

**INTERCONNECTION AGREEMENT**

**THIS INTERCONNECTION AGREEMENT** (“Agreement”) is made this 26<sup>th</sup> day of JUNE, 2019 by and between **ARTESIAN WATER MARYLAND, INC.** (“Artesian”), a corporation organized under the laws of the State of Delaware, with its principal office located at 664 Churchmans Road, Newark, Delaware, 19702, and the **MAYOR AND COMMISSIONERS OF THE TOWN OF NORTH EAST** (“Town”), a municipal corporation of the State of Maryland, with its administrative offices located at 106 South Main Street, North East, Maryland 21901 and collectively with Artesian (the “Parties”)

**WHEREAS**, Artesian is a public utility that owns and operates water systems and furnishes water service to the public and other water distributors in Maryland; and

**WHEREAS**, the Town owns and operates a water system that supplies water to customers inside and outside the Town’s corporate limits in Maryland; and

**WHEREAS**, the Parties executed an Interconnection Agreement dated January 24, 2018 (the “Red Toad Road Agreement”) with respect to an interconnection between the Town’s water distribution system and Artesian’s water distribution system on Red Toad Road near the rail line crossing (the “Red Toad Road Interconnection”); and

**WHEREAS**, the Parties wish to supersede the Red Toad Road Agreement with the terms relating to the Red Toad Road Interconnection set forth herein; and

**WHEREAS**, Artesian also desires to connect to the Town’s water system east of the Town between Mechanics Valley Road and Marley Road (the “Route 40 East Interconnection” and collectively with the Red Toad Road Interconnection, the “Interconnections”); and

**WHEREAS**, this Agreement sets forth the terms and conditions for the construction and implementation of the Route 40 East Interconnection; and

WHEREAS, the Parties are each aware and acknowledge that the Town's water system has been and prospectively may be financed with debt ("Bonds"), the interest on which the Town intends to qualify for exemption from gross income for federal income tax purposes, for which the Town represents that the qualification requires that Artesian have no special legal entitlement or rights with respect to the use, operation or control of the Town's water system or the output thereof as would be deemed under federal income tax law to give rise to "private business use" of Bond financed facilities or otherwise adversely affect such qualification of the tax-exempt status of the interest payable on the Bonds; and

WHEREAS, the Parties understand and intend that this Agreement shall be in compliance with federal tax laws such that interest on the Bonds qualifies as an exemption from gross income, and work together to make necessary modifications or amendments to this agreement, if any, in order to preserve the interest exemption on the Bonds from federal gross income; and in support of this position the parties confirm their mutual understanding and intent that: (i) this Agreement has been negotiated on an arm's-length basis and provides for compensation at fair market value; and (ii) the Town's water system has not been and is not expected to be financed for a principal purpose of providing those facilities for the benefit of Artesian.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I

### Interconnections

1.1 Undertaking to Build. Artesian, at its sole cost, shall design and construct a water meter vault at the location stated in Section 2.6.B, establishing the Route 40 East Interconnection. At a reasonable time prior to the commencement of any construction, Artesian shall provide to the Town the design drawings and specifications of the Route 40 East Interconnection for the purpose of review by and comment from the Town. All other work conducted by Artesian for the extension

of its water transmission and distribution main to the Route 40 East Interconnection, including the cost thereof, shall be the sole responsibility of Artesian. The Town shall select and Artesian shall purchase and install at its sole cost: (i) a water meter for the water meter vault at the Route 40 East Interconnection; and (ii) any facilities necessary to connect the Town's existing main to the water meter.

1.2 Permits and Licenses. Artesian shall obtain at its sole expense any permits, licenses or other authorizations, including amendments to the Cecil County Master Water and Sewer Plan, required by applicable federal, state or local laws, statutes, rules, regulations, ordinances or other authorities in order to establish the Route 40 East Interconnection and receive service as described in this Agreement. The Town shall request appropriate amendment of the Town's Maryland Department of the Environment ("MDE") water appropriation permits if necessary in order to provide water to Artesian. To the extent the Town's consent is required to obtain regulatory approvals, the Town shall provide that consent.

