
Board of Aldermen

City of Nashua
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Memorandum

TO: Mayor Bernard A. Streeter, Chairman, Finance Committee
And Members of the Finance Committee

FROM: David Rootovich, President, Board of Aldermen

DATE: April 14, 2006

SUBJ: Memorandum of Understanding (MOU) –
Veolia Water North America – Northeast, LLC

Attached please find the Memorandum of Understanding between Veolia Water North America – Northeast, LLC and the City of Nashua. The Board of Aldermen had an opportunity to discuss the MOU in detail at the Board of Aldermen's meeting, Thursday, April 13th, 2006. The suggestions that were made by various board members have been incorporated into this revised MOU. It is requested that the Finance Committee approve this contract as amended.

Thank you for your consideration in this matter.

Attachment

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is effective as of February 1 2006, by and between VEOLIA WATER NORTH AMERICA - NORTHEAST, LLC. ("Veolia"), and CITY OF NASHUA, NEW HAMPSHIRE ("Nashua") (individually a "Party," and collectively the "Parties"), and is intended to set forth the mutual intentions of the Parties hereto.

WHEREAS, Veolia is in the business of, among other things, operating, managing and maintaining municipal water systems for clients desiring said services; and

WHEREAS, Nashua has initiated proceedings before the New Hampshire Public Utilities Commission pursuant to NH RSA 38 (hereafter the "PUC Proceedings") to acquire by eminent domain the assets of Pennichuck Water Works, Inc.(hereinafter "PWW") related to the treatment and distribution of water (hereafter "Managed Assets"); and

WHEREAS, Veolia and Nashua have negotiated an Operation, Maintenance and Management Agreement ("Service Agreement") related to Veolia's operation, maintenance and management of the Managed Assets upon Nashua's successful resolution of the PUC Proceedings (the "Project"); and

WHEREAS, Veolia has provided, and will continue to provide, significant aid and expertise to Nashua in connection with the PUC Proceedings;

NOW THEREFORE, the Parties, in this MEMORANDUM OF UNDERSTANDING, set forth their mutual understanding as follows:

BINDING PROVISIONS

The following numbered paragraphs 1 through 11 in this Binding Provisions section are the agreements of the Parties that are binding on them.

1. Definitive Agreements. The Parties agree to use good faith efforts to enter into definitive agreements ("Definitive Agreements") containing terms and conditions mutually agreeable to the Parties and substantially similar to the terms and conditions set forth in the Service Agreement within twelve (12) weeks of a final order (including all appeals) in the PUC Proceedings authorizing the taking by eminent domain of the Managed Assets.
2. Veolia PUC Services. Veolia agrees to provide, for the consideration described below, consulting services to Nashua in connection with the PUC proceeding (hereafter, "PUC Services"). Veolia's PUC Services shall include: (a) aiding Nashua in preparing discovery requests and responses to PWW; (b) preparing for and participating in depositions; and (c) providing to Nashua, at Nashua's request, general advice and/or other services related to water treatment.

3. Term. The term of this MOU shall begin on the date it is executed and delivered by both parties and shall terminate two years later unless (a) the parties extend it by a written agreement, (b) it is terminated by mutual agreement, or (c) Nashua pays Veolia the amount specified in Paragraph 9.
4. Relationship. Neither Party has the right nor the power to bind the other Party to any contractual obligation whatsoever and neither Party shall act as, or hold itself out as, the agent, employee or representative of the other Party. This MOU shall not be deemed to make the parties partners or create any fiduciary relationship between them.
5. Confidentiality. Veolia or Nashua may from time to time disclose to the other party confidential information relating to its business and affairs ("Confidential Information"). Neither Party will disclose Confidential Information of the other Party or to any third party without the express written consent of the other Party. Each Party will use at least the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own Confidential Information, but not less than a reasonable degree of care. Either Party may seek injunctive relief to enforce its rights under this Section. Confidential Information will be clearly designated in writing as confidential. Confidential Information does not include information: (a) generally available to or known to the public; (b) previously known to the recipient; (c) independently developed by the recipient outside the scope of this MOU; (d) lawfully disclosed by a third party; or (e) required to be disclosed by operation of law. Upon any termination or expiration of this MOU in accordance with its terms, each party will, within a reasonable period of time thereafter return all confidential or proprietary information received from the other party under the terms of this MOU, except that each party may retain a legal file copy. The covenants contained in this paragraph shall survive the termination or expiration of this MOU for a period of three years.
6. Intellectual Property. This MOU does not offer or grant to the receiving Party any rights in, or license to use, any drawings, data, plans, ideas, methods, computer software of other proprietary property disclosed in connection with this MOU or the Project.
7. Protected Information. Nashua agrees that all information related to Veolia's proposals, know-how, trade secrets and other information conveyed to Nashua ("Protected Information") is Veolia's exclusive proprietary and confidential information. Nashua agrees to use Protected Information solely for purposes of evaluating a possible project. Nashua agrees to keep Protected Information confidential, and Nashua will not disclose, use or exploit for its benefit Protected Information other than to implement a project with Veolia. Nashua agrees it will not implement a project using all or part of Protected Information with any party other than Veolia, without Veolia's prior written authorization. If Nashua does not authorize Veolia to proceed with a project, Nashua shall return all copies, extracts or other reproductions in whole or in part of any Protected Information to Veolia, except that each party may retain a legal file copy. The covenants contained in this paragraph shall survive the termination or expiration of this MOU.

