbrance, or any other disposition, shall be restricted in accordance with ARTICLE FOURTH, Section 2 of the Amended and Restated Articles of Incorporation.

## ARTICLE VI

### Dividends

The board of directors may from time to time declare, and the corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and by the corporation's Amended and Restated Articles of Incorporation.

## ARTICLE VII

### Corporate Seal

The board of directors may authorize a corporate seal which shall have inscribed thereon the name of the corporation and the state and year of incorporation.

## ARTICLE VIII

### Amendments

Except as otherwise provided by applicable law or by the corporation's Amended and Restated Articles of Incorporation, these bylaws may be altered, amended, or repealed and new bylaws may be adopted by the board of directors, subject to repeal or change by action of the shareholders.

## ARTICLE IX

### Indemnification of Directors and Officers

The corporation shall indemnify each of its directors or officers, or former directors or officers, or any person who may have served at its request as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise, to the fullest extent permitted by law.

ADOPTED:



Exhibit 8.2.6

Special Legislation

(See Attached)

## SB 391-LOCAL – AS INTRODUCED

2010 SESSION

10-2760

08/03

SENATE BILL **391-LOCAL**

AN ACT relative to the payment of certain amounts from the water fund to the town general fund by the town of Hanover.

SPONSORS: Sen. Houde, Dist 5; Rep. Nordgren, Graf 9; Rep. Benn, Graf 9; Rep. Pierce, Graf 9

COMMITTEE: Public and Municipal Affairs

## ANALYSIS

This bill transfers certain amounts from the water fund to the town general fund of the town of Hanover for disbursement to the Hanover and Dresden school district and Grafton county.

-----

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

10-2760

08/03

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

AN ACT relative to the payment of certain amounts from the water fund to the town general fund by the town of Hanover.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 Transfer from Water Fund to Hanover General Fund for Payout to the Hanover and Dresden School Districts and Grafton County. Notwithstanding the provisions of RSA 38:29, the town of Hanover shall be authorized to transfer to the town general fund for disbursement to the Hanover and Dresden school district and Grafton county, semi-annually on June 30 and December 31 of each year, an amount from the water fund equal to the amount of property taxes that would have been paid on certain property formerly owned by Hanover water works company and conveyed to the town pursuant to RSA 38:8 on July 1, 2010. For the purposes of calculating the taxes that would have been paid on such property, the town shall use the assessed value of the property, as regularly determined by the town assessor.

2 Effective Date. This act shall take effect July 1, 2010.

EXISTING LOT: 1,344 AC+/-

PROPOSED:

