

INTERMUNICIPAL AGREEMENT
BETWEEN
THE TOWN OF ANDOVER, MASSACHUSETTS
AND
THE TOWN OF NORTH READING, MASSACHUSETTS
FOR
POTABLE WATER SERVICE
2014-2019

6-26-2015

Andover/North Reading Water Supply Agreement

THIS AGREEMENT entered into on June 26, 2015 by and between the Town of Andover, a municipal corporation within the Essex, Commonwealth of Massachusetts, acting through its Board of Selectmen, and the Town of North Reading, a municipal corporation within the County of Middlesex, Commonwealth of Massachusetts, acting through its Board of Selectmen.

WITNESSETH

WHEREAS, the Town of Andover has the authority to sell and supply potable water to the Town of North Reading under this intermunicipal agreement which provides the terms and conditions of sale, furnishing of water, payment for sale;

WHEREAS, the Town of North Reading has the authority to purchase said water under the terms and conditions of this agreement;

WHEREAS, the Towns are authorized by Chapter 40, Section 4 and 4A of the General Laws of the Commonwealth of Massachusetts to enter into the Intermunicipal Agreement for the establishment and construction of a water supply, treatment, distribution facility;

WHEREAS, the Towns deem it to be in the public interest for the Town of Andover to supply and sell, and for the Town of North Reading to receive and pay for potable water to supply its citizens; and

WHEREAS, both Towns have been authorized to enter into this agreement by vote of their respective Boards of Selectmen as evidenced by their signatures to the Agreement.

NOW THEREFORE in consideration of the mutual promises and covenants herein set forth, and in order to secure the services described below, the parties hereto, each binding itself, its respective representatives, successors, and assigns, to mutually agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Short Title

This Agreement may be referred to as the “Third Andover/North Reading Water Supply Agreement.”

1.2 Definitions

For all purposes of this Agreement, and any amendments or other changes thereto, the terms shall have the meanings set forth below.

A. “**Andover**” means the Town of Andover, in Essex County, Massachusetts, or its duly authorized agent.

B. “**DEP**” means the Department of Environmental Protection of the Commonwealth of Massachusetts.

Andover/North Reading Water Supply Agreement

A. “Force Majeure Events” means a consequence of any Acts of God, act of public enemy, laws, blockades, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, labor strikes, power failures, explosions, breakage or accident to machinery, lines or pipe, failure of water supply, regulatory requirement, restriction or limitation, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the reasonable control of such party, and which act, omission or circumstance such party, and which act, omission or circumstance such party is unable to prevent or overcome by the exercise of due diligence.

B. “Minimum Daily Flow” means the lowest total volume of water measured in gallons or cubic feet at a metering station over any consecutive twenty-four (24) hour period during a calendar year.

C. “Maximum Daily Flow” means the highest total volume of water measured in gallons or cubic feet at a metering station over any consecutive twenty-four (24) hour period during a calendar year.

D. “North Reading” means the Town of North Reading, in Middlesex County, Massachusetts, or its duly authorized agent.

E. “Person” means any individual, firm, company, association, society, corporation, political subdivision, fire district or group.

F. “Planned Utilization” means the capacity in Andover’s waterworks that North Reading desires to use.

G. “Waterworks” means facilities for collection, storage, supply, distribution, treatment, pumping, metering, and transmission of water.

H. “Water Drought Warning” means the implementation of mandatory water use restrictions on Andover’s 25 largest water users, including North Reading, in conjunction with an appeal for voluntary conservation efforts for all users, per Andover’s Drought Management Plan (attached hereto by reference).

J. “Water Drought Emergency” means the implementation of a series of enforceable measures that restrict or halt certain types water use for all users, per Andover’s Water Restriction Bylaw (attached hereto by reference).

1.3 Meanings and Construction

This agreement, except where the context clearly indicates otherwise, shall be construed as follows:

A. Definitions include both singular and plural;

B. Pronouns include both singular and plural and include both genders.

1.4 Resolutions of Disputes

Any dispute arising under this agreement shall first be attempted to be resolved in a timely and mutually acceptable manner by the two parties. If the parties are unable to resolve the dispute, civil action may be taken by either party through a court of proper jurisdiction.

1.5 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

2. GENERAL PROVISIONS

2.1 Obligations of the Parties

Both North Reading and Andover understand and agree to the following obligations, limitations, and commitments, in consideration of Andover's agreement to permit connection by North Reading to Andover's waterworks to supply North Reading with drinking water in exchange for payment and other consideration as specified in this agreement.

A. Consumption Quantities. North Reading's consumption of Andover's water shall be governed as follows:

1. Andover shall furnish up to a maximum of 1.5 million gallons per day (MGD) to North Reading through interconnections identified in section 2.1(E) of this Agreement. The amount of water North Reading draws on a daily basis up to the maximum of 1.5 MGD shall be within its sole discretion, except in the case of a Force Majeure or a Water Drought Warning or Emergency event as described in section 2.2 of this Agreement.

