

DRAFT - FOR DISCUSSION PURPOSES

MANAGEMENT LEASE AGREEMENT FOR OPERATION OF WEST NECK WATER DISTRICT

Redlined by WNWD Board 1/10/21

*2nd edition after TB Work Session comments and submissions 1.25.22.
New and/or agreed upon comments/amendments in blue*

AGREEMENT made this 28th day of February, 2022, between Suffolk County Water Authority, a public benefit corporation having its principal office at 4060 Sunrise Highway, Oakdale, New York (“SCWA”) 11769, and the Town of Shelter Island (“Town”), a municipal corporation having its principal office at 38 North Ferry Road, P.O. Box 970, Shelter Island, New York 11964.

WHEREAS, the Town is the owner of a public water supply system used in the distribution of water to consumers solely in an area of the Town in West Neck, Town of Shelter Island, New York serving approximately 70 properties known as the West Neck Water Improvement District (“District”); and

WHEREAS, the parties desire to provide for the operation of the District water supply and distribution system including fee based delivery of water by the Authority to all water customers located within the District whether existing now or in the future; and

WHEREAS, the Authority requires as a condition to operate the District water supply and distribution system that certain capital improvements be made to the system, which improvements shall be paid for through a surcharge amount as set forth in 7.1; and

WHEREAS, the parties desire to enter into a Lease Agreement pursuant to Town Law §209-q under the terms and conditions hereinafter specified;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

I. OPERATION AND MAINTENANCE

1.1 The Town and the District hereby leases to the Authority, for the term hereinafter specified all of the right, title and interest in the entire District water supply and distribution system, including wells, hydrants (if any), water storage and distribution system, real property, and other water supply facilities, and all extensions thereto as identified in Exhibit A. The leased property includes replacements, additions, betterments and improvements which may hereafter be furnished and installed in or by the Town or the SCWA during the term of this Agreement.

1.2 The SCWA agrees to operate, maintain and repair, **at its own cost and expense with no charge to the District (covered in Management Fee?)**, the entire operating plant, wells, hydrants, storage and distribution system of the District, and to ~~sell~~**provide** water **solely** to the customers located within the District pursuant to the terms hereof. The Town represents that it has good title to the above facilities and that such facilities shall be leased to the SCWA in an “as is” condition as of the date of the last inspection of such facilities by the SCWA prior to the execution of this Agreement. The Town will, to the extent reasonably practicable, advise the SCWA of all defects and conditions known to the Town that affect the operations, plant, water storage and distribution system, **(which currently crosses private property)** real property and other water supply facilities of the District and all extensions thereto.

1.3 The SCWA shall be the sole supplier of water within the District during the term of this Agreement or ~~any extensions thereto~~. **(A new agreement would have to be made for any extension)**.

1.4 The SCWA shall assume the benefit of existing equipment service agreements, if any, and the Town shall provide copies of any such agreements to the SCWA. Except as otherwise provided herein, the SCWA shall not assume any liability or obligation under any contracts or agreements the Town may have with any third parties.

II. CAPITAL IMPROVEMENTS

2.1 In addition to the consideration stated elsewhere herein, the SCWA agrees to make approximately **\$1,700,000** worth of capital improvements to the water supply and distribution system of the District within five years of the full execution of this Agreement. The currently proposed capital improvements are included **and will be prioritized as set out in Exhibit B attached hereto as agreed by SCWA, the Town and district representatives**. The actual capital improvements made to the District water supply and distribution system may differ **and the Town and the district customers will be notified of any changes** from those listed in Exhibit B, but the total cost of improvements over the initial five-year period of this Agreement shall not be less than **\$1,700,000**. If the SCWA makes less than **\$1,700,000** in capital improvements in the first five years of this Agreement, the surcharge amount set forth in paragraph 7.1 will be recalculated to reflect the cost of the capital improvements actually made within the first five years of this Agreement. **(There needs to be language that capital expenditures not exceed the \$1.7 and these expenses do not apply to surcharge.)** The District will receive **an annual report of amortized capital improvement expenditures on February 28th of each year for a period of five (5) years**.

III. REPLACEMENTS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS

3.1 The Town **and the District** shall not at any time during the term of this Agreement be obligated to make replacements, additions, betterments and improvements to the water supply and distribution system within the District at its own cost and expense, unless otherwise provided for in this Agreement.