1.3 Ownership by the Town. The Town shall own the water meters and the water meter vaults at the Interconnections, and all water facilities on the Town's side of the meters (collectively, the "Town's Facilities"), and shall have all right, title and interest thereto.

1.4 Maintenance and Repair of the Town's Facilities. It shall be the Town's sole responsibility to maintain the Town's Facilities at the Red Toad Road Interconnection and, upon its completion, the Route 40 East Interconnection, in a manner that provides reasonable assurance that the Interconnections function properly at all times as intended. The Town shall be responsible for any and all necessary repair of the Town's Facilities in a timely manner.

## ARTICLE II

### Interconnection Deliveries

2.1 Sale and Purchase of Potable Water. In exchange for the rate described in Section 2.9, Town shall deliver and sell potable water to Artesian, and Artesian shall receive and purchase potable water from Town, via either the Route 40 East Interconnection or the Red Toad Road

Interconnection, at a minimum average daily rate of thirty-five thousand (35,000) gallons (the "Minimum Take Rate") in each regular quarterly billing period of the Town. The Town shall, from the execution of this Agreement, make available to Artesian from the Red Toad Road Interconnection up to one hundred five thousand (105,000) gallons per day. Artesian may, from time to time, request that the Town increase the supply available through this Interconnection, it being understood that at no time shall Artesian's requests require more than one hundred fifty thousand (150,000) gallons per day from the Red Toad Road Interconnection. The Town shall, from the execution of this Agreement, make available to Artesian from the Route 40 East Interconnection up to two hundred thousand (200,000) gallons per day. Artesian may, from time to time, request that the Town increase the supply available through this Interconnection, it being understood that at no time shall Artesian's requests require more than two hundred thousand (200,000) gallons per day from the Route 40 East Interconnection. The Town shall be obligated to have the requested increased supply available for Artesian thirty (30) days after receipt of Artesian's notice. Artesian shall send all such notices requesting increased supply to the Town's address set forth in Section 3.9.A. below. Following each such request, upon confirmation that the increased supply is available, the minimum daily take of water through the Interconnections by Artesian shall also increase to an amount equal to one-third (1/3) of the requested level of committed available supply. For example, each additional thirty thousand (30,000) gallons per day in committed supply increases the minimum daily amount that Artesian must take by ten thousand (10,000) gallons. In the event that the water taken by Artesian in a regular billing period is less than the applicable Minimum Take Rate, Artesian shall pay for water during such billing period at the Minimum Take Rate. The provisions of this Section shall not preclude Artesian from taking greater amounts of water per day in the event of an emergency, such as, but not limited to, firefighting or interruption of service from Artesian's other sources of supply for limited periods of time, but in any event no longer than three (3) consecutive days. Artesian shall provide notice to Town by phone and via email if such additional takes may extend for more than twenty-four (24) hours. Under any circumstance that Artesian takes or intends to take an amount of water greater than that stipulated by this Agreement, Artesian shall notify the Town as soon as practically possible, but in no case longer than two (2) hours after the take has begun.

Town contacts for emergency draws:

Ron Carter

Telephone: 410-920-1627

Email: [rcarter@northeastmd.org](mailto:rcarter@northeastmd.org), or

Melissa MacKenzie

Telephone: 410-287-5801 or 302-584-6207

Email: [mmackenzie@northeastmd.org](mailto:mmackenzie@northeastmd.org)

Any request by Artesian for water in excess of the stated maximum for each of the Interconnections shall be the subject of negotiations between the Parties that shall encompass, without limitation, the infrastructure necessary to provide additional supply, the timeline for installing such infrastructure, recovery of the costs associated with installing such infrastructure, and the rate that would apply to the purchased supply.

2.2 Commencement and Term. The commencement date for this Agreement shall be the date that it has been executed by both Parties, and Town shall continue to provide water to Artesian via the Red Toad Road Interconnection. The availability of delivery by Town and the purchase by Artesian of potable water via the Route 40 East Interconnection shall commence on the first day of the month next following the date on which the Route 40 East Interconnection is completed to the satisfaction of the Parties and placed into commercial operation. The term of this Agreement shall be for a period of five (5) years from the Commencement Date. This Agreement shall automatically renew for up to two (2) additional five (5) year terms at the end of the prior term absent cancellation by notice from either party provided at least thirty (30) days prior to the end of the prior term.

