

**THE
WATERFORD / EAST LYME
WASTEWATER COLLECTION AND CONVEYANCE AGREEMENT**

DATED: _____, 2022

TABLE OF CONTENTS
FOR THE
WATERFORD / EAST LYME
WASTEWATER COLLECTION AND CONVEYANCE AGREEMENT

An Agreement between the Town of Waterford and the Town of East Lyme hereinafter referenced as "Parties" regarding the collection and conveyance of wastewater from these towns to the City of New London's Thomas E. Piacenti Regional Water Pollution Control Facility.

PART I – INTRODUCTION

SECTION	PAGE
1. Recitals	1
2. Definitions	
Capital Account	1
Capital Improvements	2
Municipalities	2
Parties	2
Piacenti Facility	2
Planned Capital Project	2
Third Parties	2
Towns	2
3. Description of the Shared Integrated Collection and Conveyance and Pumping System	
A) Shared Infrastructure of the Parties	
1. Waterford's Shared Collection and Conveyance System	2
2. East Lyme's Collection and Conveyance System	3
B) Current and Future Sharing of Parties' Infrastructure with Non-Parties	
1. Current Non-Party Users of Parties' Infrastructure	
Point O'Woods	3
2. Current Non-Parties with Rights to Use Parties' Infrastructure	
a. The Miami Beach Association and The Miami Beach Association Water Pollution Control Authority	4
b. Old Lyme Shores Beach Association and The Old Lyme Shores Beach Association Water Pollution Control Authority	4
c. The Old Colony Beach Club Association and The Old Colony Beach Club Association Water Pollution Control Authority	4

SECTION	PAGE
d. Town of Old Lyme, a municipal corporation, and the Old Lyme Water Pollution Control Authority 3. Potential Future Non-Party Use of Parties' Infrastructure..	4 4
<u>PART II – METERING FLOW AND WASTEWATER QUALITY</u>	
1. Measurement of Flows 2. Standards of Flows/Permits/Wastewater Quality.....	5 5
<u>PART III – BILLING</u>	
1. Billing	5
<u>PART IV – EMERGENCY REPAIRS</u>	
1. Emergency Repairs	6
<u>PART V – SHARED RESPONSIBILITIES FOR CAPITAL AND OPERATION AND MAINTENANCE</u>	
1. Town of Waterford to Serve as Custodian of Capital Account 2. Sharing Costs for Capital Improvements and Operation and Maintenance for the Use of Waterford's Shared Infrastructure 3. Coordination with New London/Waterford/East Lyme Wastewater Collection, Conveyance and Treatment Agreement	6 7 8
<u>PART VI – TERM, REOPENING AND TERMINATION OF AGREEMENT</u>	
1. Term of Agreement 2. Procedure for Termination of the Agreement	9 9
<u>PART VII – OTHER PROVISIONS</u>	
1. Dispute Resolution 2. Right to Access Records 3. Reservation of Rights 4. Supersedes the 1988 Agreement and any Amendment thereto 5. Amendments and Modifications only in Writing 6. Choice of Connecticut Law	9 10 10 10 10 10

SECTION**PAGE**

7.	Severability Clause	10
8.	No Third-Party Rights	11
9.	Singular/Plural Usage	11
10.	Listing of Names and Addresses for Notices	11

PART VIII – APPENDICES

Appendix A	Capital Accounts
Appendix B	Waterford's Shared Collection and Conveyance System
Appendix C	New London/Old Lyme Beaches Agreement
Appendix D	East Lyme/Beach Associations Agreement

PART I – INTRODUCTION

SECTION 1 – RECITALS

WHEREAS, the City of New London, the Town of Waterford and the Town of East Lyme entered into a 30-year Agreement (hereinafter referred to as the “Tri-Town Agreement”) dated October 15, 2021 regarding the collection and conveyance of wastewater from the Towns to a wastewater treatment plant and related facilities located in the City of New London; and the shared responsibility for the annual operation and repair of said facilities under the Tri-Town Agreement; and

WHEREAS, Waterford is allocated 30% of the daily treatment capacity of the Piacenti Facility and East Lyme is allocated 15% of the Piacenti Facility’s treatment capacity; and

WHEREAS, the purpose of this Agreement (hereinafter referred to as the “Two-Town Agreement”) is to continue the mutually beneficial collaboration between the Towns of Waterford and East Lyme which have developed an interconnected wastewater collection and conveyance system. The collection and conveyance facilities located in each community are owned by their respective communities. This Two-Town Agreement establishes the terms, conditions and respective rights and responsibilities of Waterford and East Lyme regarding the operation and shared use of this interconnected system.