Lot 1 1,164 AC +/-

Lot 2 to be transfer to Town -  
180 AC +/-

LOT 2

LOT 1

TREATMENT FACILITY,  
SHOP & TANK

WOLFEBORO ROAD

DOGFORD ROAD

PAINE ROAD

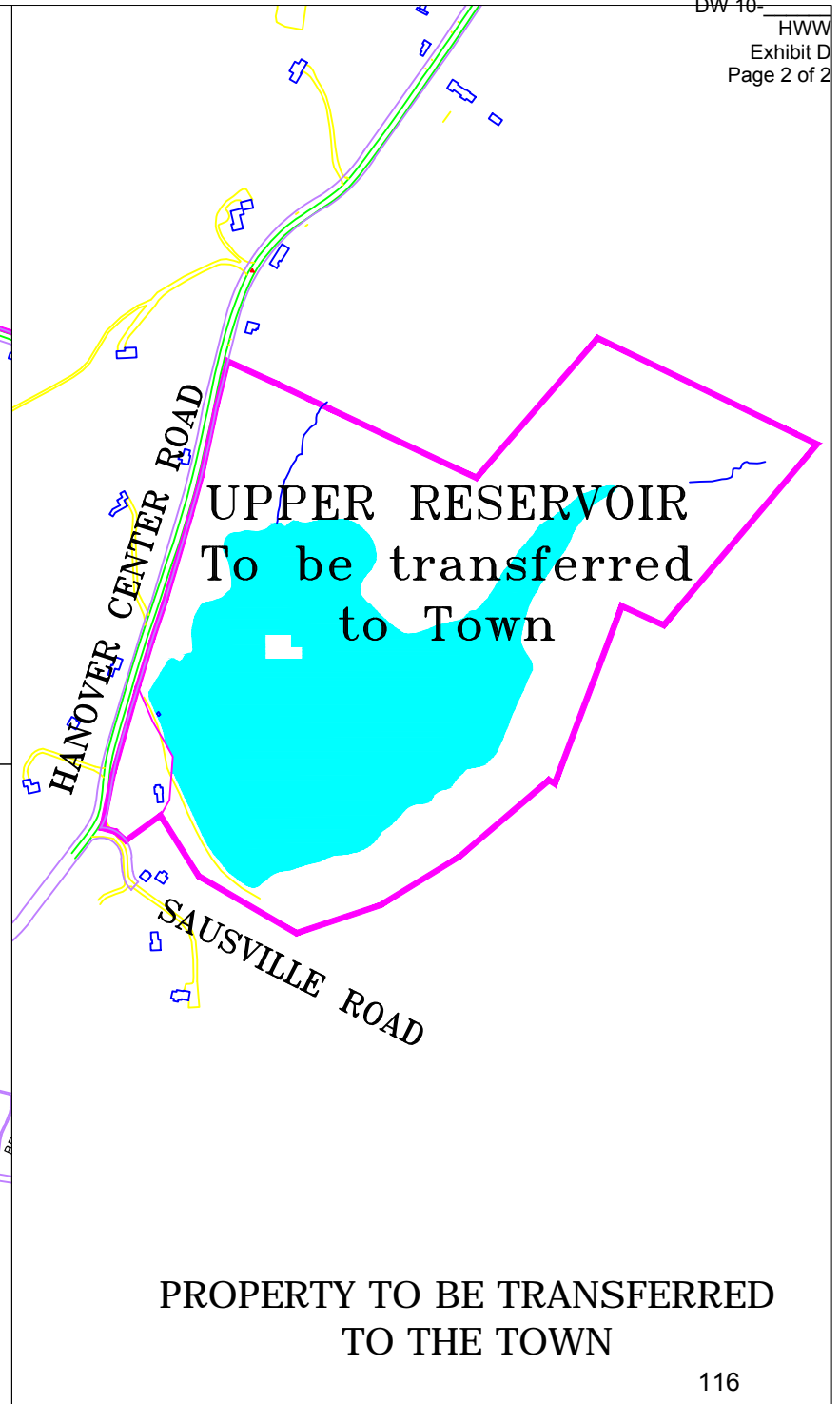
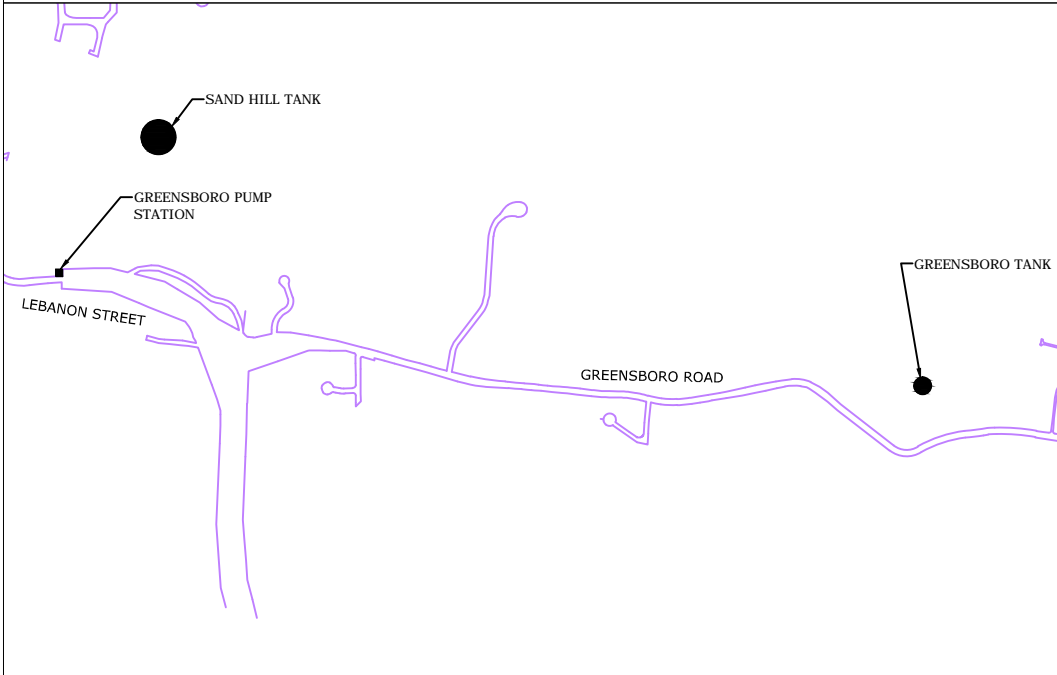
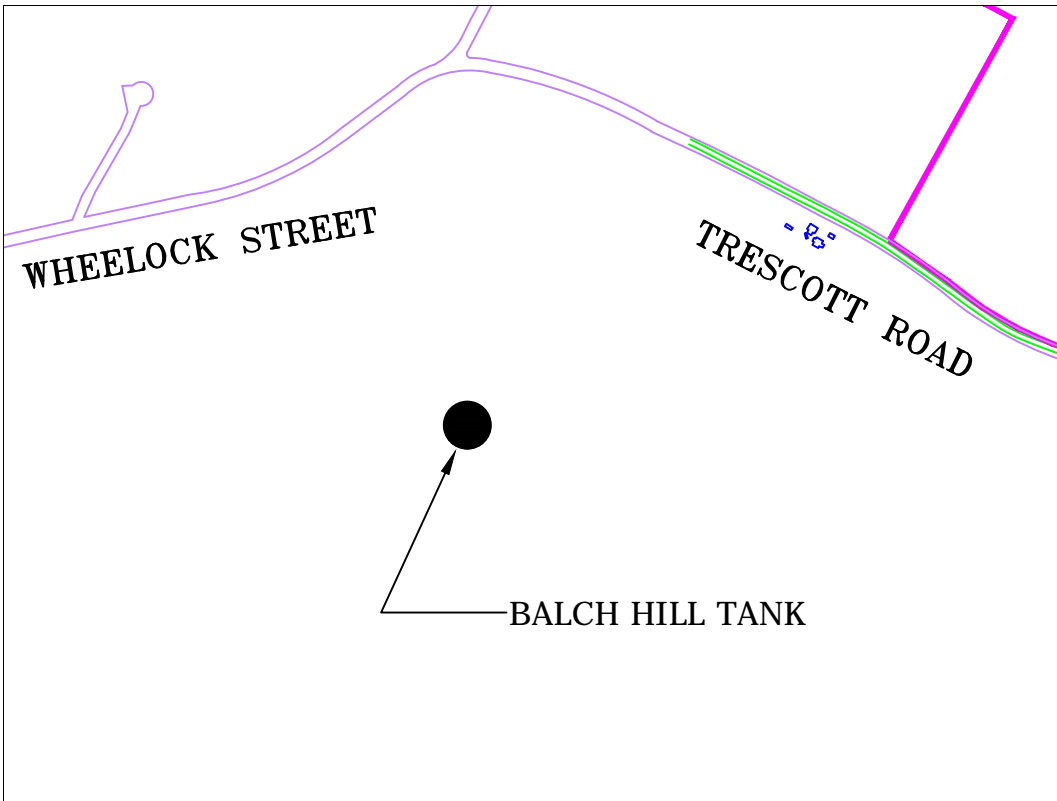
GRASSE ROAD