2.3 Water Franchise Service Area. As between the Town and Artesian, each shall be the exclusive water provider in the respective regions reflected in Exhibit A hereto, which is incorporated herein by reference, such that the Town shall serve areas designated as currently within the Town's municipal boundaries or as exclusively for the Town, and Artesian shall serve the areas designated as Mountain Hill, Elkton West, and AWMD Franchise Area. The Town shall cooperate fully with Artesian in its obtaining the exclusive water franchise from Cecil County for those areas depicted in Exhibit A hereto that are outside the Town limits and Town shall surrender to Artesian its non-exclusive water franchise with Cecil County east of Mechanics Valley Road.

The Town shall cooperate fully with Artesian in amending the Cecil County Master Water & Sewer Plan and in obtaining all necessary approvals of those amendments as a result of this Agreement and the related Franchise Agreements.

2.4 Artesian's Right to Retain Franchised Service Area. In the event that the Town shall act to annex any area for which Artesian, or any affiliate thereof, holds an exclusive franchise, or which is already served by Artesian, the Town agrees that it will not act to condemn or otherwise void or annul Artesian's franchise, and Artesian or its affiliate shall continue to provide public water service to the annexed area.

2.5 Force Majeure. If the Town's ability to deliver potable water through the Interconnections is interrupted or impaired, in whole or in part, due to failure of its equipment or facilities, leaks, required repairs to facilities, strikes, Acts of God, or other extraordinary circumstances, occurrences or conditions beyond the Town's control, including action by governmental bodies and authorities, then during the period of such interruption or impairment, the delivery obligations of the Town and the minimum purchase obligations of Artesian (as provided in Section 2.1 above) shall be suspended until the Town resumes the delivery of potable water through the Interconnections as provided under this Agreement. In the event of any such suspension, the Town shall provide advance notice to Artesian when possible, but in any event within twenty-four (24) hours of the event or the Town's knowledge thereof. Artesian specifically acknowledges, understands and agrees that the obligation to deliver potable water under this Agreement requires only the exercise of ordinary and reasonable care under the circumstances to maintain the supply of potable water and to have such available for delivery hereunder, and that the Town shall not be liable for any interruption or curtailment of its supply of potable water to Artesian resulting from force majeure. In the event water use restrictions are imposed on the Town's customers as a result of a force majeure, Artesian's take shall be limited or reduced in the same manner as all other customers and Artesian's customers subject to the same restrictions as the Town's customers, and Artesian's Minimum Take Rate shall be correspondingly reduced while the restrictions last.

2.6 Meter Vaults and Meters – Locations.

- A. The meter and meter vault for the Red Toad Road Interconnection is installed near the rail line crossing.
- B. The meter and meter vault for the Route 40 East Interconnection shall be installed on the Bay Berry Tank Property.

2.7 Meter Testing and Accuracy. The Town, at its expense, may test and calibrate its Interconnection water meters every year with the results thereof provided to Artesian. Artesian shall be notified not less than three (3) business days in advance of the date/time of any test and/or calibration of the water meters and shall be provided access to witness meter testing and calibration. If the water meter is found to register inaccurately beyond a range of tolerance of three percent (3%), an adjustment shall be made to the bills rendered for service through the Interconnection for the period of time that elapsed since the previous meter test that tested accurate within the range of tolerance. Adjustments to the quarterly billing will be based upon the product of total consumption recorded by the water meter since the last sufficiently accurate meter test and one-half the percentage variance in the accuracy of the meter as determined upon its being tested. In the event that the Town fails to test the water meters every year, Artesian shall have the right to access the meters and to conduct a test of the water meters' accuracy.

