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**APPENDIX B**

*Acquisition Agreement*



ACQUISITION AGREEMENT  
by and between  
THE TOWN OF JOHNSTON  
and the  
NARRAGANSETT BAY WATER QUALITY  
MANAGEMENT DISTRICT COMMISSION

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Whereas, the Commission on May 1, 1982 acquired from the City of Providence the Treatment Plant, interceptors, certain real property and other related assets from the City of Providence;

Whereas, the Commission is desirous of acquiring certain interceptors, etc. from the Town and the Town is desirous of transferring and conveying the same to the Commission;

Whereas, the Town and the Commission have agreed as to the assets and properties to be transferred, assigned and conveyed to the Commission;

NOW THEREFORE, in consideration of the premises and of the representations, warranties and agreements herein contained, the parties hereto agree as follows:

SECTION I.

Transfer of Assets, Property, Etc.

1.1 Transfer of Assets. Subject to the terms and conditions of this Agreement, the Town shall, at the Closing as hereinafter defined, transfer, assign and convey the following assets and properties (the "Assets") to the Commission:

(i) good, clear and marketable title to the interceptors as set forth on Exhibit A, together with good, clear and marketable title to such easements and rights of access or other interests in property, free of all encumbrances,

as the Commission may determine are required to operate, maintain, repair, replace or reconstruct the same;

(ii) all records, drawings, engineering or consultant reports or studies, plans, specifications, correspondence and files relating to the Assets to be acquired; provided, however, that such records, etc. shall remain accessible to the Town at all times;

(iii) all licenses and permits relating to the use, operation and maintenance of the Assets to be acquired hereunder; and

(iv) contracts either currently funded or funded in the past ten (10) years under the Federal Water Pollution Control Act, as amended and all studies, report, plans, specifications, correspondence and all files relating to the Assets to be acquired, as set forth on Exhibit C.

1.2 Liabilities of Town Not Assumed. The Commission will not assume any liabilities and obligations of the Town arising out of or relating to the Town's operation of the Assets, whether fixed or contingent, known or unknown.

## SECTION II.

### Consideration

2.1 Consideration. In consideration for the transfer of the Assets to be transferred, assigned and conveyed hereunder, the Commission shall assume and agree to pay all costs of operating and maintaining the Assets as an integral part of the

waste water treatment plant and collection system within the District.

### SECTION III.

#### Closing

3.1 Closing. The closing of the transactions provided for herein (the "Closing") shall take place on , 1983, or on such other date as may be mutually agreed to by the parties hereto (the "Closing Date"), provided that all the conditions of Closing set forth in Section VII hereof have been either fulfilled or waived. The place of Closing shall be the office of the Mayor, Town Hall, Johnston, Rhode Island. The Closing shall commence at 10:00 a.m. on the Closing Date and the transactions provided for herein shall all be effective at midnight of the Closing Date.

### SECTION IV.

#### Closing Instruments

4.1 Instruments of Transfer. At the Closing, the Town shall execute and deliver or cause to be executed and delivered such instrument or instruments of transfer, assignment and conveyance as the Commission shall deem necessary to vest in the Commission title to the assets to be transferred, assigned and conveyed hereunder, such instruments or instrument to be in form and substance satisfactory to the Town, the Town Solicitor, the Commission and Tillinghast, Collins & Graham (the "Commission's special counsel").



SECTION V.

Representation and Warranties of the Town

5.1 Representations and Warranties. The Town represents and warrants to and with the Commission that:

(i) the Town is a municipality, duly created by the General Assembly and validity existing under the laws of the State of Rhode Island;

(ii) the Town has full power and authority to enter into this Agreement and has complete and unrestricted power to transfer, assign, convey and deliver its rights in the Assets to the Commission in the manner contemplated by this Agreement, subject to the approvals and consents referred to herein;

(iii) the interceptors have been maintained in good working condition and that there are no defects in the interceptors which would require immediate repairs, reconstruction or replacement except as set forth on Exhibit C;

(iv) the execution and delivery of this Agreement does not, and the performance by the Town of its obligations under this Agreement will not violate, conflict with, or breach:

