

OPERATION AND MAINTENANCE SERVICES AGREEMENT

This Operation and Maintenance Agreement (the "Agreement"), made and entered into as of this 30th day of November 2015, between, the Town of New Hartford, Connecticut with an address at 530 Main Street, New Hartford, CT 06057 ("Owner") and The Torrington Water Co., a Connecticut corporation, with an address at 277 Norfolk Road, Torrington, CT 06790 ("Company").

WHEREAS, the Owner owns and operates a Water System (the "System") as described in Appendix A, which is attached hereto and made a part hereof; and

WHEREAS, the Owner is responsible for overseeing the day-to-day operation and maintenance of the System; and

WHEREAS, the Owner desires to contract with a private contracting firm that has the specialized professional skills and experience to efficiently operate and maintain this System; and

WHEREAS, the Owner and Company wish to enter into this Agreement setting forth their respective rights, duties, privileges and responsibilities,

NOW, THEREFORE, in consideration of the agreements, terms and conditions stated herein, the parties agree as follows:

ARTICLE I – CONTRACT TERM; RENEWAL AND TERMINATION

1.01 Term

The term of this Agreement shall be (2) year commencing on February 1, 2016 (or such other date mutually acceptable in writing by both parties) and expiring on January 31, 2018. The Owner and Company may enter into up to two (2) additional two (2) year extensions of this Agreement on mutually acceptable terms and conditions.

ARTICLE II – SCOPE OF SERVICES

2.01 Operation and Maintenance of the System

The Company shall provide the services as detailed in this Agreement and more particularly described in the Scope of Services attached hereto as Appendix B ("Scope of Services"). The Company shall operate and maintain the System at all times on behalf of the Owner in compliance with Applicable Law and in accordance with the terms and provisions of the Agreement, subject to any Uncontrollable Circumstances, as defined herein, and the operating and design capability of the facilities comprising the System. Company shall at all times operate and maintain the System in an efficient and economical manner and in accordance with prudent industry and utility practice.

2.02 Regulatory Compliance

Company will supervise all regulatory compliance, except for the enforcement of Owner's ordinances or regulations. Subject to the limitations of this Section and the design capabilities, Company shall operate the System in compliance with current state and federal regulatory requirements. Company will not be responsible for process upsets or violations that are attributable to:

- (a) Raw Water constituents or contaminants that are not within the design capabilities of the System or that cannot, within the design capabilities of the System, be treated to the degree Required by Applicable Law, as amended from time to time; or
- (b) The malfunction or failure of equipment except to the extent due to the negligent acts, errors or omissions of Company.

Company shall pay any fines or civil penalties for violations imposed on the Owner or Company by a regulatory agency having jurisdiction of the operation and maintenance of the System to the extent caused by the negligence or willful misconduct of Company. Company shall be given full authority to contest such violations.

2.03 Access

Owner shall provide Company with access to the System as necessary to perform the Services under this Agreement. Owner shall provide Company service records and distribution maps of System. Company shall provide reasonable access to the System for Authorized Owner personnel. All visitors, including Owner personnel, shall comply with Company's established operating and safety procedures.

2.04 Technical Support

Company shall provide technical advice to the Owner, utilizing on-site and/or locally based staff, on the operations impact or planning level costs associated with proposed expansions or extensions of the System. Such support is not intended to include engineering design, supervision of major projects, or services that are unrelated to Company's obligations under this Agreement.

2.05 Staffing

Company will provide properly trained employees of Company for the staffing of the System. In addition, Company will be on call 24 hours per day, 7 days per week for emergencies. Company will provide appropriate initial and ongoing training for its employees with respect to safety, supervisory skills, and regulatory compliance. Company shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws.

2.06 Non-Routine Services

Non-Routine Services are not included in the Services provided by Company. Non-Routine Services shall include but are not limited to the following:

- Emergency response

- Facilities repair - If operator is available and in New Hartford doing routine service no time will be charged.
- Corrective maintenance - If operator is available and in New Hartford doing routine service no time will be charged.
- Non-Routine maintenance
 - Operation and maintenance required due to Uncontrollable Circumstances
 - Flushing hydrants on an annual basis and operating gate valves
 - The installation, replacement or repair of water meters
 - Call before you dig for water customers only
 - Repairs of the distribution system such as broken gate valve, gate boxes, blow-offs, main breaks, service leaks and hydrant repair or replacement
- Customer shut off due to a leak, dirty water, low PSI or no water. If operator is available and in New Hartford doing routine service no time will be charged.

Company will assist Owner in obtaining or providing, or Company will obtain and provide with Owner authorization, such Non-Routine Services so required, and Company will be paid for such Non-Routine Services as provided for in Appendix C.

2.07 Reporting

- (i) The Company shall prepare and file all necessary reports for state and federal authorities in compliance with Applicable Law and submit a copy of such reports to the WPCA on a timely basis provided that the Company shall certify to the WPCA as to the accuracy and completeness of such reports.
- (ii) The Company shall provide reports to the WPCA relating to the quantities and characteristics of raw/potable water supply and distribution, inspections, regulatory compliance schedules and reports, operations, maintenance, projected expenditures, improvements, utilities, complaints received and other matters in a form and frequency acceptable to the WPCA.
- (iii) The Company shall provide the WPCA with a copy of any correspondence received by the Company from state, federal, or other authorities with respect to the Facilities as soon as practicable following receipt thereof and provide to the WPCA copies of correspondence submitted by the Company to such authorities.