2.8 Meter Reading and Billing Procedures; Payment of Charges.

- A. For billing purposes, the Interconnection water meters shall be read quarterly by the Town. Except for a period in which the Minimum Take Rate is not achieved as provided herein, the Town shall bill Artesian in arrears for volumes delivered during the quarterly period, computed at that rate per unit further described in Section 2.9 below. In any period in which the Minimum Take Rate is not achieved as required herein, the Town shall bill Artesian in arrears for volumes equivalent to the Minimum Take Rate.
- B. Artesian shall pay each quarterly bill from the Town within thirty (30) days of receipt.

C. The Town's Major Facilities Fee shall not apply.

2.9 Rate. The Parties agree that the price for water delivered through the Interconnections initially shall be \$4.46 per thousand gallons. The rate shall be subject to change at such time as: (i) the Town adjusts rates for all of its water customers; and/or (ii) Artesian requests a Minimum Take Rate in excess of the amounts currently available from the Interconnections as provided in Section 2.1 above. The change in the rate Artesian pays shall be determined in a manner consistent with Exhibit B, hereto, which is incorporated herein by reference, which supports the initial rate of \$4.46 per thousand gallons.

2.10 Water Quality Warranty; Consumer Confidence Report; Notice of Water Quality Standards Violation.

A. The Town warrants that potable water furnished to Artesian under this Agreement shall be in compliance with all applicable federal and State of Maryland drinking water quality regulations in effect at the time potable water is delivered via the Interconnections. The Town shall have no responsibility for water quality on Artesian's side of the meter.

B. Pursuant to its water quality warranty, the Town agrees to provide Artesian with a copy of its annual Consumer Confidence Report ("CCR").

C. In the event of a violation of the State of Maryland primary drinking water quality standards affecting water sold to Artesian through the Interconnections, the Town shall notify Artesian immediately, as provided in Section 3.9.B below.

2.11 Termination for Default. Each of the Parties reserves the right to terminate this Agreement upon written notice in the event of a default. Prior to termination because of a default, the defaulting Party shall have the right to cure the default within thirty (30) days of the date of receipt of the notice of default from the non-defaulting Party. The failure of the defaulting Party to cure



the default within the thirty (30) day period shall result in the termination of this Agreement at midnight on the thirtieth (30th) day. Notwithstanding the provisions of this Section, the Parties are not relieved of any accrued financial obligations with respect to the Agreement, which shall remain enforceable until the financial obligations are satisfied.

2.12 Acknowledgment of Alternative Supply. By executing this Agreement, Artesian acknowledges and represents to the Town that it has the ability to obtain its water supply from a source other than the Town.

2.13 Reservation of Right to Protect and Maintain Facilities. The Town reserves the right to do all things it deems necessary for the efficient operation and maintenance of its plants and systems. It is expressly agreed that suspension or reduction of service in order to carry out construction activities, routine maintenance or repair necessary to protect and maintain the Town's Facilities of twelve (12) hours or less in any one (1) day shall not relieve Artesian of its obligation to pay any amount due under this Agreement.

### ARTICLE III

#### Miscellaneous

3.1 Management and Operational Assistance. Upon request by the Town, Artesian or its affiliates shall offer management and operational assistance on a time and material basis as the Parties shall hereafter agree. Services available from Artesian include, but are not limited to, engineering system evaluation, project and construction management, rate analysis and rate design.

3.2 Right of First Refusal. If State laws, local laws, ordinances or resolutions do not preclude the Town from doing so, Artesian shall have a right of first refusal should the Town determine that it desires to sell its water system, which right shall enable Artesian to acquire the Town's water system at a price as the Parties shall determine, subject to approval as necessary from the Maryland Public Service Commission.