3.2 The SCWA may, ~~in its sole discretion~~ with notification to and approval by the Town and the District, and at SCWA's own cost and expense, make replacements, additions, betterments and improvements or abandon any portion of the water supply and distribution system now existing or hereafter formed within the District in order to provide adequate supply of water at proper pressure and of high quality to the District. The Town agrees that such replacements, additions, betterments and improvements may be installed at such locations as the SCWA may determine within the District and may be connected and ~~interconnected~~ within the distribution system of the District in such manner as the SCWA, the Town and the District shall determine. Legal title to such replacements, additions, betterments and improvements will be installed by the SCWA at its own cost and expense shall be and remain in the Authority. However, at the option of the Town, the Town may purchase such replacements, additions, betterments and improvements within the District at the termination of this Agreement in accordance with paragraph 8.2.

3.3 The Town agrees that the SCWA shall be entitled to the use, occupancy and possession of all of the water supply and distribution facilities and of the entire property of the West Neck Water District ~~Town associated with the water supply system~~ without the imposition of any rentals or other charges of whatever kind, other than set forth in this Agreement.

3.4 All water main extensions within the District after the execution of this Agreement, other than those made in accordance with paragraph 2.1, shall be made in accordance with the SCWA's Rules and Regulations existing at the time of the subject extension. A copy of the current SCWA Rules and Regulations is set forth in Exhibit C, but they are subject to change from time to time. Said Rules and Regulations shall apply to all District customers in the same manner as they are applied to SCWA customers in the same service classifications. District customers shall not be subject to any rules, regulation, fees or charges other than those that SCWA customers in the same service classification are subject to, except as otherwise set forth herein.

IV. SERVICE CONNECTIONS

4.1 During the term of this Agreement, all District service connections shall be made in accordance with the SCWA's Rules and Regulations existing at the time of the service connection. A copy of the current SCWA Rules and Regulations is set forth in Exhibit C, but they are subject to change from time to time. (What/when are notifications of rate increases and/or any forthcoming fees made to the District?)

V. WATER SUPPLY BY THE SCWA

5.1 On and after the effective date of this Agreement, the SCWA will furnish and supply all water to those existing customers located within the District and new customers who shall apply to the SCWA for the service of water during the term of this Agreement.

5.2 It is expressly understood and agreed that the furnishing of water and the performance of services by the SCWA to District customers shall be in accordance with and governed by this

Agreement and the SCWA's Rules and Regulations and any changes, amendments or revisions thereof.

5.3 The SCWA, at its own cost and expense, shall operate and maintain the District water supply system by performing the following functions and services:

- (a) Prepare and mail residential and commercial customer account billings and notifications for customers located in or serviced by the District according to the SCWA's billing cycles.
- (b) Promptly deposit all receipts for paying accounts in such bank or trust company as determined by the SCWA.
- (c) Report all water meter readings, account billing, and collected amounts to the Town and District representatives annually.
- (d) Conduct all necessary water sampling, testing, monitoring and analyses, regulatory reporting and prepare water quality statements to ensure water quality is in compliance with all federal and state and county laws, rules and regulations, and assure water supply and quality complies with the same. These reports will be copied and sent to the Town Clerk as they are distributed. Any and all county, state and federal agency fines and violation fees will be paid by SCWA.
- (e) Manage and supervise the daily operations of the District water system, including maintenance of the existing system and take all appropriate measures to ensure compliance with all regulatory requirements and be available for all agency inspections of premises.
- (f) Provide customer service in accordance with the level of service provided to all SCWA customers and in accordance with the SCWA's Rules and Regulations in effect and as amended from time to time.
- (g) Operate, maintain and repair the District water mains, hydrants and appurtenances.

New clause: SCWA shall not sell District water to any party other than District customers. SCWA shall not transport water off the Town proper at any time during this agreement.