(a) the Town's Charter or any ordinance or regulation of the Town, any applicable law or statute of the United States, the State of Rhode Island or any

other governmental authority applicable to the Town, or any regulation thereunder presently in effect to which the Town may be subject;

(b) any injunction, award, order, judgment or decree of any governmental agency, authority or court; or

(c) any provision of any mortgage, lien, lease, agreement or other document to which the Town is a party or by which the Town is bound, except as has been disclosed in Exhibit D hereof;

(v) except as set forth in Exhibit E, there is no suit, action, or proceeding pending before any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator, or threatened against or affecting the Town which, if adversely determined, would affect the operation of the Assets to be conveyed in any respect, nor is there any judgment, decree, injunction, rule or order of any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator outstanding against the Town which would have such effect and the Town has not been notified of any violation of any law, regulation or order arising out of the operation of the Assets to be conveyed;

(vi) the Town has good and clear marketable title of record free of all mortgages, liens, pledges, security interests, charges or encumbrances of every nature, kind and description, in and to the Assets to be conveyed except as set forth in Exhibit D hereof;

(vii) this Agreement has been duly and validly authorized, executed and delivered by the Town and constitutes a legal, valid and binding agreement of the Town in accordance with its terms, and the instrument or instruments of transfer, conveyance or assignment, when executed and delivered in accordance with this Agreement, will convey to the Commission all of the Town's right, title and interest in and to the Assets to be conveyed;

(viii) each representation and warranty of the Town set forth in this Agreement shall be true on and as of the Closing Date as though such representation or warranty was made as of the Closing Date, and, furthermore, each representation and warranty of the Town shall survive the Closing; and

(ix) no representation or warranty given herein or in any Exhibit hereto and no document or statement furnished pursuant hereto contains any false or misleading statement or omits any fact or information necessary to prevent any such representation, warranty or information from being false or misleading.

SECTION VI.

Covenants of the Town of Johnston  
with Respect to the Operation of the  
Assets Prior to Closing

6.1 Operation of the Assets. From and after the date hereof through the completion of the Closing, the Town shall not (i) sell, lease, transfer or otherwise encumber any of the interceptors and other property interests described in Exhibit A or (ii) cancel, reduce or allow to lapse the coverage under any fire, casualty, theft, title, liability or other insurance policy relating to the Assets to be conveyed hereunder.

6.2 Repairs. From and after the date hereof through the completion of the Closing, the Town shall keep the Assets in good repair, working order and condition.

SECTION VII.

Conditions of Closing

7.1 Conditions of Closing. The obligations of the Commission hereunder are subject to the fulfillment before or at the Closing of the following conditions:

(i) execution of an agreement by and between the Town and the Commission relating to the post closing operation and maintenance of the Assets, extension of laterals, and access to records, such agreement to be in form and sub-

stance satisfactory to the Commission and the Commission's special counsel;

(ii) the representations and warranties of the Town shall be true and correct in all material respects at the time of Closing, and all agreements of the Town contained herein and required to be performed at or prior to the Closing shall have been performed at the time of Closing;

(iii) receipt by the Town in form and substance satisfactory to the Commission, of all approvals for the transactions provided for herein, including without limitation, any approval required by the Town;

(iv) receipt by the Commission of a certificate dated the Closing Date of the Mayor of the Town of Johnston to the effect that;

(a) all of the representations and warranties of the Town contained herein were true in all material respects as of the date hereof and are true as of the Closing Date;

(b) all agreements required to be performed by the Town prior to the Closing have been performed; and

(c) the Town operated and maintained the Assets from the date hereof to the Closing Date in accordance with the requirements of Section VI hereof;

(v) receipt by the Commission of an opinion of the Town Solicitor of the Town dated the Closing Date, in form and substance satisfactory to the Commission and the Commission's special counsel, to the effect:

(a) that the Town is a municipality duly created by the General Assembly and validly existing under the laws of the State of Rhode Island;