2.08 Safety

The Company shall maintain the safety of the public water at a level consistent with Applicable Law, all insurance requirements.

2.09 Use of Facilities

The facilities that comprise the System shall be used solely for the extraction, treatment and distribution of drinking water within the boundaries of the town or within a municipality having an inter-municipal Agreement with the WPCA. At no time shall the Company use or permit the use of the facilities for any purpose other than those contemplated by this Agreement without the WPCA's prior written consent.

ARTICLE III – RESPONSIBILITIES

3.01 WPCA Responsibilities

(a) Owner shall be responsible for:

- Attainment and payment of all permitting fees
- System performance compliance
- Use of Owner's land, equipment, buildings, structures and facilities under the Owner's ownership that are located at the System as of the effective date of this Agreement.
- Obtaining insurance on the System
- Capital Improvements and repairs, including associated bonds and/or other debt service, to the System
- Maintaining all existing easements, licenses, warranties and all permits pertaining to the System.
- Utilities (electricity, natural gas, telephone, cable land lines)
- Chemicals
- Fuels
- Supplies
- Costs of residuals disposal
- Laboratory costs
- Labor, subcontractor costs, equipment, supplies, and other expenses associated with Non-routine Services, as specified herein
- Expenses for WPCA or Town employees
- Expenditures for routine maintenance and repairs, including maintenance contracts, equipment, supplies, etc., except Company labor for preventative maintenance during normal business hours
- Expenditures for emergency water line or equipment repair or replacement
- Expenses related to municipal or private surveillance and alarm monitoring by municipal or third party vendors
- MDC inter-connection charge
- Fire protection
- Engineering or other professional services outside of the scope of services provided herein.
- Replacement cost of existing spare part(s) when use of the spare part is for normal wear on the part (if a spare part is being utilized to rectify a situation caused by the Company, the spare part shall be replaced at the Company's expense).
- Cost of services for preparing qualifying past due account for Rent Receivership, including postage, court filing fees, marshal's fees, lien filing fees, and court representation by the Company.
- Cost of services for processing unpaid final billed accounts and past due invoice accounts to a Collection Agency.
- All other items not specifically listed as a Company obligation under this Agreement.

- (b) As of or prior to execution and delivery of this Agreement, the WPCA shall have delivered to the Company (i) a certificate of incumbency for the officers of the WPCA executing this Agreement; (ii) Water quality monitoring requirements and (iii) such other certificates and documentation as the Company shall reasonably request in connection with the execution and delivery of this Agreement.
- (c) Compliance with Applicable Law. Except to the extent specifically delegated to the Company in this Agreement, the WPCA shall comply with all Applicable Law. The Company shall assist the WPCA in complying with all Applicable Law known to the Company. The WPCA shall be responsible for any fines or penalties arising out of noncompliance by the WPCA with Applicable Law except for any fines or penalties which result from either; (i) the Company's noncompliance or breach of the terms and provisions of this Agreement, or (ii) the negligent or willful acts or omissions of the Company.
- (d) Taxes. The WPCA shall be responsible for all real estate, *ad valorem*, personal property, utility, excise, franchise, occupational, disposal, sales, and use taxes applicable to the Facilities (excluding the Company's equipment) and the services provided for under this Agreement other than taxes imposed upon the Company's income or taxes related to the Company's employees. The WPCA shall furnish a document at the Company's request relieving the Company of obligation for sales and use taxes.
- (e) Project Support. The WPCA shall permit exclusive use by the Company, without charge, of all equipment, structures, and facilities under the Town's ownership assigned to the Facilities or as specified in future equipment or construction specifications. The WPCA, at its sole discretion, may provide the Company with the temporary use of any Town equipment so that the Company may discharge its obligations under this Agreement in the most cost-effective manner. The WPCA shall provide the Company with information necessary to manage, operate, and maintain the Facilities.
- (f) Capital Improvements and repairs. The WPCA shall be responsible for providing all Capital Improvements and Repairs to the Facilities, including without limitation the cost of all permits, approvals, labor, materials, utilities, equipment, and supplies. As an alternative, the WPCA and the Company may enter into future agreements for the funding of specific Capital Improvements and repairs. Any loss, damage, or injury resulting directly and solely from the WPCA's failure to provide Capital Improvements and repairs when reasonable requested by the Company shall be the sole responsibility of the WPCA. The WPCA shall not hold the Company in breach of Agreement for failure to fulfill any obligation under this Agreement to the extent that such failure results directly from the WPCA's failure to provide Capital Improvements and Repairs when reasonably requested by the Company.

3.02 Company Responsibilities

- (a) Company shall be responsible for complete operation and administration of the System as detailed in the Scope of Services in Article II and Appendix B. Company shall perform all routine and non-routine operation and maintenance services required for efficient

operation and maintenance of the System. Company's obligations under this Agreement are predicated on Owner making necessary Capital Improvements to the System.

- (b) Company shall be responsible for any and all income taxes associated with or arising from the performance of the services contemplated under this Agreement. To the extent permitted by law, Owner shall provide Company with any applicable certificates of exemption from sales tax for purchases made by Company in order to fulfill its obligations under this Agreement.
- (c) As of or prior to execution and delivery of this Agreement, the Company shall maintain (i) a copy of all Company Authorization necessary to perform its obligations under this Agreement; (ii) copies of certificates of insurance; (iii) certificates of incumbency for the officers of the Company executing this Agreement; and (iv) such other certificates and documentation as the WPCA shall reasonable request in connection with the execution and delivery of this Agreement.
- (d) Company shall also be responsible for:
 - Labor and benefits
 - Safety equipment and related supplies
 - Cell phone communication and related supplies
 - Transportation (including fuel) to/from/around Town
 - Costs for utilizing existing spare part(s) when it is used to replace the existing part as a result of a negligence or misconduct by the Company.