WHEREAS, transmission of wastewater from East Lyme to said Piacenti Facility will require the use of interceptor sewer mains and other wastewater conveyance systems located in Waterford, and

WHEREAS, East Lyme and Waterford desire to set forth their respective rights and obligations regarding the use and maintenance of said facilities,

WHEREAS, both Parties acknowledge New London granted up to 300,000 gallons per day of treatment capacity in a 2018 Agreement with the Beach Associations referenced herein which will be additional flow through both East Lyme and Waterford above and beyond each of the Town’s allotted capacity,

WHEREAS, each Party recognizes that an order from the State of Connecticut directed at either Town might require certain terms of this Agreement to be revisited.

NOW THEREFORE, the Parties agree to the following:

For the purpose of this Agreement, the following terms shall have the meaning set forth below:

SECTION 2 – DEFINITIONS

“Capital Account” means an account which may be established separately for each of the Parties and maintained by the Town of Waterford which will reflect the accumulated capital payments, interest accrued and reserves created by each Party and not yet expended for Capital

Improvements unrelated to the shared facilities referenced in the October 15, 2021 Tri-Town Agreement. The beginning balances for each Party at the time of the signing of this Agreement are attached as **Appendix A** 'Beginning Balances of Capital Account'.

"Capital Improvements" means the acquisition, construction, reconstruction, rehabilitation, demolition or replacement of certain shared infrastructure described on a map attached hereto as **Appendix B** under terms and conditions as detailed in Part V herein.

"Municipalities" means the geographical boundaries of Waterford and East Lyme; "municipality" means any one or more of the municipalities, as the context may dictate.

"Parties" means the Town of Waterford (hereinafter called "Waterford") represented by Waterford Utility Commission, and the Town of East Lyme (hereinafter called "East Lyme") represented by the East Lyme Water & Sewer Commission.

"Piacenti Facility", means the City of New London's existing treatment plant, known as the "Thomas E. Piacenti Regional Water Pollution Control Facility".

"Planned Capital Project" means a capital improvement project that Waterford has planned well in advance allowing Waterford ample time to notify East Lyme of the cost and timing of the project.

"Third Party(ies)" means any town, city, or entity whether public, quasi-public, or private, located outside of the jurisdictional boundaries of the Town of Waterford, and/ or the Town of East Lyme.

"Towns" means Waterford and East Lyme; "town" means either of the towns, as the context may dictate.

SECTION 3 – DESCRIPTION OF THE SHARED INTEGRATED COLLECTION AND CONVEYANCE AND PUMPING SYSTEM

A) SHARED INFRASTRUCTURE OF THE PARTIES

1. WATERFORD'S SHARED COLLECTION AND CONVEYANCE SYSTEM

Waterford's existing interceptor sewers, force mains and other directly related facilities located as follows: beginning at the intersection of Gallup Lane and Rope Ferry Road, extending in a general easterly direction to the Evergreen Pump Station (hereinafter "Evergreen PS"). The collection and conveyance component of this system is shared by East Lyme and Waterford. Said wastewater conveyance system is more particularly described in a map or plan or report entitled "Map Showing the General Location of Selected Wastewater Conveyance Facilities in the Town of Waterford Comprised of East Lyme Sewer Main and Waterford Wastewater Conveyance System Date: August 23, 1988 Not to Scale by Consulting Environmental Engineers, Inc." See **Appendix B** 'Waterford's Shared Collection and Conveyance System'. Ownership and title to the sewers and related facilities located in Waterford is in the Town of Waterford.