5.4 The Authority shall defend and save harmless to the extent permitted by law the Town and its successors and/or assigns, any officers, directors, trustees, employees, representatives, servants and/or agents (collectively the "indemnified parties"), against and from all claims, damages, liabilities, suits, losses, payments, actions, recoveries, judgments, including without limitation, fees and disbursements of counsel incurred by the indemnified parties and other costs of every kind and description arising out of or occasioned by any breach of this Agreement by the SCWA, and/or any negligent act or omission of the SCWA, its agents, contractors, employees, servants or licensees, during the term of this Agreement, including without limitation any such costs incurred by the indemnified parties. The requirements set forth in this section 5.4 shall survive the expiration or other termination of this Agreement.

VI. OBLIGATIONS OF THE TOWN

6.1 Prior to the effective date of this Agreement, the Town shall furnish the Authority with the following information: (how much of this is already completed and is it included in management fee or are we paying for 3rd party to do so?)

- (a) An original up-to-date map of the District supply and distribution system, to the extent such maps are presently available, showing the location and size of any and all water mains and extensions thereto (with identification of said mains as to whether they are cast iron or asbestos cement or other material), existing valves and valve connections, and the location of all hydrants (if any) indicating whether such hydrants are equipped with shut-off valves (a copy of same is attached hereto as Exhibit A). The SCWA shall maintain maps of the District system and any additions, betterments, abandonments or deletions to the system and shall incorporate the District information into the SCWA's mapping program which shall be made available to the District and the Town as changes are made. All Town-owned properties lying within the Shelter Island Heights are excluded from the District map. On the termination of this Agreement, the SCWA shall provide the Town with up-to-date maps of the District system.
- (b) (b) An up-to-date file of customers and tap card information for the District's services and fire line services, to the extent such information is available, showing the street address location, including Suffolk County Tax Map information, name of the account and size of each meter and service, type of material and ties to the curb valve, and other information necessary to administer customer accounts.
- (c) Documentation showing all parcels of land and buildings used in the operation of the District's water supply and distribution systems and which are to be leased to the SCWA pursuant to this Agreement (see Exhibit A attached hereto).

6.2 The Town agrees to adopt all rates, fees, charges and/or ad valorem or other levies sufficient to pay the management fee set forth in Section VII of this Agreement.

6.3 The Town hereby represents that any debt which has been incurred by the District, or its predecessors, for the purpose of paying for the cost of improvements to the District water supply and distribution system that is the subject of this Agreement has been paid in full. To the extent that any debt incurred by the District for the purpose of paying the cost of the improvements to the District water supply and distribution system have not been paid, the Town hereby covenants and agrees that such debt is solely the responsibility of the District, and the Town agrees to discharge existing indebtedness of the District water supply and distribution system in accordance with the requirements of the terms of the indebtedness and the law. The Town hereby expressly waives any and all claims to compensation for said existing indebtedness from the SCWA during the term of this Agreement and any extensions thereto, and agrees to indemnify and save harmless, to the extent permitted by law, the SCWA, its successors and/or assigns, any officers, directors, employees, representatives and/or agents against and from any and all claims,

damages, liabilities, costs and expenses, including without limitation, fees and disbursements of counsel incurred by the SCWA arising out of the discharge of such indebtedness by the Town.

6.4 The Town agrees to **review and with approval**, make vacant Town-owned property, **excluding those located within the Shelter Island Heights, for (within) the District** to the extent it is not needed for other Town uses, available to the SCWA for use as future wells to supply the District and other areas of the Town.

6.5 The Town shall defend, indemnify and save harmless, to the extent permitted by law, the SCWA, its officers, agents, servants and/or employees against and from any and all claims, damages, liabilities, suits, losses, payments, actions, recoveries, judgments, including without limitation, fees and disbursements of counsel incurred by the SCWA and other costs of every kind and description arising out of any breach of any representation, warranty, covenant or agreement of the Town contained in the Agreement, any liabilities of the Town, any claim, action or proceeding that challenges the manner in which the Town exercises its statutory authority, any act or omission of the Town, its agents, contractors, employees, servants and licensees prior to the effective date of this Agreement, any claim, action or proceeding commenced by any third party for injury to person or property suffered prior to the effective date of this Agreement and any and all other acts or omissions of the Town prior to the effective date of this Agreement. The requirements set forth in this section 6.4 shall survive the expiration or other termination of this Agreement.