ARTICLE IV – INDEMNIFICATION

4.01 Company Indemnification

Company shall indemnify, defend and hold the Owner and its officials, employees, and agents (collectively, the "Owner Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Owner Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Company; or (b) the negligence or willful misconduct of Company, its agents, employees, and/or subcontractors arising out of the performance of this Agreement or the Services; provided, however, as to any of the foregoing, Company shall not be liable to the Owner Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Owner Indemnified Parties.

4.02 Owner Indemnification

Owner shall indemnify, defend and hold the Company and its officers, directors, employees, and agents (collectively, the "Company Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims demands, liens, encumbrances,

judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Company Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Owner; or (b) the negligence or willful misconduct of Owner, its officials, agents, employees, and/or contractors arising out of this Agreement or the Services; or (c) an Environmental Claim, any discharge, dispersal, release, or escape from the System, any flow into or upon land, the atmosphere or any water course or body of water; or (d) any violation by the Owner of any Applicable Law prior to the first date of Term of this Agreement; provided, however, that as to any of the foregoing, Owner shall not be liable to the Company Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Company Indemnified Parties.

(a) Notwithstanding anything to the contrary set forth in this Agreement, the Owner and the Company acknowledge and agree that the following components of the System are in need of repair as of the date hereof:

Black Bridge Station

Alarms in off position

Well inspection and rehab

Pinemeadow Station

Well inspection and rehab

Distribution system – gate valves not showing on maps

(b) The Owner agrees that the repairs and / or replacement of the system components listed above constitute Non-Routine Services pursuant to paragraph 2.06 above. The Company shall prepare cost estimates and/or obtain bids for performing such repairs and/or replacement for the Owner's review and approval. Upon such approval, the Company, or its contractors, shall complete said repairs and/or replacements.

(c.) The Owner acknowledges and agrees that the Company is not liable or responsible for the condition of the System components set forth above or for any damages, fines, penalties or any other liabilities arising from or related to said System components. Owner shall indemnify, defend and hold the Company and its officers, directors, employees, agents and contractors harmless from and against any and all of said damages, fines, penalties or other liabilities, including without limitation reasonable attorneys' fees.

In the event that both the Owner and Company are negligent, then in such event each party shall be responsible the portion of the liability equal to its comparative share of the total negligence.

4.03 Hazardous Materials

Owner acknowledges that except as specifically stated in this Agreement, Company has no responsibility as a generator, treater, storer or disposer of hazardous or toxic substances found or identified at a site. Owner agrees to defend, indemnify and hold harmless Company, from any claim or liability, arising out of Company's performance of work under this Agreement and made or brought against Company for

any actual or threatened environmental pollution or contamination except to the extent that Company has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by Company in defense of such claim.

4.04 Consequential Damages

Neither party shall be liable for any special, consequential, punitive, indirect or incidental damages relating in any way to this Agreement or the System, loss of actual or anticipate profits or revenue or cost of claims of customers.

4.05 Limitation of Liability

Liability of Company to Owner under this Agreement shall be limited to the amount of the Annual Fee plus proceeds of applicable insurance. The foregoing limitation of liability shall not apply to claims of indemnification from third parties.

4.06 Right of Offset

In the event the WPCA is entitled to indemnification pursuant to this Agreement or in the event fines, penalties or any other amounts are owed but unpaid by the Company pursuant to any provision of this Agreement, the WPCA shall have the right, subject to a reasonable opportunity to cure, to offset the amount of any such indemnity claim against amounts then owing or to become owing by the WPCA to the Company under this Agreement or otherwise. The rights by the WPCA to offset under this Section shall be in addition to and not in limitation of any other rights it may have.

ARTICLE V – INSURANCE

5.01 Company Insurance

Company shall obtain and maintain at its expense the insurance coverage's described in Appendix D.

5.02 Owner's Insurance

Owner shall procure and maintain fire, property, and boiler and machinery insurance, on an all risk basis, on the System, in amounts equal to 100% of the value of their repair or replacement. The Owner agrees to provide the Company a waiver of subrogation on behalf of itself and its insurance carriers.

ARTICLE VI – COMPENSATION

6.01 Base Compensation

The initial year base compensation for the operation and maintenance of the System shall be as set forth in Appendix C.

6.02 Annual Adjustments to Base Compensation

The base compensation for the operation and maintenance of the System shall be adjusted annually in accordance with the terms of Appendix C.

6.03 Payment Terms

The Owner shall make monthly payments on the first day of each month for which services will be rendered in an amount equal to 1/12 of the base compensation. Company shall invoice the Owner in arrears for all other amounts due, if any. Partial months shall be prorated. Such invoices shall be due and payable within forty-five (45) days from the date received by the Owner. The Owner will review Company's invoices, and if the Owner questions any items, the Owner shall notify Company within fifteen (15) days of receipt of the invoice. The Company shall respond to the WPCA's notice of deficiency within forty-five (45) days after receipt. If the parties fail to agree, either party may by written notice to the other party, have the amounts due determined by the dispute resolution process as provided in Section 11.02. All amounts not in dispute will be paid when due. Payment not made within thirty days shall be subject to interest at 1 ½%.