3.3 Indemnity.

- A. The Town agrees to indemnify, defend and hold harmless Artesian and its successors and assigns, from and against any and all claims, demands, causes of action, suits, judgments, debts, liabilities, losses, damages, and expenses (including reasonable fees and disbursements of legal counsel) of any kind whatsoever that may be sustained or suffered by Artesian and are caused, in whole or in part, by any material misrepresentation, breach or non-performance by the Town with respect to any representations, warranties, undertakings, agreements, covenants or obligations of the Town contained in this Agreement.
- B. Artesian agrees to indemnify, defend and hold harmless the Town and its successors and assigns, from and against any and all claims, demands, causes of action, suits, judgments, debts, liabilities, losses, damages, and expenses (including reasonable fees and disbursements of legal counsel) of any kind whatsoever that may be sustained or suffered by the Town and are caused, in whole or in part, by any material misrepresentation, breach or non-performance by Artesian with respect to any representations, warranties, undertakings, agreements, covenants or obligations of Artesian contained in this Agreement.
- C. In the event of a legal challenge in the courts or before the Maryland Public Service Commission to this Agreement or the terms hereof by a non-party hereto, Artesian shall take all reasonable actions to cooperate with and assist in the Town's defense, including, but not limited to, making available Artesian's rate design expert and legal and finance teams.

3.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns. The Parties' respective rights and obligations hereunder shall not be assigned or delegated without the prior written consent of the other Party. There are no intended third party beneficiaries in connection with this Agreement.

- 3.5 Authority and Binding Effect. The Parties each represent, warrant and affirm to the other: (a) their authority and power to enter into this Agreement and to make, perform and carry into effect their respective commitments, obligations and undertakings as set forth herein; (b) their authority to enter into and perform each of the transactions contemplated hereby; (c) that all consents and authorizations requisite to their execution of this Agreement and performance hereunder have been obtained; (d) that this Agreement, the transactions contemplated hereby and the Parties' performance hereunder will not violate any federal, state or local law, statute, regulation, rule ordinance, tariff term or other similar authority applicable to either of them; and (e) when executed, the Agreement shall constitute a valid and binding obligation, enforceable by each Party against the other in accordance with its terms.
- 3.6 Amendment. This Agreement may be amended or supplemented only through a written instrument, signed by both Parties.
- 3.7 Entire Agreement. This Agreement embodies the entire agreement between the Parties with respect to the subject matter hereof, and there are no agreements, understandings, conditions, warranties or representations, oral or written, expressed or implied, with reference to the subject matter hereof that are not merged in this Agreement or superseded hereby. Specifically, upon the complete execution of this Agreement, the Red Toad Road Agreement shall be deemed terminated, superseded hereby, and merged herein. The recitals set forth at the beginning of this Agreement are incorporated herein for all purposes.
- 3.8 Terms Severable. Should any term of this Agreement be held invalid or unenforceable, such determination shall not render the remaining terms of this Agreement invalid or unenforceable unless to do so would cause the Agreement to fail of an essential purpose.

3.9 Notices; Notice in Emergency; Change of Notice Information.

- A. Notice: Except as provided under in Section 2.1 above with respect to emergency draws or Section 3.9.B. below with respect to emergencies, any notices required to be given hereunder shall be in writing and shall be delivered by hand delivery, by overnight courier with delivery confirmation, or by certified mail with return receipt requested. Notwithstanding the foregoing, quarterly bills from the Town to Artesian shall be delivered via U.S. first class mail.

Notice to the Town:

Town of North East  
Attn: Town Administrator  
North East Town Hall  
106 South Main Street  
P.O. Box 528  
North East, Maryland 21901-0528

Billing to Artesian:

Artesian Water Company  
Attn: Accounts Payable  
664 Churchmans Road  
Newark, Delaware 19702

Notice to Artesian:

Artesian Water Maryland, Inc.  
Attn: Joseph A. DiNuuzio, President  
664 Churchmans Road  
Newark, Delaware 19702

- B. Notice in the event of an emergency: With respect to this Agreement, a failure of the Town to supply potable water through the Interconnections to Artesian for any reason or the failure of the Town to supply water to Artesian that is in compliance with the State of Maryland primary drinking water quality standards for any period of time shall constitute an *emergency*. In the event of such an emergency, the Town

shall notify Artesian in person at Artesian's office at 664 Churchmans Road, Newark, Delaware, or via Artesian's Emergency Dispatch by telephone at 1-800-332-5114.

C. Change of Address/Notice Information: The Parties agree to provide notice of change of name, address or other contact information, as applicable, within ten (10) business days of each such change.