B. Control of System Leaks and Wasteful Use. North Reading shall operate and maintain its waterworks connecting to that of Andover in accordance with customary practices and within the guidelines set forth below. North Reading shall take all reasonable measures to minimize the wasteful use of water within its service area. Should Andover impose restrictions on water use on its customers (e.g., sprinkling bans) North Reading shall conform to such and impose like restrictions within its service area. The imposition of said restrictions shall be within the sole and exclusive discretion of Andover. Nothing in this Agreement shall prevent North Reading from imposing its own restrictions above and beyond those imposed by Andover.

C. Conformance to Law. Both North Reading and Andover shall abide by all applicable laws, rules, regulations, and bylaws of the United States, the Commonwealth of Massachusetts, and any political subdivision thereof having jurisdiction over the activities and obligations under this intermunicipal agreement insofar as such compliance is not lawfully superseded by the terms of this agreement.

D. Water Quality. Andover will guarantee that the quality of water supplied to North Reading will meet all State and Federal regulations.

E. Contract Service Area. Andover shall deliver water to North Reading at the following points of delivery:

1. The Andover/North Reading town line at Gould Road and Central Street.
2. The Andover/North Reading town line at Route 28.

F. Measurement of Flows. The measurement of water delivered to North Reading shall be undertaken by North Reading and Andover. Such flow measurements shall be made by approved metering devices owned by North Reading at locations determined by North Reading and approved by Andover. Meter readings shall be taken and reported to and confirmed by Andover on a monthly basis, and Andover shall have the right to have an agent present to read any meter at such time. All such metering devices shall be inspected and calibrated at least annually by North Reading. A copy of the inspection and calibration reports shall be filed at Andover's Water Department.

In the case of missing or inaccurate flow records, due to faulty metering device operation or other circumstances, an estimate of flow shall be made by Andover based on past records of a comparable period and confirmed with North Reading. The estimates shall be used by Andover to establish North Reading's payments to Andover for the period of missing or inaccurate data.

G. Construction of Connections. Any and all connections between the Andover and North Reading waterworks necessary to effectuate this Agreement, shall be designed and constructed by North Reading, shall be of good design and constructed in a workmanlike manner, shall be submitted to Andover for approval in writing by Andover, and shall be paid for by North Reading.

H. Records, Accounts and Audits. Andover shall keep books of records and accounts, in which complete and accurate entries shall be made of all its transactions with North Reading.

I. Ownership of Connection Facilities. Each town shall own all waterworks on its side of the Town Line between Andover and North Reading.

J. Assignment of Users. North Reading's users of its waterworks shall be served by water facilities owned, operated and maintained by North Reading, unless there is written amendment to this Agreement.

K. Responsibility for System Operation and Maintenance. Andover assumes no responsibility for the operation and maintenance of waterworks constructed and owned by North Reading. Andover's waterworks shall be operated and maintained by Andover, and North Reading assumes no responsibility for the operation and maintenance of the same. Andover shall not be responsible or liable in any way for the Acts of God, or any other act or acts beyond its

Andover/North Reading Water Supply Agreement

control which may, in any way, cause an interruption or discontinuance of the service provided for in this Agreement. However, under such circumstances, Andover shall use its best efforts to restore service to North Reading as soon as possible.

2.2 Impairment of Supply

A. Responsibility. The furnishing of water to North Reading under this Agreement shall not be impaired except in the case of a Force Majeure or Water Drought Warning or Emergency event which impacts customers within Andover's geographic boundaries. Andover shall not be compelled to furnish the customary amounts of water to North Reading on a continuous basis during such event.

B. Force Majeure and Water Drought Warning/Emergency Events. Neither Andover nor North Reading shall be liable for damages or otherwise for failure to perform any obligation under this agreement which failure is occasioned by a Force Majeure or Water Drought Warning or Emergency event. Such event affecting the performance of either Andover or North Reading, however, shall not relieve such other party of liability in the event of its negligence, intentional acts, or in the event of such party's failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. Andover shall communicate the details of such events to North Reading, including the level/amount of flow restriction, the anticipated duration, and the remediation/management actions being taken, with as much advanced notice as possible, but not less than 72 hours, and the two parties will remain in contact with each other throughout the duration of the event.