2. EAST LYME'S COLLECTION AND CONVEYANCE SYSTEM

For purposes of this Agreement, East Lyme's wastewater conveyance system shall consist of a "force main" and related facilities in the Town of Waterford, which are connected to the westerly terminus of Waterford's existing wastewater conveyance system described above. For purposes of this agreement, such East Lyme's "force main" means that pipe and related facilities in Waterford located as follows: beginning at the east bank of the Niantic River at land now or formerly of John Wadsworth, thence extending in a general easterly direction along Avenue "B" to its intersection with Fourth Street, thence extending in a general southerly direction along Fourth Street to its intersection with Mago Point Way extending in a westerly direction to Rope Ferry Road, thence extending in a general easterly direction along Rope Ferry Road to its intersection with Gallup Lane, being the westerly terminus of Waterford's wastewater conveyance system described herein. Said force main is more particularly described in a map or plan or report entitled "Map Showing the General Location of Selected Wastewater Conveyance Facilities in the Town of Waterford Comprised of East Lyme Sewer Main and Waterford Wastewater Conveyance System Date: August 23, 1988 Not to Scale Consulting Environmental Engineers, Inc." See Appendix B.

The design, construction and installation of East Lyme's force main described herein was at East Lyme's sole cost and expense. The force main meets the construction and performance standards of equivalent facilities performed under the jurisdiction of the Waterford Water Pollution Control Authority (now Utility Commission).

Upon completion of the construction of the force main referenced above and upon Waterford's acceptance of said main, ownership and title to the force main described above was vested in Waterford. East Lyme has the exclusive use of this force main.

After the completion of the connection between Waterford's wastewater conveyance system and East Lyme's force main, Waterford accepted said force main and Waterford assumes the responsibility for maintaining, repairing and operating the Waterford shared wastewater collection and conveyance system and the East Lyme "force main" described above. The cost of capital maintaining, repairing and operating the shared wastewater collection and conveyance system described in Paragraph 1 above (except for the Evergreen PS) shall be apportioned between the Towns based on proportional use of said system. The cost of capital, maintaining, repairing and operating the East Lyme force main shall be paid by East Lyme. The maintaining, repairing, operating, and capital cost sharing for the use of the Evergreen PS is addressed in the Tri-Town Agreement of October 15, 2021.

B) CURRENT AND FUTURE SHARING OF PARTIES' INFRASTRUCTURE WITH NON-PARTIES

1. CURRENT NON-PARTY USERS OF PARTIES' INFRASTRUCTURE

Point O' Woods

2. CURRENT NON-PARTIES WITH RIGHTS TO USE PARTIES' INFRASTRUCTURE

- a. The Miami Beach Association and The Miami Beach Association Water Pollution Control Authority*
- b. Old Lyme Shores Beach Association and The Old Lyme Shores Beach Association Water Pollution Control Authority*
- c. The Old Colony Beach Club Association and The Old Colony Beach Club Association Water Pollution Control Authority*
- d. Town of Old Lyme, a municipal corporation, and Old Lyme Water Pollution Control Authority

* Pursuant to July 24, 2018 Agreement between East Lyme and Beach Associations.

3. POTENTIAL FUTURE NON-PARTY USE OF PARTIES' INFRASTRUCTURE

All Parties affected by any proposed additional expansion of the use of this interconnected wastewater collection and conveyance infrastructure by Third Parties located outside of the Parties' territorial limits must agree in advance to the terms and conditions associated with such additional sharing of a Parties' infrastructure.

If East Lyme seeks to create additional Third Party customers who will be using Waterford's infrastructure beyond those with contractual rights as of the date of this Agreement, it shall secure approval for such use from Waterford according to the following terms:

If East Lyme financially benefits from such additional use beyond the proportional contributions for O&M based on flow described in Part II, Section 1, it will share such benefit with Waterford in proportion to the respective depreciated value of East Lyme's and Waterford's collection and conveyance systems affected by such additional use. For instance if East Lyme receives XX dollars for the intended flow use of its transmission system from any proposed new customer it shall share said revenue proportionally with Waterford based on the depreciated value of each Town's original investment in the infrastructure being used by said new customers. Within the first three years of the Agreement, the Parties will come to an agreement regarding the dollar value of each communities' depreciated infrastructure affected by any new use so as to be able to calculate the allocation of the benefits to each of any additional transmission capacity revenue.