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, at the rates set forth in Appendix C.

6.04 Public Health and Safety Emergencies

Company may, without the Owner's prior written approval, undertake emergency repairs or actions which may subsequently be considered changes in the scope of services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as possible of its actions and its intention to request additional compensation for such emergency services. The Owner shall promptly review Company's request and upon agreement that there was a change in scope of services (which agreement shall not be withheld without good and sufficient cause); the Owner shall provide such compensation.

ARTICLE VII – TERMINATION

7.01 Termination

Either party may terminate this Agreement pursuant to the terms of Section 7.02 hereof.

In the event of termination of this Agreement, the WPCA shall, upon invoice by the Company, pay the balances of any outstanding accounts to include but not be limited to the Base Compensation for services rendered through the termination date, cost of verifiable Non-Routine Services performed by the Company, and any other amounts that are owed but unpaid pursuant to the provisions of this Agreement.

7.02 Events of Default

(a) Events of Default by the Company. The occurrence of any of the events set forth below, in each case unless caused by Uncontrollable Circumstances shall constitute an Event of Default of this Agreement by the Company.

- Entry into bankruptcy, reorganization or similar proceeding of the Company or its successor for the readjustment, arrangement, composition or adjustment of any debt under the United States Bankruptcy Code, as amended, or any part thereof, or under any other laws, rules or regulations, whether state or federal, for the release of debtors, now or hereafter existing.
- Assignment by the Company or its successor for the benefit of any of its creditors.
- If any representations or warranty made in writing by or on behalf of the Company in this Agreement or in any certificate or other document delivered pursuant hereto or otherwise in connection with any of the transactions contemplated hereby, shall prove to have been false, misleading or incorrect in any material respect when made or deemed made.
- Failure to pay any final and un-appealable fine, if and to the extent such fine is the result of the Company's failure to operate the Facilities in accordance with the terms of this Agreement, within the time period prescribed by such authority.
- Placement of a lien or other encumbrance on the Facilities which is not discharged by the Company within five (5) days of notice demanding such by the WPCA, provided such lien was filed on account of any action by the Company or anyone acting on the Company's behalf.
- Failure to otherwise comply with any of the material covenants or provisions under this Agreement.

(b) Events of Default by the WPCA. The occurrence of any of the events set forth below, in each case unless caused by Uncontrollable Circumstances shall constitute an Event of Default of this Agreement by the WPCA.

- If any representations or warranty made in writing by or on behalf of the WPCA in this Agreement or in any certificate or other document delivered pursuant hereto or otherwise in connection with any of the transactions contemplated hereby, shall prove to have been false, misleading or incorrect in any material respect when made or deemed made.
- Failure to pay any uncontested or undisputed fines, if and to the extent such fines are the WPCA's responsibility pursuant to the terms of this Agreement, within sixty (60) days of demand therefore by such authority.
- Failure to pay any amount due and owing to the Company pursuant to the terms of this Agreement.
- Failure to otherwise comply with any of the material covenants or provision of this Agreement.

- (c) Notice of Event of Default. Any party may declare such Event of Default by delivery of notice to the breaching party, describing the Event of Default and describing, if the non-breaching party so desires, the remedies it shall seek in connection with such Event of Default. In the Event of Default of this Agreement the non-breaching party must provide notice of the Event of Default to the breaching party, identifying the specific nature of the breach, and the breaching party in such instances shall have a period of thirty (30) days following receipt of such notice to cure the Event of Default, or reasonable additional time if a default cannot be cured within thirty (30) days and the defaulting party is diligently pursuing its cure.
- (d) Remedies. Upon the occurrence of an Event of Default by either the Company or the WPCA, each party shall have all those rights and remedies allowed by Applicable Law in equity, including but not limited to, the right to terminate this Agreement in accordance with the terms herein.

7.03 Conditions of System upon Termination

One year prior to the expiration of the Term, the Company and the WPCA shall conduct an exit review to determine whether:

- (a) All necessary maintenance has been undertaken,
- (b) The System is operating in compliance with Applicable Law, provided however, that
 - The raw water supply is within treatment capabilities of the well houses and
 - The WPCA has completed all Capital Improvements and Repairs required or requested by the Company to maintain the Facilities in compliance with Applicable Law, and
- (c) The System is in a condition commensurate with the age of structure and equipment, including normal wear and tear.

If such exit review establishes that the foregoing requirements have not been satisfied as a result of the Company's failure to comply with its maintenance obligations hereunder, the Company shall at its sole cost, make all necessary repairs to bring the System into compliance with such requirements. In the event that the Company does not make such repairs, the WPCA shall have the right to offset any remaining monthly Base Compensation for the cost of such repairs in accordance with Section 5.08.

7.04 Termination of Agreement due to sale of Water System

In addition to the provisions set forth in Section 7.02, the Owner can terminate this agreement if it is selling the System or its assets by giving 60 day notice to the Company in the manner described in 10.01. The Company agrees to fully cooperate in any such transfer by providing all necessary records and materials as may be required by Owner to consummate said sale.

ARTICLE VIII – ASSIGNMENT AND SUBCONTRACTING

8.01 Assignment

Except as otherwise provided in this Agreement, neither party shall assign its rights, nor secure the assumption of its obligations under this Agreement, in whole or in part, without the prior written consent of the other party. The Owner shall have the right to withhold consent if it has reasonable grounds to believe that the assignee will not be able to fulfill the scope of services requirements. This Agreement shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.02 Subcontracting

Company may subcontract work under this Agreement to any third party with the approval of the Owner. Such approval shall not be unreasonable withheld.