3.10 Headings. The headings of Articles and Sections herein are for convenience only and shall not be considered when construing the Parties' rights and obligations hereunder.

3.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

3.12 Counterparts. This Agreement may be executed in counterparts, with signatures exchanged via electronic means, including as PDFs, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature page follows]*

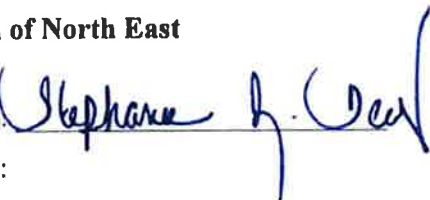
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, sealed and delivered as of the day and year first written above.

**Artesian Water Maryland, Inc.**

Attest:   
Name: Joseph A. DiNunzio

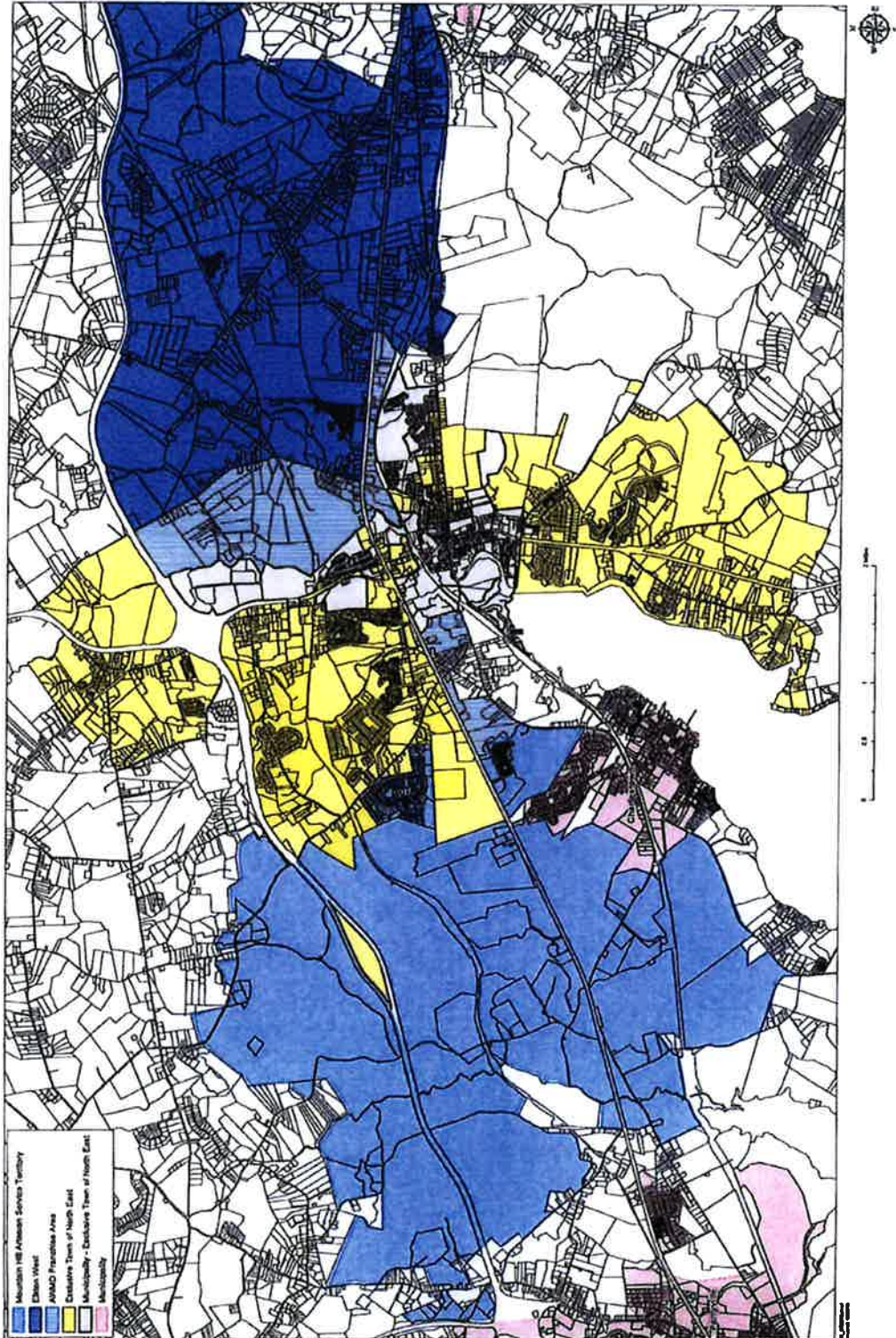
BY:  (SEAL)  
Dian C. Taylor  
Chief Executive Officer

