

2 copies

District 3
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WATER SERVICE AGREEMENT
BETWEEN
THE TOWN OF STERLING AND VILLAGE OF FAIR HAVEN

This Agreement made this 17th day of May, 2018, by and between the Town of Sterling, a municipal corporation duly organized under the laws of the State of New York, with main offices at 1290 State Route 104A, Sterling, New York 13156, hereinafter referred to as ("Sterling") and the Village of Fair Haven, a municipal corporation duly organized under the laws of the State of New York with main offices at 14523 Cayuga Street, Fair Haven, New York, 13064, hereinafter referred to as ("Fair Haven").

WITNESSETH:

WHEREAS, Sterling has duly formed Water District No. 3 (hereinafter called the "District"), to serve an area of Sterling, and Sterling may in the future establish additional districts; and

WHEREAS, representatives of Fair Haven and representatives of Sterling have reviewed the possibility of a Water Service Agreement to provide water to the District and any future districts, and all parties agree that it would be in both party's best interest to establish a Water Service Agreement; and

WHEREAS, this Agreement has been duly authorized by due action of the respective parties, after full compliance with the laws of the State of New York applicable thereto, and is the binding obligation of said parties;

NOW, THEREFORE, in consideration of the mutual promises and mutual covenants and agreements herein contained, in the sum of one-dollar lawful money of the United States, each to the other in hand paid, the receipt of which is hereby acknowledged by each party, and other good and valuable consideration, the parties hereto do mutually agree as follows:

1. Provision of Water Services

1.1 **Water Agreement.** Fair Haven agrees to supply, and Sterling agrees to purchase water in accordance with the terms and provisions of this Agreement.

1.2 **New Users.** Within the area served by the District, Sterling may allocate its water supply as it deems appropriate. Sterling may add new users to the District, provided that the new users meet the standards set by Sterling. Sterling may extend or expand the water districts or add new water districts upon the prior written consent of Fair Haven.

X 1.3 **Additional Districts.** Additional districts and other replacements, additions, betterments and/or improvements may be made by Sterling in its sole discretion and at its own cost and expense. The plans and specifications for such phases, replacements, additions, betterments and improvements shall be submitted to Fair Haven prior to construction for its review, and Fair Haven may, at its own expense, inspect the work during the construction. Upon completion of any such replacements, additions, betterments and improvements, the improvements shall become subject to the terms of this Agreement and Fair Haven shall then become responsible for the maintenance thereof and legal title to such improvements will remain with Sterling.

1.4 **Responsibility.** Sterling's water system shall remain the property of Sterling and Sterling shall remain solely responsible for any unpaid indebtedness now or in the future due or owing thereon, and for any

is it mandatory?
so no new agreement needed for District 2
? why are we discussing this?

upgrading required to comply with any Federal, State or County Law, rule or regulation.

