

C-RESALE.DOC
(03/28/08)

LOWER BARTLETT WATER PRECINCT
WATER USER AGREEMENT-INDIVIDUALS

AGREEMENT, made and entered into as of the X (today) day of March, 2020 (the "Agreement") by and between:

CONSUMER: Name _____
MAILING ADDRESS: _____
Town _____ State _____ Zip _____
TEL: (1) X _____ (2) X _____
Email: (1) X _____ (2) X _____

(Hereinafter referred to as the "Consumer", and the **LOWER BARTLETT WATER PRECINCT**, a New Hampshire village district located in the Town of Bartlett, Carroll County, New Hampshire with a mailing address of P. O. Box 315, Intervale, NH 03845 TEL: (603) 356-6738 (hereinafter referred to as "LBWP").

R E C I T A L S:

A. Consumer owns certain property located at:

_____ (hereinafter the "Premises").
Town of Bartlett, Carroll County, New Hampshire,
as more particularly described in deed
from: _____
to: _____
Dated: _____

and recorded in the Carroll County Registry of Deeds, Book _____, Page _____

B. LBWP has constructed Waterworks to enable it to provide water service to the premises and the Premises is connected to the LBWP water system under Agreement with prior owner of said Premises.

C. The Premises is situated outside LBWP's municipal boundaries, but within LBWP's franchise area.

D. LBWP has constructed Waterworks to enable it to provide water service to the Premises.

E. LBWP desires to sell and deliver water to Consumer at the Premises, provided that the fees and charges relating to the same are substantially equivalent to the fees and charges Consumer would be required to pay for the sale and delivery of water if the Premises were located within LBWP's municipal boundaries.

F. Consumer and LBWP have determined to enter into this Agreement to establish the terms under which LBWP will provide water to Consumer.

G. The terms of Agreement have been submitted to the NHPUC for informational purposes as necessary in connection with the franchise issued to LBWP by NHPUC Order 21,951 having an effective date of January 18, 1996, and extensions to said franchise as have been or shall be subsequently approved by NHPUC. In consideration of the mutual promises and covenants set forth in this Agreement, LBWP and Consumer agree as follows:

ARTICLE I. SHORT TITLE, DEFINITIONS AND INTERPRETATIONS

1.1 Short Title. This Agreement may be referred to as the
(Name of Consumer) _____ - Lower Bartlett Water Precinct Water Agreement."

1.2 Definitions. For all purposes of this Agreement, including any amendments, terms shall have the meanings set forth below.

1.2.1 "Average Daily Flow" shall mean the total volume of water measured in gallons or cubic feet at all metering stations at which water delivered pursuant to this Agreement is metered during any six (6) month period divided by the actual number of days in such six (6) month period.

1.2.2 "Customer" shall mean any Person (as defined below) purchasing, contracting to purchase, or otherwise obtaining water from LBWP.

1.2.3 "Maximum Daily Flow" shall mean the highest total volume of water measured in gallons or cubic feet at a metering station over any consecutive twenty-four (24) hour period.

1.2.4 "NHDES" shall mean the New Hampshire Department of Environmental Services, Water Supply & Pollution Control Division.

1.2.5 "NHPUC" shall mean the Public Utilities Commission of the State of New Hampshire.

1.2.6 "Period" shall mean any length of time.

1.2.7 "Person" shall mean any individual, firm, company, association, society, corporation, limited liability company, political subdivision, fire district or group.

1.2.8 "Tariff" shall mean the rules, regulations, rates and charges of LBWP with respect to the provision of water services.

1.2.9 "Taxpayer Customers" refers to those residential and business premises located within the municipal boundaries of LBWP.

1.2.10 "Waterworks" shall mean facilities for collection, storage, supply, distribution, treatment, pumping, metering or transmission of water.

1.3 Construction. This Agreement, except where the context clearly indicates otherwise, shall be construed as follows:

1.3.1 Definitions include both singular and plural;

1.3.2 Pronouns include both singular and plural and include both genders.

1.4 Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire.