ARTICLE IX – GOVERNING LAW AND DISPUTE RESOLUTION

9.01 Governing Law

This Agreement shall be governed by and construed in accordance with the laws (and not the rules governing the conflict of laws) of the State of Connecticut.

9.02 Dispute Resolution

In the event that a dispute arises among the parties, the disputing party shall provide the other party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive shall also be included in the notice and response. The executives shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as they reasonable deem necessary to resolve the dispute. If the executives have not resolved the dispute through good faith efforts within sixty (60) days, then, before restoring to taking the case to court, the parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both parties.

Absent mutual consent by both parties, in the event that one of the parties brings a dispute immediately to court without first following the afore-mentioned dispute resolution process, then the opposing party shall be entitled to recover reasonable attorney's fees and costs from the party initiating the litigation if either (a) the case is remanded and the parties are ordered to follow the dispute resolution process outlined herein or (b) the dispute is heard and judgment is awarded in favor of the opposing party.

Jurisdiction shall be proper in any state or federal court located in the State of Connecticut.

ARTICLE X – MISCELLANEOUS

10.01 Notices

All notices shall be in writing and shall be delivered, in person or transmitted by certified mail, return receipt requested, or national courier service providing proof of receipt, to the parties listed below. Either party may update such addresses on written notice to the other party. Notices shall be effective upon receipt.

To the Company:

The Torrington Water Company
P.O. Box 867
Torrington, CT 06790
Attention: Steven Cerruto

To the Owner:

Town of New Hartford
530 Main Street
New Hartford, CT 06057

10.02 Entire Agreement; Modifications; Schedules

The provisions of this Agreement (except captions, which are for convenience only and shall be ignored in interpreting this Agreement), including the Appendices annexed hereto shall (a) constitute the entire agreement between the parties, superseding all prior or contemporaneous negotiations, understandings or agreements and (b) not be modified in any respect except by express written agreement executed by the parties. The Appendices attached hereto are specifically made a part of this Agreement.

10.03 Notice of Litigation

In the event that the WPCA or the Company receives notice of or undertakes the defense or the prosecution of any actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the Facilities, the party receiving such notice or undertaking such defense or prosecution shall promptly give the other party notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.

10.05 Appendices

The following Appendices are attached to this Agreement and made a part hereof:

List of Appendices

Appendix A: The System

Appendix B: Scope of Services

Appendix C: Pricing

Appendix D: Insurance

Appendix E: Definitions

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

WITNESSES:





Town of New Hartford

By:

(Name)

Its:

(Title)

WITNESSES:



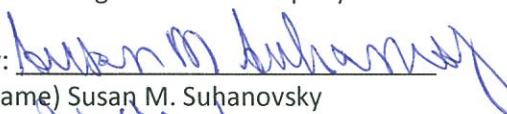

The Torrington Water Company

By:

(Name) Susan M. Suhanovsky

Its:

(Title) President

APPENDIX A THE SYSTEM

Water System

The water supply for New Hartford is provided by two separately located wells completed in the overburden aquifer along the Farmington River. The system is a community water system that serves just of 1300 people (Public Water System ID No. CT0920011). These wells are commonly referred to as the Pine Meadow Well and Black Bridge Well and are generally described below.

Pine Meadow Well

Location	South of the center of town
Well House	Yes
Pump Capacity	200 gpm at 348 FT TDH
Motor Size:	30 HP
Treatment system	Sodium hydroxide for pH control; UV disinfection
Back-up Power	Generator onsite
Safe Yield	in excess of 200 gpm

Black Bridge Well

Location	Blake Bridge Road
Well House	Yes
Pump Capacity	200 gpm at 370 FT TDH
Motor Size:	30 HP
Treatment system	Manganese filtration; chlorine disinfection
Back-up Power	Portable generator connection
Safe Yield	in excess of 200 gpm

Together the wells can supply the system in excess of 400 gpm, or 576,000 gallons per day (gpd). Present average daily demand is about 225,000 gpd. The system is permitted for a maximum daily withdrawal of 450,000 gpd.

Water supply lines serve an area slightly larger than the sewer service area and extend south on Rt. 44 to the River Run Condominium complex. The transmission and distribution system consists of approximately 61,000 feet of main ranging in size from 2 to 12 inches, about half of which is believed to have been installed prior to 1895. The distribution system includes two storage tanks, with capacities of 175,000 gallons and 490,000 gallons. The system includes two hydraulic zones. An in-line booster station serves two homes off of the low pressure zone, and a manually operated booster station at Black Bridge Well is available to boost water from the Pine Meadow well to the high pressure zone if the Black Bridge well is not running. The system includes an emergency, non-potable water supply inter-connection to the Metropolitan District Commission (MDC) Barkhamsted Aqueduct. The emergency inter-connection is currently not operational.

On-site septic systems exist in the aquifer protection zone of the wells; however, the wells are not known to have experienced any pollution problems associated with these septic systems or other anthropogenic sources.

Customer Base

The water and sewer systems currently serve approximately 440 customers, including 5 customers that receive sewer service only, 235 customers with water service only, and the remainder that receive both sewer and water service. Most customers are residential, with few commercial customers. The only large institution on the water system is one school. There are also 10 private and public fire protection customers.

APPENDIX B SCOPE OF SERVICES

1 SCOPE OF SERVICES

All services described in this section shall be considered Routine Services unless specifically stated otherwise herein.