- 1.5 **Contract by Consent.** Sterling may not contract to provide water to any customer beyond the limits of Sterling without prior written consent of Fair Haven and the approval of all appropriate Federal and State agencies, which may at the time have jurisdiction thereof.
- 1.6 **Water Use Regulations.** The obligation of Fair Haven to provide water to Sterling is conditioned upon Sterling's compliance with Sterling's Local Law No. 1 of 2015, as amended by Local Law No. 3 of 2017 and any amendments thereto. Sterling shall be solely responsible for any loss; penalties and/or fines occurring as a result of any failure by Sterling to comply within any such laws, rules and regulations and Sterling will indemnify and Save Fair Haven harmless from any such loss.
- 1.7 **Enforcement of Regulations.** Sterling agrees to adopt such ordinances and/or rules and regulations as reasonably requested by Fair Haven. Sterling further agrees and covenants that it will reasonably enforce such ordinances and/or rules and regulations.
- 1.8 **Liability.** Fair Haven shall not be held liable for any loss or damage from any deficiency or failure in the supply of any water service whether caused by shutting off such service in case of accident, for alterations, extensions, connections or repairs, or for any other cause whatsoever, including acts of nature. Sterling will cooperate with Fair Haven at all times in the enactment and enforcement of any necessary environmental, health or other emergency laws, rules and regulations, that may be considered by Fair Haven and Sterling as necessary to ensure the safe and effective operation of both Fair Haven's Water Districts and Sterling's Water District(s).
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Team
messing up
village?*
- 1.9 **Notification of Service Interruption.** Fair Haven will provide Sterling with at least one week advance notice of any non-emergency restrictions to the outflow of water into Sterling. Fair Haven further agrees to make all reasonable efforts to assist Sterling in providing alternate connection points or acceptance methods in case of interruptions of water service due to alterations, extensions, connections or non-emergency repairs in Fair Haven's system.
- 1.10 **Water Supply.** Fair Haven will, at all times, operate and maintain its water system in an efficient manner and will take such action as may be necessary to furnish Sterling with quantities of water required by Sterling. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Fair Haven is otherwise diminished over an extended period of time, the supply of water to Sterling's users shall be reduced or diminished in the same ratio or proportion as the supply to Fair Haven's users is reduced or diminished.
- 1.11 **Water Usage.** Sterling agrees not to use any water, except for the extinguishing of fires from fire hydrants and for use during the completion of road work in Fair Haven, without the written permission of Fair Haven. *?*
- 1.12 **Water System.** The "water system" referred to in this Agreement applies to all underground water supply pipes, valves, fittings and hydrants and appurtenances located within the Sterling Water District, as approved by the New York State Department of Health, excepting, however, the underground pipes normally considered as service entrances (laterals) to customers or facilities.

2. **Operation and Maintenance Services.**

2.1 **Definition of Services.** During the term of this Agreement, Fair Haven will provide to Sterling, for the fees set forth in this Agreement, services to manage, maintain and operate Sterling's water system, including all labor and equipment necessary to perform the services, upon the terms and conditions set forth in this Agreement. Except as otherwise specified in this Agreement, Fair Haven will provide the services in its own name and will interact directly with the water district customers of Sterling.

2.2 **Basic Services.** Fair Haven shall provide the operational duties and administrative duties set forth in Sections 2.3 and 2.4 as basic services to manage, maintain and operate Sterling's water system for the basic fee set forth in Section 4. Fair Haven shall comply with all laws and regulations applicable to it and to Sterling in providing the services, including but not limited to regulations of the NYS Department of Health and Department of Environmental Conservation. Services shall be performed during regular business hours, except Fair Haven's personnel shall be available 24 hours per day to deal with emergencies.

2.3 **Operational Duties.** Fair Haven shall provide routine operation and maintenance of Sterling's water system on behalf of Sterling, including the following:

2.3.1 **Sampling.** Routine required samplings and tests for regulatory agencies;

2.3.2 **Meter Reading.** Comparison of retail water meter readings in conjunction with Fair Haven's billing schedule;

2.3.3 **Installation.** Tapping the main and installation and/or inspection of new connections to Sterling's water system;

2.3.4 **Repairs.** Fair Haven shall participate in all repairs of the water system;

2.3.5 **Inspection.** Surveillance of system;

2.3.6 **System Cleaning.** Flushing of Sterling's water system when needed and cleanout of blockage;

2.3.7 **Stakeout of utilities;**

2.3.8 **Emergency Repairs.** Fair Haven shall participate in all emergency repairs of the water system;

2.3.9 **Hydrant Testing.** Fire hydrant testing in Sterling will be performed in accordance with the fire hydrant testing schedule established by Fair Haven.

2.4 **Administrative Duties.** Fair Haven shall provide routine administration for Sterling's water system, including the following:

2.4.1 **Billings.** Billings of retail customers in Sterling's name in accordance with Section 4 below.