ARTICLE II. TERMS OF DELIVERY

2.1 Obligations of Consumer. Subject to the provisions of Section 5.1, below, Consumer understands and agrees to the following obligations and limitations made in return for LBWP's agreement to permit Consumer to connect to the LBWP water system and become a Customer of LBWP.

2.1.1 Limitation of Rights. Nothing in this Agreement is intended as a grant by LBWP of any exclusive right or privilege. In any Period in which Consumer receives water pursuant to this Agreement, Consumer shall comply in all respects with LBWP's Tariff, except as otherwise specified herein.

2.1.2 Charges and Fees. Consumer shall make timely payment of all charges described in this Agreement in accordance with and subject to the provisions set forth in Sections 3.3, 3.4, and 3.5 below.

2.1.3 Quantity of Water. Consumer shall limit its usage of water provided under this Agreement to the following:

Average Daily Flow - 150 Gallons Per Bedroom Per Day

Maximum Daily Flow - 1,400 Gallons Per Day

LBWP shall have no responsibility to supply water in excess of that amount or at other than normal operating pressures.

2.1.4 Right to Receive Water Not Assignable. Consumer may not assign its contract rights to purchase water to another Person, unless LBWP consents to such an assignment in writing. If Consumer makes such an assignment of rights, this Agreement shall be null and void.

2.1.5 No Sale of Water to Third Parties. Consumer shall not resell any water purchased in accordance with the terms and conditions of this Agreement to another Person. If Consumer makes such a sale, this Agreement shall be null and void.

2.1.6 Construction of Connections. Any and all connections between LBWP's waterworks and Consumer's Premises necessary to effectuate this Agreement, shall be of good design and constructed in a workmanlike manner and shall be paid for by Consumer.

2.1.7 Ownership of Connection Facilities. LBWP shall own all pipes laid from its presently existing Waterworks, or Waterworks constructed in connection with the Project, up to and including the curb stops installed at the Premises. The service lines from such curb stops to the buildings located on the Premises shall be the property of Consumer and shall be maintained by Consumer in a manner reasonably satisfactory to LBWP.

2.2 Ownership of Metering Devices. LBWP shall install and own all metering devices applicable to the Premises. The size of such meters shall be determined by LBWP based upon the volume of water to be provided to the Premises. Any damage to such meters arising from Consumer's failure to protect such meters from the elements, including, without limitation, freezing, shall be repaired by LBWP at the sole cost and expense of Consumer.

2.3 Obligations of LBWP. Subject to the provisions of Section 5.2, below, LBWP agrees to the following obligations and limitations in return for the timely payment by Consumer of the fees and charges specified in this Agreement.

2.3.1 Service Area. Subject to the limitations contained in this Agreement, LBWP shall deliver water to Consumer at a point on (**location of property**)_____ in the Town of Bartlett identified on Exhibit A attached hereto and made a part hereof, subject to the limitations contained herein.

2.3.2 Quality of Water. LBWP shall supply water meeting the drinking water quality criteria established from time to time by the United States Environmental Protection Agency and the NHDES.

2.3.3 Measurement of Flows. The measurement of water delivered to Consumer shall be undertaken by LBWP. Such flow measurements shall be made by one or more metering devices, which shall be placed by LBWP at the locations selected by LBWP.

2.3.4 Maintenance of Metering Devices.

2.3.4.1. Any and all metering devices installed pursuant to this Agreement shall be inspected and calibrated in accordance with the applicable regulations of the NHDES. A copy of any inspection or calibration report shall be provided to Consumer.

2.3.4.2 Consumer may request LBWP to test and certify the accuracy of a metering device at any time. If the metering device reads within specifications accepted by the NHDES, the cost of such tests shall be borne by Consumer. If the average error over different test rates is greater than that allowed by the NHDES, the cost of the test shall be paid by LBWP and LBWP shall adjust its bill for one month prior to such tests accordingly.

2.3.4.3 Consumer may have the accuracy of any metering device tested by an independent third party at its own expense at any time, provided Consumer gives LBWP written notice fifteen (15) days in advance of said test. LBWP shall have the right to be present at any such test.