VII. MANAGEMENT FEE FOR SERVICES

7.1 In consideration of the services provided by the SCWA, the Town **and the District** agree to pay SCWA a management fee equal to the revenues the SCWA would receive if SCWA rates and charges were applied for water service within the District. The applicable SCWA rates and charges are those as set forth as the prevailing rates and charges for water service on Fire Island/ Shelter Island set forth in SCWA's Rules and Regulations (**currently \$2.956 per thousand gallons with a annual minimum charge of \$243.96**), all as the same may be amended from time to time. In addition, the Town shall pay an annual surcharge of **\$17,077.20 or \$243.96 per customer**, for the capital improvements made in accordance with paragraph 2.1 above. The surcharge is the annual amount to be paid for the cost of the capital improvements made in accordance with paragraph 2.1 plus interest (**rate?**) over a 25 year period. The above referenced rates and charges plus the surcharge for capital improvements constitute the Management Fee. (**Water quality fee of \$5,600 or \$80.00/customer? What provision can the town/SCWA make for residents of the district who cannot afford the 201% jump in increase for 2022?)**

7.2 The Town **and the District** may establish water rates and charges that are higher than the SCWA's rates and charges set forth above in paragraph 7.1 and apply such excess revenues to the annual surcharge. The annual surcharge will then be reduced by the amount of such excess revenues.

7.3 The SCWA shall account for the billings of the customers of the District and invoice the Town **and the District** quarterly for the differential, if any, between the Management Fee set forth herein and the amounts billed to District customers on behalf of the Town as provided for in this Agreement. If the billings of the customers of the District are greater than the Management Fee, the excess amount shall be remitted to the Town on a quarterly basis.

7.4 **Any and all miscellaneous fees** billed by the SCWA are to be billed in accordance with the SCWA's Rules and Regulations as the same may be amended from time to time. The SCWA agrees that it will not establish any miscellaneous fees for District customers that are over and above such fees as reflected in the SCWA's Rules and Regulations – Fire Island/Shelter Island Miscellaneous Fees/Other Charges and Credits. The SCWA shall retain all receipts associated with the billing of these miscellaneous fees. The SCWA shall provide an **annual** report to the Town of any such fees collected from District customers upon request of the Town.

7.5 All billing to customers of the District by the SCWA will be in accordance with the rates and charges that now exist or that are hereinafter adopted or imposed by the Town. The Management Fee due to the SCWA shall be in accordance with this Agreement.

VIII. TERM OF THIS AGREEMENT

8.1 The term of this Agreement shall be for a period of 40 years beginning on **February 28, 2022** and expiring on **February 28, 2062**.

8.2 If this Agreement is not renewed at the end of such term or any renewal thereof or is terminated for any legal cause prior to the expiration of said term or any renewal thereof, the Town **and the District** shall acquire from the SCWA any replacements, additions, betterments and improvements or other capital improvements installed in the District at the Authority's cost and expense during the term hereof and any renewal term. The value of the capital improvements made under paragraph 2.1 shall be based upon a **25 year life**. The value of replacements, additions, betterments and improvements or other capital improvements, other than those made under paragraph 2.1, shall be computed at original cost, less depreciation, based upon a **35 year life**.

8.3 In the event the Town **or the District** do not acquire the capital improvements made by the SCWA pursuant to paragraph 8.2, at the end of the initial term, or any renewal thereof, the **SCWA shall have the option to purchase from the Town the entire operating plant, distribution facilities and real property** owned by the Town and leased to the SCWA **(Is the Town willing to consider selling the golf course? How would just sale of the wells legally work?)** The value of such assets shall be determined to be the original cost as paid by the Town less depreciation based upon a 35 year life. The value of the real property shall be its market value on the date of the conveyance. The SCWA may limit its acquisition of property to an easement interest for so long as the property is needed for public water supply purposes.

8.4 If this Agreement is not renewed at the end of the initial term or any renewal thereof, or is ***terminated for any cause whatsoever** prior to the expiration of said term or any renewal thereof, and the Town declines to acquire the capital improvements as described in paragraph 8.3 above, the SCWA retains the right, without limitations and without the imposition of any transmission fees or any other fees or charges, **to the continued **ownership of and use of any storage, transmission main or booster pumping facilities.**

***Explicit legal reasons for termination provided for both parties**

****there is no “ownership” to be continued - This is a Lease Agreement for Operation**

IX. INSURANCE

(Will this mean a rate/fee/surcharge increase for WNWD customers presently or in the future?)