(b) that the Town has full power and authority to enter into this Agreement and has complete and unrestricted power to transfer, assign, convey and deliver all of its right, title and interest in the Assets to be conveyed to the Commission as provided in this Agreement; that all proceedings and approvals required of the Town to approve this Agreement and to effect the transactions provided for herein have been duly taken and obtained, that this Agreement has been duly and validly authorized, executed and delivered by the Town and is a valid and binding obligation of the Town; and that the execution and delivery of this Agreement did not, and the performance by the Town of its obligations under this Agreement will not, violate, conflict with or breach:

(1) The Town's Charter, any ordinance or regulation of the Town, any applicable law or

statute of the United States, the State of Rhode Island or any other governmental authority applicable to the Town, or any regulation thereunder presently in effect as to which the Town may be subject;

(2) any injunction, award, order, judgment or decree of any governmental agency, authority or court; or

(3) any provision of any mortgage, lien, lease, agreement or other document to which the Town is a party or by which the Town is bound, except as has been disclosed to the Commission in Exhibit D hereof;

(c) that the documents and instruments of transfer, assignment and conveyance, including deeds and bills of sale, delivered by the Town to the Commission at the Closing have been validly authorized, executed and delivered by the Town and convey to the Commission all of the right, title and interest of the Town purported to be conveyed thereby;

(d) except that as set forth in Exhibit E such Solicitor has no knowledge after due inquiry, of any suit, action or proceeding pending before any court, governmental or administrative agency, department,

board, commission, instrumentality or arbitrator, or threatened against or affecting the Town which, if adversely determined, would affect the operation of the Assets in any respect, nor does such Solicitor know after due inquiry of any judgment, decree, injunction, rule or order of any court, governmental or administrative agency, department, board, commission, instrumentality or arbitrator outstanding against the Town which, in the opinion of such Solicitor would have such effect;

(vi) the receipt by the Commission of certified copies of all resolutions, approvals, consents and authorizations as may, in the opinion of the Commission's special counsel, be required or desirable to effect the transactions provided for herein;

(vii) since the execution of this Agreement, none of the following shall have occurred or arisen:

(a) any damage or destruction in the nature of a casualty loss, whether covered by insurance or not, adversely affecting any of the Assets; or

(b) any other event, condition or state of facts of any character which materially and adversely affects or threatens to materially and adversely affect, the operation of the Assets.



(viii) the passage and implementation of the user fee ordinance and the execution and delivery by the Commission and the Town of a comprehensive agreement, approved by all required federal and state regulatory authorities, including, without limitation, the U.S. Environmental Protection Agency, which agreement shall contain provisions relating to (a) the imposition, billing and collection of the user fees, and the method and times of payment thereof to the Commission; (b) requirements for discharging waste water; and (c) such other provisions relating to the use, operation and maintenance of the Assets to be acquired as the Commission and the Town shall mutually determine;

(ix) the receipt by the Commission of an opinion of the City Solicitor to the effect that the user fee ordinance referred to above has been duly and validly enacted and that all necessary approvals, consents, resolutions and authorizations for such enactment have been obtained and no action is pending or threatened in any court which would, in the opinion of such Solicitor, in any way affect the validity or implementation of such ordinance; and

(x) receipt by the Commission of such consents, statements, certificates or audits relating to any contract listed in Exhibit C as may be necessary or desirable in the sole judgment of the Commission to ascertain the status of

the same, and to carry out the transactions provided for herein.

#### SECTION VIII.

##### Access to and Preservation of Records, Etc.

8.1 Access to Records. From the date hereof through the Closing Date, the Town shall give to the Commission's employees, agents and other representatives authorized by the Commission full access (during normal business hours and upon reasonable prior notice) to its engineering reports, studies, files, books, contracts, commitments and records; and the Town shall furnish to the Commission during such period all information concerning the Assets as the Commission may reasonably request.

#### SECTION IX.

##### Amendment to Agreement

9.1 Amendment. At any time prior to the Closing, any provision of this Agreement may be amended, modified or waived by written agreement of the parties hereto.

#### SECTION X.

##### Construction

10.1 Applicable Law. This Agreement shall be construed and interpreted under the laws of the State of Rhode Island applicable to agreements made and entirely to be performed within such state.

SECTION XI.