2.3.4.4 In the case of missing or inaccurate flow records, due to faulty metering device operation or other circumstances, an estimate of flow, which shall be reasonable, shall be made by LBWP based on past records and other relevant data for a comparable Period. The estimates shall be used by LBWP to calculate the payments due from Consumer. Such payments shall be subject to the provisions of Sections 3.3, 3.4, and 3.5 below.

2.3.5 Records, Accounts and Audits. LBWP shall maintain records of all financial transactions with Consumer, and these records shall be available for inspection by Consumer at the offices of LBWP during normal business hours.

2.4 Responsibility for System Operation & Maintenance. LBWP assumes no responsibility for operation and maintenance of waterworks owned by Consumer including, without limitation, those described in Section 2.1.7. LBWP's sole duty hereunder shall be to provide water of the quantities and quality specified in Sections 2.1.3 and 2.3.2 at the location specified in Section 2.3.1, subject to the terms and conditions contained in this Agreement.

2.5 Limitation of Liability.

2.5.1 Liability for Non-Negligent Acts. If LBWP is unable to supply some or all of the water demanded by Consumer under this Agreement for any reason other than LBWP's own negligence, LBWP shall not be liable to Consumer for any damages arising out of such failure to supply water. Consumer hereby waives any rights it might have to any damages for such failure.

2.5.2 Impairment of Supply. If LBWP is unable to supply Consumer with water for any reason other than the negligence of LBWP, Consumer shall not be entitled to compel LBWP to supply

it with additional quantities of water nor shall it be entitled to any damages as a result of LBWP's failure to supply it with water. In addition, LBWP cannot be compelled to furnish Consumer with water if LBWP Waterworks or the sources upon which LBWP is dependent for its supply of water is impaired, and Consumer shall be entitled to no damages as a result of LBWP's failure to supply it with water. LBWP shall be the sole judge as to whether the water available to it is adequate to supply Consumer and whether LBWP's Waterworks or sources of supply are impaired. The exercise of such judgment must be reasonable, however. LBWP's decision shall be final and binding on Consumer.

2.5.3. Liability for Accident. Neither LBWP nor Consumer shall be liable in damages or otherwise for failure to perform any obligation under this Agreement, which failure is occasioned by or in consequence of any act of God, act of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, wash-outs, vandalism, civil disturbances, labor strikes, power failures, explosions, breakage or accident to machinery or lines of pipe, failure or want of water supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein specified or otherwise, not within the control of such party and by which act, omission or circumstance such party is unable to prevent or overcome by the exercise of reasonable care.

2.5.4 Liability Resulting from Negligence. Neither Consumer nor LBWP shall be relieved of liability for loss resulting from its negligence, intentional actions, or its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch nor shall such causes or contingencies affecting performance relieve Consumer from its obligations to make payments of amounts then due in accordance with this Agreement.

2.5.5 Consumer Liability for Water Provided. Nothing herein shall be construed as relieving Consumer under any circumstances from its duty to pay for water delivered pursuant to this Agreement.

2.6 Indemnification. Consumer shall exonerate, indemnify and save harmless LBWP from all claims and demands for injuries to persons, loss of life, damage to property or other losses arising out or connected with the performance of this Agreement which LBWP is legally bound to pay, excepting, however, such claims and demands as shall result primarily from negligence on the part of LBWP. Provided, however, that in the event such claims and demands result primarily from negligence on the part of LBWP, Consumer shall exonerate, indemnify and save harmless LBWP from that portion of such claims and demands not resulting from negligence on the part of LBWP. The phrase "claims and demands" shall include, but shall not be limited to, damages, judgments, settlements, costs of defense, including attorneys' fees and legal actions, claims or proceedings and appeal therefrom. Consumer shall procure and maintain such public liability insurance as will protect Consumer and LBWP from such claims and demands in such amounts as LBWP shall reasonably deem necessary.