PART II – METERING FLOW AND WASTEWATER QUALITY

SECTION 1 – MEASUREMENT OF FLOWS

East Lyme has installed and will maintain a flow measuring device at the Niantic River Pump Station (hereinafter “Niantic River PS”) which meets mutually acceptable specifications to measure, record and transmit the volume of wastewater flow from East Lyme to Waterford.

Waterford has installed and will maintain flow measuring devices at Mago Point and the Evergreen PS which meet mutually acceptable standards to measure, record and transmit the combined volume of wastewater flow from East Lyme through the portion of Waterford’s collection and conveyance system covered by this Agreement. The flow measuring device at Mago Point will serve as a backup for the meter at the Niantic River PS. The respective rights and responsibilities for meters in Waterford and East Lyme which calculate flow from East Lyme are articulated in the Tri-Town Agreement and adopted here by reference.

SECTION 2 – STANDARDS OF FLOWS/PERMITS/WASTEWATER QUALITY

The Waterford Utility Commission will promulgate and maintain rules and regulations consistent with state and federal law and the City’s wastewater treatment guidelines with respect to the operation of the wastewater conveyance system and sewer main and related facilities. East Lyme will adopt and enforce the same rules and regulations and any amendments thereto within the boundaries of East Lyme. If either town proposes to adopt new rules and regulations which affect the wastewater conveyance system and sewer main and related facilities and are more stringent than those required by state and federal and the city’s guidelines, the respective Water Pollution Control Authorities of each town shall agree upon the necessity and terms of such rules and regulations before they are adopted, except that Waterford may apply and enforce any such more stringent rules and regulations in Waterford before agreement with East Lyme.

Waterford and East Lyme have committed to New London and one another the collection and conveyance of wastewater to New London which meets the requirements detailed in the Tri-Town Agreement which commitment is adapted herein by reference.

East Lyme shall be responsible for assuring that the strength and character of the wastewater discharged into the Waterford sewer system meets the requirements of the Waterford Sewer Use and Sewage Disposal Ordinance. More particularly, East Lyme shall make provisions for odor and corrosion control to assure that the wastewater discharge into Waterford’s infrastructure has a daily average hydrogen sulfide concentration of less than 5 ppm (vapor) and a peak concentration of not more than 15 ppm (vapor). East Lyme shall provide adequate facilities for treatment, testing and remote monitoring consistent with Waterford’s standards and practices to assure that the hydrogen sulfide limitations are met.

PART III – BILLING

The parties agree to collaboratively develop, over the next three years, a transparent billing protocol which meets the diverse needs of both communities. The current billing method will be

used in the interim. Waterford will provide timely responses to any questions East Lyme has about the basis of the existing and proposed billing protocols.

PART IV – EMERGENCY REPAIRS

SECTION 1 – EMERGENCY REPAIRS

The Town of Waterford may make such emergency repairs to the shared collection and conveyance infrastructure covered by this Agreement as are necessitated from time to time for operational reasons. The cost of said emergency repairs shall be paid out of the Capital Accounts for each Town pursuant to the percentages described in Part V, Section 2 below. The Town of Waterford may make emergency repairs without a prior agreement between Waterford and East Lyme.

PART V – SHARED RESPONSIBILITIES FOR CAPITAL AND OPERATION AND MAINTENANCE

SECTION 1 – TOWN OF WATERFORD TO SERVE AS CUSTODIAN OF CAPITAL ACCOUNT

A separate ledger for each of the Capital Accounts will be maintained by Waterford on behalf of both Waterford and East Lyme. The funds in the Capital Accounts shall be invested by Waterford in the same instruments and with the same prudence as is required by State statute and regulation for the investment of municipal funds generally. All income from the investment of the Capital Accounts shall be credited to each municipality's Capital Account in the same proportion as the respective balances of the Capital Account of each municipality at the time the income was accrued. An accounting of the balances and all transactions affecting each of the Towns' Capital Accounts will be provided to East Lyme by Waterford each summer as soon as the Town's audit is complete. East Lyme may request a balance of their Capital Account at any time during the year. Waterford shall provide said balance within ninety days of any such request.