Agreements

11.1 Entire Agreement. This Agreement supersedes all other agreements, whether written or oral, that may have been made or entered into by the Town and the Commission relating to the acquisition of the Assets.

SECTION XII.

Notices

12.1 Notices. Any notice, request, instruction, or other document to be given hereunder by either party to the other shall be in writing and delivered personally or by registered or certified mail, postage prepaid, return receipt requested,

(i) If to the Town of Johnston to:

Johnston Town Hall  
1385 Hartford Avenue  
Johnston, Rhode Island 02919  
Attention: Mayor Ralph R. Russo

with copy to:

Richard C. Tallo, Esq.  
265 Atwells Avenue  
Providence, Rhode Island 02903

(ii) If to the Commission, to:

Joseph F. Turco, Chairman  
Narragansett Bay Water Quality  
Management District Commission  
57 Eddy Street  
Providence, Rhode Island 02903

with copy to:

Tillinghast, Collins & Graham  
2000 Hospital Trust Tower  
Providence, Rhode Island 02903  
Attention: Louise Durfee, Esq.

SECTION XIII.

Miscellaneous

13.1 Exhibits. All Exhibits attached to this Agreement are incorporated in this Agreement and constitute part of this Agreement.

13.2 Captions. Captions and section headings are for reference only and shall not limit or otherwise affect the meaning of the sections hereof.

13.3 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and this Agreement shall become effective when the counterparts have been executed and delivered by the Town and the Commission.

13.4. Post Closing Matters. At any time after the Closing, if the Commission shall consider or be advised that any further assignments, assurances in law, or other acts or instruments are necessary or desirable to vest, perfect or confirm in the Commission title to any of the Assets conveyances hereunder, the Town shall do all acts and things as the Commission may reasonably deem necessary or property to vest,

perfect, or confirm title to the Assets to be conveyed to the Commission and otherwise to carry out the purposes of this Agreement.

SECTION XIV.

Indemnification

14.1 Indemnification. Notwithstanding any investigation made by the Commission prior to the Closing Date, the Town hereby agrees to indemnify and hold harmless the Commission from and against any liability, loss, costs, expense or damage (including reasonable attorneys' and accountants' fees incurred in defending or prosecuting any claim for any such liability, loss, cost, expense or damage) resulting or arising from (i) a breach of any representation, warranty or agreement made in this Agreement by the Town or (ii) resulting or arising from the conduct and operation by the Town of the Assets acquired hereunder through the Closing Date, and the Commission agrees to indemnify and hold harmless the Town from and against any liability, loss, cost, expense or damage (including reasonable attorneys' and accountants' fees incurred in defending or prosecuting any claim for any such liability, loss, cost, expense or damage) resulting or arising from the Commission's conduct and operation of the Assets acquired hereunder following the Closing Date.

SECTION XV.

Billing

15.1 Billing. The Commission has determined that it will begin to directly bill the users of the System for collection and treatment as soon as it is practicable so to do. It is anticipated that direct billing by the Commission will be effected by July 1, 1984 but shall be conditioned upon appropriate legislative changes being made by the General Assembly to the Commission's Enabling Act set forth in Title 46-25-1 through 46-25-56 of the General Laws of Rhode Island, as amended. The Commission has agreed that until July 1, 1985 or until direct billing is implemented, whichever first occurs, the bill rendered to the Town by the Commission will be the same as the bill rendered for the period July 1, 1982 through June 30, 1983. The Town agrees to pay when due all bills rendered by the Commission.

SECTION XVI.

Binding Effect

16.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the Commission and the Town and neither party hereto shall have the right to assign any interest in this Agreement without the prior written consent of the

other party hereto, and any purported assignment without such consent shall be null and void.

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

In presence of:

TOWN OF JOHNSTON

\_\_\_\_\_

By \_\_\_\_\_

THE NARRAGANSETT BAY WATER  
QUALITY MANAGEMENT DISTRICT  
COMMISSION

\_\_\_\_\_

By \_\_\_\_\_

EXHIBIT A  
INTERCEPTORS, ETC.



EXHIBIT C  
REPAIRS, ETC.

EXHIBIT D

MORTGAGES, LIENS, ETC.

EXHIBIT E  
LITIGATION