**Town of North East**

Attest:   
Name:

BY:  (SEAL)  
Robert F. McKnight  
Mayor

# EXHIBIT A TO INTERCONNECTION AGREEMENT



# EXHIBIT B TO INTERCONNECTION AGREEMENT

## Methodology for calculation of rate per thousand gallons

Exhibit C

Town of North East

Bulk Rate Calculation

	Components Allocation	Allocated	Allocated	Allocated	Allocated	Allocated	Allocated	Allocated	Allocated	Allocated	Allocated	Allocated
	Units	Rate	Rate	Rate	Rate	Rate	Rate	Rate	Rate	Rate	Rate	Rate
	304 m <sup>3</sup> /h	608 m <sup>3</sup> /h	906 m <sup>3</sup> /h	1206 m <sup>3</sup> /h	1506 m <sup>3</sup> /h	1806 m <sup>3</sup> /h	2106 m <sup>3</sup> /h	2406 m <sup>3</sup> /h	2706 m <sup>3</sup> /h	3006 m <sup>3</sup> /h	3306 m <sup>3</sup> /h	3606 m <sup>3</sup> /h
Cost of water production - Note 3	\$ 281,458	272,340	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44	\$ 1.44
Return on Investment - Depreciation Expense - Note 4	\$ 556,870	281,250	\$ 1.96	\$ 1.83	\$ 1.82	\$ 1.75	\$ 1.70	\$ 1.64	\$ 1.58	\$ 1.54	\$ 1.50	\$ 1.45
Return on Investment - Rate Base												
Original Cost of Plant	\$ 152,84,927											
Accumulated Depreciation	\$ 5,130,247											
Net Assets	\$ 14,696,740											
Allocated Rate of Return - Note 2	2.13%	\$ 300,643	281,250	\$ 1.06	\$ 1.01	\$ 0.99	\$ 0.95	\$ 0.91	\$ 0.89	\$ 0.86	\$ 0.84	\$ 0.81



\$1,744,992      \$ 446 \$ 434 \$ 424 \$ 414 \$ 405 \$ 397 \$ 388 \$ 381 \$ 374 \$ 365 \$ 349

**Adjusted Units - Thousands of gTons**

<b>Total per May 2, 2017 Rate Study</b>	<b>272,340</b>												
<b>Adjusts</b>	<b>10,950</b>	<b>2100</b>	<b>2180</b>	<b>4180</b>	<b>5420</b>	<b>6300</b>	<b>7050</b>	<b>8700</b>	<b>9450</b>	<b>10900</b>	<b>12050</b>		
<b>Total Adjusted Units</b>	<b>283,290</b>	<b>23100</b>	<b>23980</b>	<b>46000</b>	<b>59620</b>	<b>69300</b>	<b>77550</b>	<b>95700</b>	<b>103950</b>	<b>121900</b>			

**Notes:**

1 Depreciation Expense represents the recovery of investment in plant over the useful life. It should approximate the principal

repayment for loans.

2 Cost of Capital from May 2, 2017 Water Utility Rate Study 2.31%

3 Cost of Water Production

Account ID	Description	Amount
80-850-342-41-10	Power	\$ 18,000
50-850-342-43-00	Prog Serv - RRM Services	\$ 61,500

50-850-432-80-50	Trade Waring	\$ 2,000
50-850-432-61-50	Chemicals	\$ 165,860
50-850-432-62-20	Security	\$ 150,000
	Electricity	\$ (21,001)
		\$ 397,459