Nothing herein contained shall preclude either Town from making extensions and improvements in their respective sanitary sewerage systems, provided Waterford shall not make any capital improvements to its wastewater conveyance system referred to in Part I, Section 3A)1 hereof or the force main referred to in Part I Section 3A)2 hereof unless and until an agreement has been entered into between it and East Lyme with respect to each Town's share of the costs of such improvements and the manner in which each Town shall pay the same or a determination is made under Part VII, Section 1. Should any extension or improvements by Waterford diminish the continued availability to East Lyme of the capacity described in Section 1 or its exclusive use of the force main described in Section 3.2, or should any extensions or improvements by East Lyme exceed the capacity described in Section 1, before undertaking such work the Towns shall enter into an agreement with respect to each Town's share of the costs or credits resulting from such extension or improvements, and the manner in which each Town shall pay the same.

Notwithstanding the provisions above, if Waterford determines that good engineering and

operating practice for sewer utilities requires that improvements should be made to its wastewater conveyance system referred to in Section 3.1 hereof and Waterford and East Lyme are unable to reach an agreement (with respect to the need for the improvement or each town's share of the costs of such improvement and the manner in which each town shall pay the same) within 90 days after Waterford notifies East Lyme of the need for the improvement, then the two towns shall submit to arbitration the question of whether the particular improvement is warranted as good engineering and operating practice for sewer utilities. A single arbitrator shall be appointed under the jurisdiction of the American Arbitration Association. That arbitrator shall be a registered professional engineer with recent experience in the field of sewer system construction and operation. Said arbitrator shall not have been associated in any way with East Lyme or Waterford or New London within the previous ten years. If the arbitrator determines that the improvement is warranted, then the improvement shall be done. In making such determinations, Waterford and the arbitrator shall take into account the continued availability to East Lyme of the capacity described in Section 1. Said arbitrator shall also determine the allocation of his or her fees for the arbitration process. If any disagreement remains concerning each town's share of the costs of such improvement and the manner in which each town shall pay the same, such disagreement shall be resolved in accordance with the provisions of Part VII of this Agreement. Pending such resolution, the cost of the improvement to the wastewater conveyance system shall be allocated in the same ratio as provided in Part V for the most recent fiscal year and shall be paid by each town as the costs are incurred. The cost of an improvement to the force main shall be paid by East Lyme as the costs are incurred. If the outcome of the arbitration as to costs shall result in an adjustment of the amounts for which each town is responsible, such adjustments shall be made at the time of the next semiannual payment made by East Lyme to Waterford under Part III.

SECTION 2 – SHARING COSTS FOR CAPITAL IMPROVEMENTS AND OPERATION AND MAINTENANCE FOR THE USE OF WATERFORD'S SHARED INFRASTRUCTURE

The cost for O&M as well as capital expenditures for the portion of Waterford's shared infrastructure used by East Lyme and its other customers under this Agreement are separate and distinct from Waterford's infrastructure used by East Lyme which is covered by the Tri-Town Agreement (the Evergreen PS and the portion of the force and pressure mains to Piacenti which are located in the Town of Waterford). Some of this infrastructure was constructed in 1975. Other portions were constructed between 1976 through the date of this Agreement. Between the years of 1975 thru 1993, only wastewater generated in Waterford was conveyed through the system. Thereafter, wastewater generated in East Lyme and beyond also began to flow through this infrastructure.

Under the previous Two-Town Agreement, the O&M and capital cost-sharing distribution for this shared conveyance infrastructure was based on the total annual flows from East Lyme through Waterford. The Parties agree to continue the same cost-sharing formula for O&M and capital improvements based on proportional flow which was utilized in the previous Agreement.