2.4.2 **Customer Service.** Receive and address customer questions and concerns;

- 2.4.3 **Record Maintenance.** Maintain records necessary or advisable to the operation of the Sterling water system and provide reports to Sterling as necessary for Sterling to fulfill any legal requirements;
- 2.4.4 **Report Preparation.** Prepare all required reports for the appropriate authorities for Fair Haven and on behalf of Sterling to the extent that such reports relate to services being provided by Fair Haven;
- 2.4.5 **Construction Plan Review.** Review plans for new construction, such as new subdivisions, for compliance with standards for water districts and individual services, and provide advisory services to Sterling;
- 2.4.6 **Notification.** Advise customers of any interruption or impairment of service, to the extent practicable;

2.4.7 **Fair Haven Insurance.** Obtain and maintain all necessary insurance;

what is the coverage? \$-wise

2.5 **Additional Services.** The parties acknowledge that not all services that may be necessary to operate and maintain the Sterling Water District are included in the basic services set forth above. Fair Haven may provide such additional services to Sterling as agreed with Sterling on a case by case basis, and that Sterling will pay Fair Haven for performing such additional services. Examples of such additional services include the following:

- 2.5.1 **Installation.** Installation of new facilities;
- 2.5.2 **Replacement.** Provision or replacement of master meters, control valves or pump stations; (significant possible upgrade) after review by Fair Haven and approval by Sterling;
- 2.5.3 **Other Services.** Any other service not included as part of the basic services.

? labor cost?

2.6 **Procedure for Additional Services.** Before Fair Haven undertakes any additional services on behalf of Sterling, except in an emergency situation, Fair Haven and Sterling will agree in writing to the terms under which the additional services are to be provided, including the scope of work, the fees involved and the terms and conditions of payment. If Fair Haven is undertaking a repair to Sterling's water system in an emergency, but cannot delay until the parties have an opportunity to agree upon the terms for the additional services, Fair Haven will endeavor to advise Sterling officials of the need to make the emergency repair at the earliest possible time and the parties will agree upon a basis for payment as soon as possible.

2.7 **Sterling Operation and Maintenance Responsibilities.**

2.7.1 **Valve Boxes.** Upon completion of construction, any subsequent raising, lowering or otherwise alternating water valve boxes because of street improvements shall be done by Sterling at its own expenses. The valve boxes shall be altered to render them flush with the finished surface of the pavement. Furthermore, the valve box alternative shall not hinder the valve operation. Fair Haven shall take no responsibility for the activities of Sterling pursuant to

this paragraph; and any activities of Sterling in altering valve boxes are solely the responsibility of Sterling.

2.7.2 **Hydrants and Mains.** Should it become necessary to relocate, raise or lower any fire hydrants or water mains due to highway or street construction or for any other reason, such alteration shall be at the expense of Sterling.

3. **Fees**

3.1 **Water Usage.** As compensation for providing water services and a water supply, each equivalent dwelling unit ("EDU") in the water district shall pay Fair Haven a fee based upon water meter readings taken by Fair Haven, as set forth on Exhibit A. The fee per quarter shall be determined beginning with the Commencement Date and continuing for each quarter. The fee shall be pro rated (number of days of service provided divided by the number of days in quarter) if the Commencement Date is not on the first day of a calendar quarter and for new customers who hook up during a quarter. Sterling and Fair Haven will bi-annually review water costs and adjust water rates accordingly based on an increase of the cost to supply water to Sterling. The number of units will be updated at least annually to reflect additions and subtractions. For purposes of this Agreement, each single-family residence connected to the water system shall be considered one unit. The manner in which the number of units for users is determined is in accordance with Town of Sterling Local Law No. 1 of 2015, as amended by Local Law No. 3 of 2017 and any amendments thereto.

3.2 **Fees for New Connections.** Sterling and Fair Haven shall establish from time to time a rate schedule for the connection of properties to Sterling's Water District, which shall be paid by the property owner to Fair Haven. The schedule of rates at the inception of this Agreement is set forth in Exhibit B. Fair Haven agrees that it will not charge a connection fee to customers who connect to Sterling's Water District during the construction phase of each water district. Sterling and Fair Haven will bi-annually review and adjust the rate schedule and the services to be provided. For purposes of this Agreement, a new connection consists of the necessary connections between Sterling's Water District and the customer's property line.