EAST WHELOCK STREET

TRESCOTT ROAD

BALCH HILL TANK

LOWER WATERSHED PROPERTY



## WARRANT FOR SPECIAL TOWN MEETING

GRAFTON, ss

TOWN OF HANOVER

TO THE INHABITANTS OF THE TOWN OF HANOVER, NEW HAMPSHIRE, who are qualified to vote in Town affairs:

TAKE NOTICE AND BE WARNED, that the Special Town Meeting of the Town of Hanover, New Hampshire, will be held as follows:

ON TUESDAY, OCTOBER 27, 2009 AT THE GYMNASIUM, HANOVER HIGH SCHOOL, LEBANON STREET, HANOVER, ARTICLES ONE THROUGH THREE WILL BE PRESENTED, DISCUSSED AND ACTED UPON BEGINNING AT 7:00 PM AT THE GYMNASIUM, HANOVER HIGH SCHOOL, LEBANON STREET, HANOVER.

ARTICLE ONE: To see if the Town will vote to raise and appropriate the sum of \$8,570,916 through the incurrence of indebtedness in accordance with the provisions of the New Hampshire Municipal Finance Act, RSA 33 by the Town's assumption of the two existing loans originally made to the Hanover Water Works Company through the New Hampshire Department of Environmental Services Drinking Water State Revolving Loan Fund (NH DES DWSRF), which assumption has been consented to by NH DES DWSRF; and to take all action as may be necessary to carry out the purpose of this vote. Although this debt will be a general obligation of the Town, it is intended and expected that funding for the debt service associated with these loans will be paid exclusively by water rates collected from users of the water utility. A two-thirds ballot vote is required.