Capital Improvements - means the acquisition, construction, reconstruction, rehabilitation, demolition or replacement of the relevant portions of Waterford's shared infrastructure as defined

in Part I, Section 2, or major components thereof. Capital Improvements include repairs which cost, exclusive of the labor cost for Town employees, more than \$25,000. This threshold figure will increase 2% each year of the Two-Town Agreement. Other than the percentage of cost sharing, capital expenditures threshold, and notifications associated, such expenditures with this conveyance system will be handled administratively in a similar manner as capital expenditures associated with the Piacenti Facility as described in the Tri-Town Agreement. The Capital Improvements incurred during the fiscal year together with the flow percentages will be used to calculate the Parties' cost sharing. During the life of the previous "Waterford/East Lyme Sewer Agreement", East Lyme made annual contributions to Capital Accounts under Waterford's custody in the amount of \$11,873 per year for the Waterford Wastewater Conveyance System, now *Waterford Shared Collection and Conveyance System*, and \$13,830 per year for the East Lyme Sewer Main, now *East Lyme's Collection and Conveyance System*. With the approval of East Lyme, during the life of the previous agreement, funds from these accounts were used to cover East Lyme share for various capital expenditures associated with the Waterford Wastewater Conveyance System. The total current balance of East Lyme's accounts as of June 3, 2022 is \$140,861.03 (Appendix A). East Lyme shall continue such annual Capital Accounts contributions to absorb the impact of a major [planned or emergency] capital expenditure on East Lyme. During the life of the previous agreement Waterford did not create a Capital Accounts. By ordinance, Waterford capital expenditures are funded through the general government fund, and appropriations are made at such time [capital funds] as needed for emergencies, or through the Capital Improvements Program (CIP) budget period for planned projects. Waterford will continue such capital funding source.

Cost Sharing Distribution – For a given fiscal year, the percentage of cost sharing for O&M as well as capital expenditures shall be prorated based on the flow from each community through the portion of Waterford's collection and conveyance covered by this Agreement:

East Lyme percentage – Annual flow from the East Lyme Conveyance System as metered at the Niantic River PS in Niantic, then divided by the annual total flow into the Evergreen PS from the Waterford Shared Collection and Conveyance System as metered by the 48-inch interceptor meter located just west of the Evergreen PS, then multiplied times 100.

Waterford percentage – 100.00 minus East Lyme percentage.

SECTION 3 – COORDINATION WITH NEW LONDON / WATERFORD / EAST LYME WASTEWATER COLLECTION, CONVEYANCE AND TREATMENT AGREEMENT

Waterford and East Lyme agree that the provisions of this Agreement are to be read and understood in conjunction with the East Lyme/Waterford/New London Agreement. Neither is intended to abrogate the rights and responsibilities stated in the other. To the extent possible, said agreements shall be construed so as to be harmonious and the separate provisions of each agreement should be construed so that each would be operative.

PART VI – TERM, REOPENING AND TERMINATION OF AGREEMENT

SECTION 1 – TERM OF AGREEMENT

This Agreement shall be in effect for a period of twenty (20) years. The Parties shall have the option of extending the Agreement for another ten (10) years if the Parties agree to such an extension no less than five (5) years from the end of the original term. At any time before the final five years of the initial twenty (20) year term, any of the Parties may, by giving written notice to the other parties, propose to extend the term of this Agreement for an additional ten (10) years. In such event, each of the Parties receiving said notice shall respond to said notice within sixty (60) days after receipt of same. If either of the responding parties refuses to extend the Agreement, it shall provide reasonable and rational reasons for said refusal. If either of the responding Parties proposes an extension upon certain conditions or modifications, it shall give reasonable and rational reasons for such conditions or modifications. Upon receipt of the answers from the responding Parties, the Party proposing to extend the term of this Agreement shall either begin negotiations with the other Parties or withdraw its proposal, in its discretion.

SECTION 2 – PROCEDURE FOR TERMINATION OF THE AGREEMENT

The Parties agree to adapt the same termination procedure outlined in Part V, Section 2 of the Tri-Town Agreement which shall be adopted herein by reference.

PART VII – OTHER PROVISIONS

SECTION 1 – DISPUTE RESOLUTION

It is the express intention of the parties that all legal proceedings related to this Agreement or to any rights or any relationship between the parties arising therefrom, except disputes pertaining to Part V, Section 1, shall be solely and exclusively initiated and maintained in the Superior Court for the Judicial District for New London at New London, Connecticut. The parties each irrevocably consents to the jurisdiction of such court in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding. It shall be a condition precedent to initiating an action in the Superior Court that the parties have engaged in non-binding mediation.

THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND THE PARTIES HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A

JURY, AND ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE PARTIES' CONSENT TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY

SECTION 2 – RIGHT TO ACCESS RECORDS

On reasonable notice and at reasonable times and intervals, all records of the Town of Waterford pertaining to the infrastructure referenced herein shall be available for inspection and review by authorized representatives of the Town of East Lyme and by an independent certified public accountant retained and paid by East Lyme for such purposes.

SECTION 3 – RESERVATION OF RIGHTS

The Parties each reserve the right to assign their respective rights and obligations under this Agreement and any related agreements to an entity or system providing for regional water and/or sewer service.

SECTION 4 – SUPERSEDES THE 1988 AGREEMENT AND ANY AMENDMENT THERETO

Waterford and East Lyme agree that this Agreement is intended to supersede and replace their agreement dated August 24, 1988, as amended, and that said agreement is hereby declared null and void.

SECTION 5 – AMENDMENTS AND MODIFICATIONS ONLY IN WRITING

The provisions of this Agreement shall be amended or modified only by written agreement duly executed by the duly authorized representatives of the Parties.

SECTION 6 – CHOICE OF CONNECTICUT LAW

This Agreement and any questions concerning its validity or construction shall be governed by the laws of the State of Connecticut.

SECTION 7 – SEVERABILITY CLAUSE

In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal or unenforceable in any respect, the other provisions shall remain in force and effect, except that if any portions of this Agreement are determined to be invalid, illegal or unenforceable, the Towns will negotiate in good faith to reestablish the Sections that are determined to be invalid, illegal or unenforceable. If after six months of negotiations, mutual agreement is not reached, any Party may, but is not obligated to, terminate this Agreement in same manner and subject to the same terms as provided in Part VI Section 3 of this Agreement as if the end of the term were five years from the date of notice of termination.

SECTION 8 – NO THIRD-PARTY RIGHTS

Except as may be expressly provided herein, nothing in this Agreement is intended to confer on any person other than the Towns of Waterford and East Lyme any rights or remedies under or by reason of this Agreement.

SECTION 9 – SINGULAR/PLURAL USAGE

In this Agreement, the use of the singular shall encompass the plural, and vice versa, where appropriate in the context.

SECTION 10 – LISTING OF NAMES AND ADDRESSES FOR NOTICES

Except as otherwise provided in this Agreement, all notices and communications required or permitted hereunder shall be in writing and sufficiently given if delivered in person, sent by certified or registered mail, or by email as follows:

If to Waterford:

Chairman
Waterford Utility Commission
1000 Hartford Road
Waterford, Connecticut 06385

Plus, a copy to:

First Selectman
Waterford Town Hall
15 Rope Ferry Road
Waterford, Connecticut 06385

Plus, a copy to:

Director
Waterford Utility Commission
1000 Hartford Road
Waterford, Connecticut 06385

If to East Lyme:

Chairman
East Lyme Water and Sewer Commission
PO Box 519
Niantic, Connecticut 06357

Plus, a copy to:

East Lyme Public Works Director
PO Box 519
Niantic, Connecticut 06357

The respective addresses to which such notices are given may be changed from time to time by written notice from the Addressee. Additionally, email addresses provided to each Party may be used as proper notification.

IN WITNESS WHEREOF, the Parties of this Agreement and this instrument to be signed in triplicate by their duly authorized officers and their respective seals to be affixed hereto, all as of this ____ day of _____, 2022.

Signed, Sealed and Delivered in the presence of:

TOWN OF WATERFORD

By Robert Brule, First Selectman
As authorized by Board of Selectman and
Representative Town Meeting

Witnesses

TOWN OF WATERFORD

UTILITY COMMISSION

By its Chairman,
Kenneth Kirkman

Witnesses

TOWN OF EAST LYME

WATER & SEWER COMMISSION

By its Chairman,
Kevin Seery

Witnesses

APPROVED AS TO FORM:

Nick Kepple – Town Attorney – Town of Waterford

APPROVED AS TO FORM:

Edward O'Connell - Town Attorney – Town of East Lyme