8. Costs and Payment. Nashua shall pay Veolia for Veolia's PUC Services on an hourly rate basis pursuant to the rates set forth in the attached Rate Sheet (Appendix A). Veolia shall invoice Nashua monthly. Nashua shall pay the invoice within 45 days of receipt. It is specifically agreed by and between the parties that:

- a. Veolia shall not invoice Nashua for costs incurred by Veolia in connection with responding to Nashua's RFP;
- b. Veolia shall not invoice Nashua for the first \$50,000 of PUC Services performed by Veolia;
- c. Veolia shall not bill for PUC Services incurred prior to February 1, 2006;
- d. The total of \$100,000, both billed and unbilled, represents a firm not to exceed cost to the City of Nashua for services provided by Veolia as part of Nashua's PUC support services through the preparation of the Capstone testimony by Nashua scheduled for November 14, 2006. Additional authorizations, if required, are referenced in item "e" below; and
- e. Veolia shall seek written authorization from Nashua if the PUC Services exceed \$100,000 (including the first, unbilled \$50,000).

Veolia's billing for PUC Services will be on a cost basis to cover salary and full benefit costs of its employees. It will not include profit or overheads unrelated to compensation and benefits.

9. Break-up Fee. Upon the occurrence of one or more of the following, under which Nashua is unable or elects not to proceed further with the project, causing Veolia not to become the operator of any portion of the Project, Nashua will pay Veolia a fee as set forth hereinafter:

- a. Negotiation of a settlement between Nashua and PWW under which Veolia Water is not the operator of the system;
- b. Nashua withdraws its Petition at any time prior to a final order of the PUC (including all appeals by Pennichuck);
- c. Nashua elects to rebid the operation, maintenance and management of Managed Assets.

In the event one or more of the above occurs on or after any of the following dates, Veolia shall be entitled to the corresponding fee:

February 1, 2006	\$100,000
March 1, 2006	\$200,000
April 1, 2006	\$300,000
May 1, 2006	\$400,000
June 1, 2006	\$500,000
June 12, 2006	\$550,000
Notice to Proceed	\$900,000
Service Commencement Date	\$1,500,000

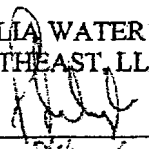
Following the Service Commencement Date, the Termination for Convenience Fee shall be paid by Nashua in accordance with the Service Agreement.

10. Release. Except for PUC Services already performed, Veolia, in consideration of this MOU and for other good and valuable consideration received, hereby releases and forever discharges Nashua, its elected officials and agents, servants, employees and consultants, from any claim which it now has or may have had, for any reason whatsoever, from the beginning of time to the effective date of this MOU.
11. Information and Access. During the term of this MOU, Nashua shall make available to Veolia at all reasonable times engineering, financial, and other documents, studies, information, personnel and site access that Veolia reasonably needs to meet its obligations under this MOU, which Nashua has in its possession or is legally able to provide.

WITNESS their hands and seals this day and year first above written:

VEOLIA WATER NORTH AMERICA -
NORTHEAST, LLC.

CITY OF NASHUA, NEW HAMPSHIRE

By: 
Name: Philip G. Ashcroft
Title: President
Date: 4/14/06

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX A

Rate Sheet

As specified within the Memorandum of Understanding, Veolia will charge Nashua the following hourly rates:

Category	Examples	Rate
Senior Management	Ashcroft, Arendell, Tomashosky	\$125 per hour
Senior Technical	Ford, Noran, Fahey	\$80 per hour
Technical		\$60 per hour