3.3 **Terms of Payment.** Fair Haven will render a statement to Sterling Water District users on a quarterly basis, covering the basic service fee and any additional charges in the event of default in payment by the water user, Sterling will submit payment to Fair Haven, take due action to levy unpaid water bills on the user's taxes for recovery and hold Fair Haven harmless. Payment is due on statements rendered to Sterling water users for the quarterly fee per user within thirty (30) days of the mailing of the statement. Payment is due on a statement for all other charges within thirty (30) days. Sterling agrees to submit payment to Fair Haven within thirty (30) days following notification that the water user has not paid and shall pay a late charge of ten percent (10%) upon any account not paid when due.

3.4 **Application of Fees.** The parties agree that in exchange for Fair Haven performing the services herein Sterling will provide road work services in Fair Haven pursuant to the Intermunicipal Cooperation Agreement for Road Work Services between Sterling and Fair Haven dated _____

4. **Customer Billing.**

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4.1 **Billing.** The parties acknowledge that although Fair Haven will be assuming responsibility for the daily operation of Sterling's Water District and all water usage charges collected from the customers will be the revenues of Fair Haven, Sterling retains ownership of its system. Fair Haven has developed its standard format that can be used to send statements to Sterling customers in the water district for water usage. Sterling will annually bill and collect the operation and maintenance charges, in accordance with the established EDU schedule, from Sterling customers. Sterling will bill and collect this charge as an additional item on the Sterling customers' yearly property tax bill. The parties acknowledge and agree that prior to the Commencement Date they will develop a protocol for the handling of bills and receipts, so that the respective parties involved will have the necessary information to perform their functions.

5. **Insurance.**

5.1 **Liability Insurance.** Sterling and Fair Haven shall each maintain liability insurance covering its activities under this Agreement. Except as the parties may otherwise agree, Sterling shall add Fair Haven as an additional insured on its policy covering its water district. Fair Haven shall add Sterling as additional insured on its liability policy.

5.2 **Employee Insurances.** Fair Haven shall be responsible for obtaining and maintaining insurances related to its employees, including statutory disability insurance and unemployment insurance.

5.3 **Property Insurance.** Sterling shall maintain property insurance on its water system. Except as the parties may otherwise agree, Sterling shall add Fair Haven as an additional insured on its policy covering its water system.

6. **Indemnification.**

6.1 **Fair Haven Indemnification.** Fair Haven agrees to indemnify, defend and hold harmless Sterling from any and all actions, claims, losses and expenses (including reasonable attorneys' fees and expenses) for the acts, omissions or decisions of Fair Haven, its agents, employees, invitees, and those under its control, while performing its contractual responsibilities under this Agreement, except to the extent that Sterling's losses and expenses are covered by its own insurance policy.

6.2 **Sterling Indemnification.** Sterling agrees to indemnify, defend, and hold harmless Fair Haven from any and all actions, claims, losses and expenses (including reasonable attorneys' fees and expenses) for the acts, omissions or decisions of Sterling, its agents (other than Fair Haven), employees, invitees, and those under its control, in connection with Sterling's Water District or while performing its contractual responsibilities under this Agreement, except to the extent that Fair Haven's losses and expenses are covered by its own insurance policy.

6.3 **Waiver of Subrogation Rights.** Notwithstanding any other provisions in this Agreement, Sterling and Fair Haven, and all parties claiming under them, hereby mutually release and discharge each other from all claims and liabilities arising from or covered by insurance maintained by Fair Haven and/or Sterling in connection with the water district or the operation or maintenance thereof, or any activities in connection with the water district, regardless of the cause of the damage or loss.