9.1 The Town will provide insurance coverage evidenced by a Certificate of Insurance or proof a self-insurance submitted in a form acceptable to the SCWA as follows:

- (a) Thirty days notice of cancellation, non-renewal or reduction of coverage is required
- (b) The interest of the SCWA, as additional insured with no responsibility for payment of premium, shall be added to all policies.

(c) Coverage shall be obtained and maintained throughout the life of the Agreement as follows:

(i) General Liability - Commercial General Liability, including separate limits for Personal Injury and Products/Completed Operations. Coverage to include Contractual Liability.

Limits: \$1,000,000 general liability

\$2,000,000 aggregate

\$2,000,000 products/completed operations

(ii) Excess Liability -

Limit: \$5,000,000 on a form that follows the underlying coverage

(iii) The limits provided above shall be reviewed and increased as deemed **reasonable and appropriate** by the SCWA **and the Town** during the term of this Agreement and any extensions thereto.

9.2 The SCWA will provide insurance coverage evidenced by a Certificate of Insurance or proof a self-insurance submitted in a form acceptable to the Town as follows:

(a) Thirty days notice of cancellation, non-renewal or reduction of coverage is required.

(b) The interest of the Town, as additional insured with no responsibility for payment of premium, shall be added to all policies other than Workers' Compensation.

(c) Coverage shall be obtained and maintained throughout the life of the Agreement as follows:

(i) Automobile Liability - Comprehensive Automobile Liability, including all owned, non-owned, and hired autos, in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability, New York State Personal Injury Protection.

(ii) General Liability - Commercial General Liability, including separate limits for Personal Injury. Coverage to include Contractual Liability.

Limits: \$1,000,000 per occurrence
 \$1,000,000 for Personal Injury Liability

 \$2,000,000 aggregate

Excess Liability -

Limit: \$5,000,000 on a form that follows the underlying coverage

(iv) Workers' Compensation - As required by the Workers' Compensation Law of the State of New York.

(v) The limits provided above shall be reviewed and increased as deemed appropriate by the SCWA during the term of this Agreement and any extensions thereto.

X. MISCELLANEOUS

10.1 This Agreement incorporates the entire agreement between the parties hereto as to the subject matter hereof and terminates and overrides any prior agreements or understandings.

10.2 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.3 The parties hereto agree to execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purposes and intent of this Agreement.

10.4 This Agreement may not be amended, changed, modified or altered except in writing executed by the parties hereto.

10.5 This Agreement shall be governed in accordance with the laws of the State of New York. The venue for said action shall be in Suffolk County, New York.

10.6 Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to, acts of God, government restrictions (including

the denial or cancellation of any necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Notwithstanding the foregoing, this paragraph shall not be applied so as to excuse or delay payment of any monies by one party to the other, including rent and the Management Fee.

10.7 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or enforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been stated herein.

10.8 All notices shall be in writing and will be deemed effective for all purposes as of the date such notice is mailed, postage prepaid to be delivered to the Suffolk County Water Authority, Legal Department, 4060 Sunrise Highway, P.O. Box 38, Oakdale, New York 11769 and Town of Shelter Island, Office of Town Clerk, 38 North Ferry Road, P.O. Box 970, Shelter Island, New York 11964.

10.9 The SCWA agrees that it shall not assign, transfer, convey or otherwise dispose of this Agreement or any of its right, title, benefit, advantage or burden imposed on it without the prior written approval of the Town.

10.10 It is expressly understood and agreed that in case a material default be made in the performance of any of the covenants in this Agreement by either party or should either party fail to substantially comply with any law regarding public water supply or should either party file or have filed against it a petition in bankruptcy or similar proceeding or should either party be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the other party may, if it so elects at any time thereafter, terminate this Agreement and the term hereof on giving the other party five days' notice in writing, and this Agreement and the term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this Agreement for expiration hereof.

IN WITNESS WHEREOF, the respective parties hereto have set their hands and seals the day and seals the day and year first above written.

SUFFOLK COUNTY WATER AUTHORITY

By: _____

TOWN OF SHELTER ISLAND

By: _____

- The Town should not face a financial burden at termination, particularly given that the WNWD customer will be paying for the initial capital improvements