2.3 Notices and Communications

A. Any and all notices, communications, and acknowledgements pertaining to the terms and provisions of this agreement shall be conveyed by both electronic mail and U.S. mail to the following officials:

Town Manager
Town Offices
36 Bartlet Street
Andover MA 01810
manager@andoverma.gov

Town Administrator
Town Hall
235 North Street
North Reading MA 01864
townadministrator@northreadingma.gov

B. Except in the case of an emergency or unforeseen event, prior to the implementation of any significant water related actions that may impact the provision of water to North Reading, such as supply interruptions, major maintenance, and quality issues, Andover shall provide North Reading with written e-mail and verbal notice of such pending action with as much advance notice as possible. In the case of system-wide water restrictions (i.e., Water Drought Warnings & Emergencies), North Reading will be notified as soon as possible in accordance with the requirements of Section 6 "Public notification of state of water supply conservation" of Andover's Water Restriction By-law

C. Routine matters and issues will continue to be conveyed between Andover and North Reading's respective public works/water system operational personnel via customary modes of telephone and/or e-mail communication.

3. PAYMENTS FOR SERVICES

3.1 North Reading Rate

A. At the time of the signing of this agreement, Andover charges "one flat rate" (per 100 cu. ft.) for all water customers, including but not limited to residential, commercial and industrial. For the period of this agreement in which Andover charges "one flat rate" for water, North Reading shall pay an amount equal to the Andover rate.

In the event Andover moves to a consumption-based "tiered" model of water rate charges for residential water users, upon sixty days written notice of such change to North Reading, North Reading shall be charged a maximum of the water rate paid during the previous fiscal year multiplied by an annual percentage increase of five percent (5%) annually. For example-- Rates for FY 17, 18 and 19 are for illustrative purposes only:

FY 14: 7/1/13-6/30/14: Andover rate \$2.95 North Reading rate \$2.95

FY 15: 7/1/14-6/30/15: Andover rate \$3.10 North Reading rate \$3.10

FY 16: 7/1/15-6/30/16: Andover rate \$3.10 North Reading rate \$3.10

FY 17: 7/1/16-6/30/17: Andover rates tiered North Reading rate \$3.26 (FY 16 rate of \$3.10 X 1.05%)

FY 18: 7/1/17-6/30/18: Andover rates tiered North Reading rate \$3.42 (FY 17 rate of \$3.26 X 1.05%)

FY 19: 7/1/18-6/30/19: Andover rates tiered North Reading rate \$3.59 (FY 18 rate of \$3.42 X 1.05%)

North Reading shall pay for a minimum of 300 million gallons per year, commencing with the effective date of this agreement.

B.. Corrected Payments: Notwithstanding section 4.8 (Effective Date and Duration), the parties acknowledge that North Reading paid Andover for water consumption at a rate of \$3.00 per 100 cu. ft. for the period of May 1, 2014 to the date of this Agreement. The parties agree that there will be an adjustment to the amounts previously paid such that North Reading will have paid the Andover residential rate of \$2.95 for the period of May 1, 2014 to June 30, 2014 and the Andover residential rate of \$3.10 for the period of July 1, 2014 to the date of the Agreement.

Andover/North Reading Water Supply Agreement

The parties will calculate an appropriate adjustment which will be reflected as a one-time charge or credit on a corrected bill to be issued and paid in June 2015.

3.2 Billing Cycle

Andover shall bill North Reading on a monthly basis. Billings shall be rendered to North Reading and become due and payable to the Water Treatment Plant, 397 Lowell Street, Andover MA 01810-4416 within thirty (30) days of being rendered. The North Reading payment will be made via EFT.

3.3 Delinquent Bills

If water bills remain unpaid 30 days after the same shall be due, Andover's Tax Collector shall add thereto a penalty of one (1) percent per month. If the bills continue to remain unpaid two months after they are due, the Tax Collector shall add interest charged on the original bill from its due date at the rate of one and one half (1 ½) percent per month. If the final date for payment before the imposition of a penalty or the charging of interest should fall on a Saturday, Sunday, or holiday, such payment may be made to the Tax Collector on the next business day following such Saturday, Sunday or legal holiday or may be paid by mail provided the postmark on the envelope indicates that the letter was so mailed on such next business day, and the Tax Collector shall receive such payment without imposing the one (1) percent or the interest charges.

3.4 Bills over Sixty (60) Days Due

If North Reading fails to pay to Andover the amount of its bills within 60 days from the billing date, Andover may, at its discretion, give North Reading written notice of such delinquency. In the event that such written notice is given, North Reading shall have 60 days from the date of said notice to make full and complete payment of the bill, penalties and accrued interest. Unless bills are disputed by North Reading, if full payment is not received within 60 days of such notice, the Town of Andover may terminate the provision of water to the Town of North Reading. Termination shall not relieve North Reading of its responsibility to pay Andover for its proportionate share of expenses incurred by Andover for facilities used or planned for North Reading, and upon such occurrence shall have the right to make current all such delinquencies and upon doing so, this Agreement shall remain in full force and effect.

3.5 Right to Dispute Bills

North Reading may challenge the calculation of any bill by serving written objection prior to the date on which payment is due.