1.1 Operations

- (a) The Company shall operate all facilities within their design capacity and capability and in accordance with all applicable laws, regulations, and permits.
- (b) The Company shall provide administrative and back-up and support professionals that it deems necessary to assure qualified, continuous management, operation and maintenance of all facilities.
- (c) The Company shall ensure a sufficient level of experienced, qualified operator staff available 24 hours per day, 7 days per week, to provide on-call, on-site contract operations services in response to alarms, reported operational problems, and/or emergencies. On-call contract operations staff shall be on-site to respond to reported operational problems within 1 hour of receiving the alarm or being notified of the operational problem or emergency.
- (d) The Company shall be responsible for the coordination of all vendors, Companies, suppliers and Company employee efforts necessary for the proper operation of the water supply wells, water distribution system, treatment facilities and customer service, billing, and collections. Whenever feasible the Company shall obtain pricing at quoted prices for such things as chemicals and lab services to ensure efficiencies.
- (e) The Company shall advise the WPCA of abnormal (i.e. not within the Company's control) conditions that: prohibit the distribution of potable water; exceed hydraulic capacities, design criteria, maximum contaminant levels (MCLs), permit parameters, or permit conditions; or violate federal, state or local regulations. The Company shall address any violations associated with such abnormal conditions within 10 days after the conditions have ceased or within a time period stipulated by appropriate regulatory agencies, and as otherwise required under Section 5.06 herein. Services provided to address abnormal conditions, as defined herein, shall be considered and paid for as Non-Routine Services.
- (f) The Company shall obtain prior, written approval from the WPCA for any shut down of the drinking water wells, water distribution system or equipment in whole or

part, excluding emergency situations. The Company shall notify the WPCA within 1 hour of determining that an emergency situation has occurred which requires shut down of any facilities in whole or part. The Company shall continue to make emergency notification to the WPCA until such time as the WPCA has verifiable responded.

1.2 Sampling and Analysis

- (a) The Company shall provide for water sample collection and submission for laboratory analysis in compliance with all applicable laws, regulations, and permits or as otherwise required by appropriate regulatory agencies. The Company shall:
- Provide timely sample collection and submission for laboratory analysis within the specified holding times; provide for follow up sample collection and submission of samples to the laboratory as required when sample results indicate a violation of permit or other applicable requirements or when results indicate conditions which are trending toward such a violation or are indicative of operational problem(s) that could lead to such a violation.
 - Assure that all water samples are collected and submitted to a laboratory certified by the State of Connecticut Department of Public Health (DPH) to perform the analytical method for the selected parameter and type of sample as required by law, regulation or permit requirements.
- (b) The Company shall perform all analyses necessary for operational and treatment/process controls and other related operational monitoring as required by appropriate regulatory agencies, regulation and/or permit requirements and accepted and prudent industry practices. All analyses performed by the Company must be in compliance with the analytical methods specified in the applicable regulations or facility permit(s). Where analyses are conducted for operational monitoring in accordance with prudent industry practices, all analyses shall be performed in a manner that meets the performance objectives of those practices.

1.3 Communications and Customer Service

- (a) The Company shall provide the designated representative of the WPCA with telephone numbers, pager numbers, and cell phone numbers by which the WPCA may contact the Company during normal business hours and during non-business hours and/or emergency conditions. The Company shall ensure that the contact numbers are up-to-date at all times.
- (b) The Company shall maintain contract and communications with local, State and Federal officials as a representative of the New Hartford Water system.
- (c) The Company shall report promptly to the WPCA any regulatory agency inspections of the facilities, including inspections that result in a notice of a facility operational

problem or deficiency or a notice of violation. The Company shall provide copies of inspection reports to the WPCA upon receipt from the inspecting agency.

- (d) The Company shall advise the WPCA of pending, proposed or future water regulatory requirements of which the Company is aware and the potential effects of these requirements on the water system.
- (e) The Company shall process all customer service inquiries received over the 860 489-4149 telephone number listed on the bill or via mail or email, including follow up field service work as required.

1.4 Reporting Responsibilities

- (a) The Company shall prepare, sign and submit all monthly operations and monitoring reports as required by appropriate regulatory agencies and applicable laws, regulations, and permits and any other reports as may be requested by the WPCA.
- (b) The Company shall report any event or permit violation to the appropriate regulatory agencies as required by applicable laws, regulations, and permits. The Company shall immediately notify the designated representative of the WPCA of a reportable event or permit violation.
- (c) The Company shall be responsible for maintaining a complaint log and shall submit the log, which shall include a description of the complaint and how and when it was handled, to the WPCA each month or as requested.
- (d) The Company will attend WPCA at the request of the WPCA.

1.5 Equipment Maintenance, Repair, and Facility Improvements

- (a) The Company shall provide routine preventative maintenance and repair of the water facilities, including equipment, buildings and grounds, consistent with accepted maintenance practices, prudent industry practices, and/or manufacturer specifications and preventive maintenance recommendations. The Company shall identify and prepare an annual maintenance program, including: the scheduling and recording of maintenance on all system components and facilities, calibration of instrumentation and meters on an annual basis and exercise of all back-up pumps, engines, generators under the authority of the WPCA. Direct costs for routine maintenance and repairs, including costs for subcontracted services and equipment, shall be invoiced to and paid for by the WPCA in accordance with Section 3.01 of the Agreement.
- (b) The Company shall submit a monthly report to the WPCA itemizing routine and non-routine maintenance and repairs performed and needed, and documenting the cost-effectiveness of the maintenance work vs. replacement cost as related to the decisions made by the Company. Individual maintenance, repair, or replacement

tasks will remain listed on the WPCA's monthly meeting agenda until the WPCA is satisfied that the task(s) have been completed.