7. **Term and Termination.**

7.1 **Terms.** The term of this Agreement shall begin upon execution of this Agreement by all parties and shall continue until December 31, 2058, unless terminated prior to that date in accordance with Section 7.4 below.

7.2 **Commencement Date.** For purposes of this Agreement, the Commencement Date is the date on which Fair Haven assumes control and accepts responsibility of the operations of Sterling's Water District.

7.3 **Renewal.** If either party elects not to renew this Agreement at the end of the initial term, then this Agreement shall terminate at the end of the initial term.

7.4 **Termination.**

7.4.1 **As to Both Parties.** This Agreement may be terminated at any time by action, by giving at least one (1) year advance written notice to the party of intent to terminate.

7.4.2 **By Sterling.** Sterling may withdraw from this Agreement "for cause" if Fair Haven substantially fails to perform its obligations under this Agreement, provided that Sterling must first give Fair Haven ninety (90) days advance written notice of intent to terminate, which notice specifies in detail the alleged failure to perform, and further provided that Fair Haven has not cured its failure to perform within the ninety (90) day period.

7.4.3 **By Fair Haven.** Fair Haven may terminate this Agreement as to Sterling "for cause" if Sterling fails to pay the fees provided for in Sections 3 and 4, provided that Fair Haven must first give Sterling thirty (30) days advance written notice of intent to terminate and further provided that Sterling fails to bring current its payments due to Fair Haven within the thirty (30) day period. In the event this Agreement is terminated, Fair Haven may shut off the supply of water to the entire Sterling Water District and fire hydrants therein.

7.5 **Effect of Termination.** Upon the termination of this Agreement or the withdrawal of a party to this Agreement, Fair Haven and Sterling shall cooperate with each other to return to Sterling all books and records relating to Sterling's Water District and to provide for the necessary transition in a timely and orderly fashion. In the event this Agreement is not continued or not renewed or otherwise terminated, Sterling agrees that such termination shall not effect Sterling's obligation to pay for services received during the term of this Agreement pursuant to the provisions of this Agreement. The parties agree that neither this Agreement nor its termination affects ownership of any components of Fair Haven's Water District or Sterling's Water District, regardless of who receives benefit of use of such components.

8. **Miscellaneous.**

8.1 **Independent Contractor.** It is agreed by and between the parties that Fair Haven is an independent contractor and that Fair Haven may not in any capacity be considered an agent of the other party of this Agreement or bind them to any obligation, or subject them to any liability whatsoever, except as otherwise expressly agreed in writing.

- 8.2 **No Assignment.** No party may assign its rights or obligations under this Agreement, unless the written consent of the other party hereto is obtained.
- 8.3 **Amendments.** This Agreement may be amended or modified only by a subsequent written document executed by each of the parties hereto.
- 8.4 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers and their respective corporate seals to be hereunto affixed as of the day and year first above written.

VILLAGE OF FAIR HAVEN, CAYUGA COUNTY
NEW YORK

By: _____

JAMES BASILE, Village Mayor

TOWN OF STERLING, CAYUGA COUNTY
NEW YORK

By: _____

JUNE SMITH, Town Supervisor

TOWN OF STERLING, CAYUGA COUNTY
NEW YORK

By: _____

BRIAN SOPER, Town Highway Superintendent

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss:

On this 17th day of May, 2018, before me, the undersigned, personally appeared JAMES BASILE, Mayor of the Village of Fair Haven personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

TERRI M. DIGREGORIO
Notary Public, State of New York
No. 01D16025745
Qualified in Cayuga County
Commission Expires June 1, 2019

[PAGE 9 MISSING]

Exhibits:

- A. Fee per month per unit; method to calculate number of units
- B. Rate schedule for connection to water supply system.

EXHIBIT A
WATER SUPPLY RATE CALCULATION OF NUMBER OF UNITS

OPERATION & MAINTENANCE – Until June 1, 2018

Quarterly based on water meter readings per EDU:

- a. \$3.25 per 1,000 gallons