4. MISCELLANEOUS PROVISIONS

4.1 Status of Former Agreements

Andover/North Reading Water Supply Agreement

This Agreement constitutes the entire contract between Andover and North Reading, provided, however, that Andover retains full rights and authority to enforce the provisions of any proceeding or currently existing agreement as they pertain to any outstanding indebtedness to Andover.

4.2 Incurring of Debt

Nothing in this Agreement shall be construed as to prevent either party thereto from incurring any debt deemed necessary to ensure the sufficiency of funds required to construct, maintain and operate their respective waterworks.

4.3 Severability

If any clause or provision of this Agreement or application thereof shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision has not been contained herein.

4.4. Status of Legal Representatives

Each one of the benefits and burdens of this Agreement shall be inure to be binding upon the respective legal representatives, successors, and assigns of the parties hereto.

4.5 Amendment

This agreement may be amended from time to time by mutual consent of the parties and in accordance with the provisions of G.L.c40, sections 4 and 4A. Any such amendment to this shall be executed and authorized with the same formality as this agreement.

4.6 Assignment

No assignment by North Reading of its rights or duties under this Agreement shall be binding on Andover, unless Andover consents to such an assignment in writing with the same formality as employed in the execution of this Agreement.

4.7 Waiver

Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party to exercise at some future time said right or rights or another right it may have hereunder.

4.8 Effective Date and Duration

Andover/North Reading Water Supply Agreement

This Agreement shall be effective as of the date first above written. This Agreement shall be in full force and effect and shall be binding on North Reading and Andover for five (5) years from the effective date of July 1, 2014, unless sooner terminated in accordance with section 4.10 of this Agreement.

4.9 Approvals

This agreement is subject to the approval of an interbasin transfer to be obtained by North Reading as may be required pursuant to G.L.c.21, Sections 8B through 8D.

4.10 Termination

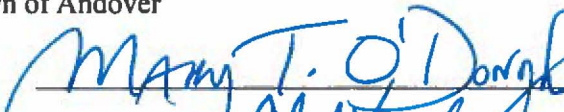
A. In the event of a material breach of this Agreement, the nonbreaching party may terminate this Agreement by giving written notice thereof to the other party no later than December 1st for an effective termination on July 1st of the following year.

B. This Agreement may also be terminated in accordance with the procedures set forth in G.L.c.40, Section 4A.

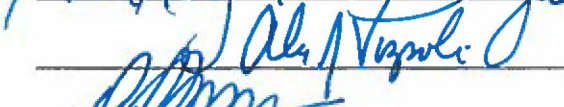
C. Notwithstanding the foregoing sections A and B, North Reading may not terminate this Agreement during the - term in which the Agreement is in effect.

IN WITNESS WHEREOF, the Town of Andover, acting through its Board of Selectmen, and the Town of North Reading, acting through its Board of Selectmen has executed this agreement on the day and year first above written.


Town of Andover



Mary T. O'Donoghue, Chair



Alex J. Vispoli, Vice Chair



Paul J. Salafia, Secretary

Daniel H. Kowalski

Robert A. Landry

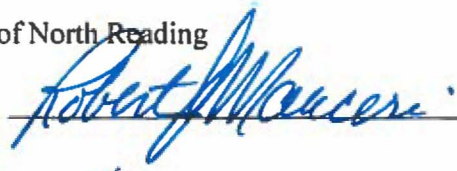
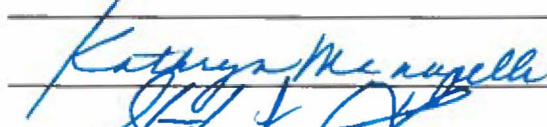
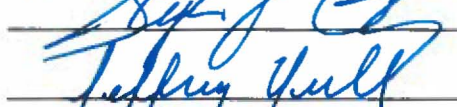

Approved as to Form by:



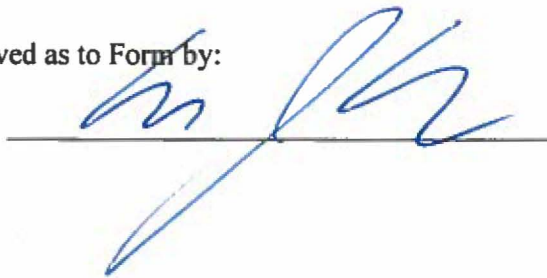
Thomas J. Urbelis, Town Counsel

Andover/North Reading Water Supply Agreement

Town of North Reading


_____ Robert Mauceri, Chairman
_____ Michael Prisco, Vice-Chairman

_____ Kathryn Manupelli, Clerk

_____ Stephen O'Leary

_____ Jeffrey Yull

Approved as to Form by:


_____ Gregg Corbo, Town Counsel