- (c) The Company shall advise the WPCA of capital improvements that may be needed for the water supply wells, treatment facilities and water distribution system. Capital improvements are defined as individual items that exceed \$2,500.00 in value and may include: major rehabilitation or overhaul of equipment, replacement equipment, new equipment or improvements required for the operation of the facilities in accordance with permit requirements, and regulation changes. The Company shall submit an annual report to the WPCA of recommendations for capital improvements, if any, required to enable the Company to comply with all applicable laws, regulations, and permits.
- (d) The Company shall implement cost containment/reduction measures where applicable as determined by mutual agreement between the Parties.
- (e) The Company shall assist the WPCA with enforcement of any existing equipment warranties and guarantees and maintain all warranties on any new equipment purchased after the contract is signed and implemented. The WPCA will maintain any existing guarantees and warranties for the mutual benefit of the WPCA and Company.

1.6 Housekeeping, Security, Safety and Other Requirements

- (a) The Company shall perform housekeeping functions at each of the facilities as required to maintain buildings, grounds, and process units in a clean, safe and orderly condition.
- (b) If requested by the WPCA and agreed to by the parties, the Company shall provide seasonal housekeeping functions to ensure access to the sites, including mowing, tree pruning, plowing, snow blowing and/or shoveling at and in the water pumping stations. Direct costs associated with seasonal housekeeping functions, including costs for subcontracted services, shall be invoiced to and paid for by the WPCA.
- (c) The Company shall secure all systems, facilities and property within the limits of existing security devices as provided by the WPCA. The Company shall notify the WPCA of any breach of security within 1 hour of determining such a breach has occurred and shall assess the facilities for breach of security impact(s) and notify the WPCA of any impact(s) as soon as such determination is made.

Services provided under this paragraph shall be considered and paid for as Non-routine Services.

- (d) The Company shall be responsible for responding to all water Call-Before-You-Dig requests and locating and marking the water utilities as required. Services provided under this paragraph shall be considered and paid for as Non-routine Services.

- (e) The contract operator shall be responsible for adhering to the Town's Spill Prevention, Control and Countermeasures (SPCC) Plan.

1.7 Water Supply, Treatment and Distribution System Services

- (a) The Company shall provide a sufficient level of experienced, certified operator(s) to operate the water supply wells, treatment facilities and distribution system, including minimum on-site coverage requirements, in accordance with all applicable laws, regulations, and permits.
- (b) The Company shall provide sufficient staff to read the water meters during normal business hours and to prepare documentation for quarterly billing.
- (c) The Company shall address any routine calls with regard to problems associated with installed meters or other aspects of the water system. Services provided under this paragraph shall be considered and paid for as Non-Routine Services.
- (d) The Company shall perform water distribution system maintenance to include the annual flushing of all existing fire hydrants. Each hydrant shall be generally inspected for adequate operation and maintenance. The Company shall also exercise gate valves in the system to ensure proper operation. Annual flushing and inspection shall be considered and paid for as Non-Routine Services.
- (e) The Company shall inspect and test new service connections to the water distribution system for conformance with the Rules and Regulations of the Town of New Hartford WPCA. Services provided under this paragraph shall be considered and paid for as Non-routine Services.
- (f) The Company shall provide the WPCA with monthly water consumption reports and distribution system leakage reports. If requested by the WPCA, the Company shall provide the WPCA information with regard to water conservation goal setting and reporting and prepare an annual conservation report for the WPCA. Services provided to prepare the annual conservation report shall be considered and paid for as Non-routine Services.
- (g) The Company shall prepare the annual water quality report known as a Consumer Confidence Report (CCR) for distribution to all water customers. The Company shall obtain WPCA approval of the final document and incorporate any changes. The Company shall provide copies for the document and include in the water bill mailing or mail separately to water customers. Services provided to prepare the CCR shall be considered and paid for as Non-routine Services.

1.8 Billing and Collections

The Company shall provide billing and collections for both water and sewer system customers since the sewer usage fees are based on either water usage or in the case of a non-water customer, a flat fee.

- (a) The Company shall provide operation, management and oversight of all applicable customer service and billing functions, including:
 - Preparation and mailing of quarterly bills based on water meter readings collected by the Company and in accordance with the Town's WPCA approved water and sewer rates.
 - Bill payments to be processed through the Company's mailing service.
 - Accounting for payment status for each account, including sending payment reminders to past due accounts.
 - Postage costs for bills, reminder notices, and final notices.
- (b) The Company shall provide collections services to the WPCA's water and sewer system, as specified below:
 - Review all delinquent accounts and determine which accounts are eligible for collection.
 - For those accounts that are eligible for shut off, issuance of collection letters, as applicable, including:
 - Transfer Letters – to transfer delinquent amounts from one active account to another or from a final billed account to an active account.
 - Reminder Notice Letters – To remind customers that bill amounts are past due and are subject to further collection actions.
 - Shut water off for non-payment.
 - Offer to Provide Service in Tenant's Name Letters – To offer to provide service in a tenant's name, in the event the owner is delinquent in paying the account.
- (c) The Company shall process "bad" checks for a fee. Costs associated with processing "services" shall be billed to and paid by the customer.