Selectmen	For 5	Against 0	Absent 0
-----------	-------	-----------	----------

ARTICLE TWO: To see if the Town will vote to raise and appropriate the sum of \$550,000 relating to the Town's assumption of an existing debt obligation of the Hanover Water Works Company currently held by Citizens Bank; and to authorize the Town to refinance this debt (and any related prepayment fees) through the issuance of not more than \$550,000 of bonds and notes in accordance with the provisions of the New Hampshire Municipal Finance Act, RSA 33; and to determine the rate of interest thereon as shall be in the best interest of the Town; and to take all action as may be necessary to carry out the purpose of this vote. Although this debt will be a general obligation of the Town, it is intended and expected that funding for the debt service associated with this loan will be paid exclusively by water rates collected from users of the water utility. A two-thirds ballot vote is required.

Selectmen	For 5	Against 0	Absent 0
-----------	-------	-----------	----------

ARTICLE THREE: To see if the Town will vote to raise and appropriate \$1.00 for the purchase of the water utility assets owned by the Hanover Water Works Company, to include the water treatment plant, related water storage tanks, pump stations, distribution system, three (3) reservoirs, sufficient land within 250 feet around Reservoirs #1 and #2, all of the land around Reservoir #3, sufficient adjacent land to allow future expansion of the water treatment plant and storage tanks, and any other water utility assets required for the treatment and distribution of water, as allowed by RSA 38:2-a, and which is in the public interest, and to authorize the Board of Selectmen to negotiate and execute all documents required to complete the transaction as proposed. The remainder of the land which will not be transferred to Town ownership as part of this transaction will remain with the Hanover Water Works Company, and the Town's ownership share of that company will increase from the current 47.2% to 50% as part of the approved transaction. All of the related transactions shall occur on or about July 1, 2010. Completion of the transaction will be dependent upon the passage of special State legislation to enable the municipal water utility to continue to make semi-annual property tax payments to the Town, School Districts and County.


Selectmen                      For   5                      Against   0                      Absent   0

Given under our hands and seal of the Town of Hanover this 28<sup>th</sup> day of September, 2009.

TOWN OF HANOVER  
BOARD OF SELECTMEN



Brian F. Walsh, Chairman

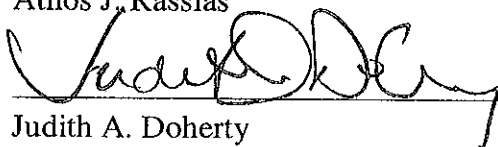


Katherine S. Connolly



Peter L. Christie

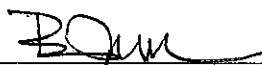
Athos J. Rassias



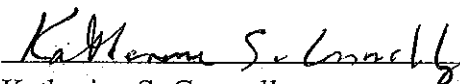
Judith A. Doherty

A True Copy, Attest:

TOWN OF HANOVER  
BOARD OF SELECTMEN



Brian F. Walsh, Chairman

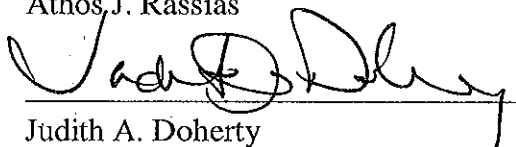


Katherine S. Connolly



Peter L. Christie

Athos, J. Rassias



Judith A. Doherty

## RETURN OF POSTING

We hereby attest that the within Warrant is a true copy of the Warrant for the Special Town Meeting described therein and further certify that we have caused to be posted an attested copy of this Warrant at the place of the Meeting and a like copy in one other public place in the Town of Hanover, namely the Municipal Building, fourteen (14) days before the day of the Meeting, not counting the day of posting nor the day of the Meeting.

### TOWN OF HANOVER BOARD OF SELECTMEN



Brian F. Walsh, Chairman

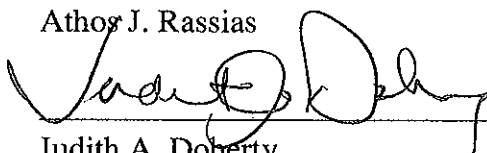


Katherine S. Connolly




Peter L. Christie

Athos J. Rassias



Judith A. Doherty

This Warrant and Return of Posting has been duly recorded in the Office of the Town Clerk of Hanover, New Hampshire this 2d day of Oct. September, 2009.



Elizabeth A. McClain, Deputy Town Clerk