APPENDIX C PRICING

Base Compensation in first Agreement year : \$97,500.

Annual Adjustments: The Base Compensation shall be adjusted in the second year by 2% increase. This will bring the base compensation in the second year to \$99,450.

Non-Routine Services:

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis. Materials and subcontractors will be invoiced to Owner by Company at cost, plus 5% to reimburse Company for administrative expenses. Hourly rates for Non-Routine Services performed shall be subject to an annual adjustment as described in the paragraph above and shall be as follows for year 1 of the Agreement: The application of the hourly rates for Non-Routine Services will be for the actual hours provided in the provision of the service (excluding travel time), provided, however, that Non-Routine Services provided outside of the normal work-week shall be subject to a two (2) hour minimum charge.

Water System – Hourly Rates for Non-Routine Services:

Operations Manager	\$85.00/hour
Plant Operator	\$85.00/hour

Billing and Collection – Hourly Rates for Non-Routine Services:

Operations / Customer Service Personnel	\$ 55.00/hour
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APPENDIX D INSURANCE

The Company at its expense shall procure and maintain during the term of this Agreement the following insurance:

- I. Insurance Types and Limits.
 1. Commercial General Liability Insurance – Commercial General Liability Insurance shall be provided by the Contractor in the following amounts: One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) in the aggregate. This policy should be written on an occurrence basis on ISO form (CG 00 01 12 07 or CG 00 01 10 01) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products/completed operations (3 years beyond completion and acceptance), personal and advertising liability, and liability assumed under insured contract (including tort liability of another assumed in a business contract). There shall be no modification limiting the scope of coverage for liability arising from explosion, collapse or underground property damage.
 2. Comprehensive Automobile Liability Coverage. A policy to provide coverage against claims of personal injury or property damage covering all owned, leased, non-owned and hired vehicles used in the performance of work under this Agreement with a minimum limit per occurrence of \$1,000,000 for personal injury and property damage.
 3. Workers Compensation Insurance. A policy to provide coverage as required by State law and Employers Liability coverage in the amount of \$500,000 per occurrence.
 4. Umbrella Liability Coverage. A policy to provide coverage excess of General Liability and Automobile Liability in the amount of \$5,000,000. The Company may satisfy this requirement by providing total limits under a combination of the primary and umbrella policies.
- II. Insurance Certification. All policies of liability insurance required to be maintained by the Company shall:
 1. Provide that coverage shall not be canceled or non-renewed until at least thirty (30) days prior notice has been given, except only ten (10) days' notice shall be provided for non-payment of premium.

Coverage shall annually provide Owner a certificate of insurance as evidence of the above coverage and include Owner as an additional insured except on workers compensation.

1. General Requirements

- a. Contractor must submit evidence of equivalent insurance coverage as appropriate for the work being performed from each of its subcontractors before their work commences.
- b. All insurance policies must be endorsed to provide that the insurer will give Contractor at least thirty (30) days written notice of cancellation.
- c. Contractor will furnish the Owner Certificates of Insurance as evidence of the required coverage.
- d. All insurance policies, except for Workers' Compensation, shall include Owner, and its officers, directors, agents and employees as additional insured's (collectively "Indemnities") covered for liability arising out of any ongoing and completed operations.
- e. All insurance policies shall contain express waivers by the insurance company of its rights of subrogation against the Indemnities
- f. All insurance policies shall be occurrence based.

APPENDIX E DEFINITIONS

"Applicable Law" means any applicable statute, law, constitution, charter, ordinance, resolution, judgment, order, permit, industry standard or code, decree, rule, regulation, directive, interpretation, standard or similar binding authority, which has been enacted, promulgated, issued or enforced by any judicial, legislative, administrative, municipal or other governmental authority having jurisdiction as of the date of execution of this Agreement. A change in Applicable Law means the enactment, adoption promulgation, modification, repeal or change of any Applicable Law which establishes new requirements or changes the requirements with respect to the operation or maintenance of the System or otherwise impacts a party's ability or cost of performance of its obligations under this Agreement. A change in Applicable Law shall include any change in any sales, use, and real property, ad valorem or excise tax or any tax paid by or on behalf of the Company which is imposed by the United States or any other taxing authority, or any political subdivision thereof with respect to the Facilities or the performance of the Company's obligation hereunder, but shall not include taxes based on or measured by net income, any unincorporated business, incorporated business, payroll, franchise or employment taxes.

"Capital Improvement" means all costs related to the construction, installation, repair or replacement of any component of the System in excess of \$2,500.00 per item.

"Non-Routine Services" means additional operation and maintenance, including the cost of labor, arts and subcontractors, considered non-routine under this Agreement or required as a result of Uncontrollable Circumstances.

"Services" means those activities provided by Company to Owner as described in Appendix B.

"Uncontrollable Circumstances" means causes beyond either party's reasonable control including, but not limited to, Acts of God, floods, quarantine restrictions, riots, strikes other than by employees of Company, commercial impossibility, failures of utilities, increases in tariff rates for electric and gas utilities, hurricanes, landslides, lightning, earthquakes, drought, epidemics, fires, explosions, bombings, casualties, acts of civil or military authority, sabotage, vandalism, acts of a public enemy or terrorists, changes in Applicable Law, receipt of Non-Specification Influent, damage to the system caused by third parties, or other events or circumstances beyond the control of the party obligated to perform, whether such other causes are related or unrelated, similar or dissimilar, to any of the foregoing.