2.7 Notices. All notices herein required or permitted to be given hereunder shall be in writing and shall be sufficient if hand delivered or mailed by certified mail, return receipt requested, and addressed as follows:

If to LBWP: Lower Bartlett Water Precinct
Attn: James Rockett, Chairperson
Box 315
Intervale, NH 03845-0315

With a Copy to: Timothy E. Britain
Cleveland, Waters and Bass, P.A.
Two Capital Plaza
Box 1137
Concord, NH 03302-03302-1137

If to Consumer: _____

With a Copy to: _____

_____ or
Such other addresses as to which either party shall notify the other by like notices.

ARTICLE III. PAYMENTS FOR SERVICES

3.1 Basis for Payments. Consumer shall be responsible for the following payments in connection with water services provided by LBWP:

3.1.1 Base Charge. Consumer shall pay LBWP a base charge for water service in an amount equivalent to the base charge assessed by LBWP for residential premises substantially equivalent to the Premises. Payment of bills shall be due upon presentment in accordance with and subject to the provisions of Sections 3.3, 3.4, and 3.5 below.

3.1.2. Metered Charge. Consumer shall pay LBWP a metered charge for each gallon of water delivered to Consumer at the location stated in Section 2.3.1 at the rate specified in Section 3.2. Payment of bills shall be due upon presentment in accordance with and subject to the provisions of Sections 3.3, 3.4, and 3.5 below.

3.1.3 Annual Charge. In addition to the Base Charge and the Metered Charge described above, each year while this Agreement is in effect, Consumer shall pay an annual fee to LBWP of an amount substantially equivalent to the tax assessment that Consumer would be required to pay to LBWP, if the Premises were located within LBWP's municipal boundaries, to cover debt service and capital costs with respect to LBWP Waterworks used in the provision of water service. Payment of bills shall be due upon presentment in accordance with and subject to the provisions of Sections 3.4, and 3.5 below.

3.1.4 Adjustments in Base Charge and Rate. The base charge established in Section 3.1.2, and the rate established in Section 3.2 shall be adjusted to coincide with each change in the base charge and rate made with respect to LBWP's Taxpayer Customers.

3.1.5 Adjustments in Annual Charge. The annual charge established in Section 3.1.4 shall be adjusted each year in accordance with the tax rate set by the New Hampshire Department of Revenue Administration for LBWP's Taxpayer Customers.

3.2 Rates. Subject to the provisions of Section 3.1.5, the initial rate charged for water delivered to Consumer shall be **\$3.00** per one thousand (1,000) metered gallons.

3.3 Billing Cycle. LBWP shall bill Consumer on a tri-annual basis in arrears. Payment of bills shall be due upon presentment.

3.4. Delinquent Bills. Bills remaining unpaid for thirty (30) days or longer from the billing date shall be subject to an interest charge of one and one-half percent (1.5%) per month on the unpaid balance. If bills or payments to be made pursuant to this Agreement remain unpaid for thirty (30) days or longer after the billing date, or the date on which payment is due, LBWP may issue a notice of intent to discontinue service to Consumer. If such bills or payments remain unpaid five (5) days or longer after the date of the notice of intent to discontinue service described above, all deliveries of water by LBWP to Consumer shall cease and said deliveries shall not be renewed until all outstanding bills and payments are paid in full at the office of LBWP. In lieu of such discontinuance, LBWP may require Consumer to make payments at less than semi-annual intervals.

3.5 Charge for Resumption of Service. If LBWP ceases to deliver water to Consumer pursuant to Section 3.4, LBWP may impose a reasonable charge for resumption of delivery of water as set forth in the Tariff.

~~3.6 Capacity Fee. A Capacity Fee of \$3,000 or \$3,500 for contracts executed after 9/1/05 (such amount equivalent to the capacity fee assessed by LBWP for residential premises substantially similar to the Premises) has been paid in full by prior owner of Premises.~~ **N/A**

3.7 Expansions and/or Upgrading of LBWP's Waterworks. In all cases, LBWP shall be the sole judge as to all improvements, additions or expansions to its Waterworks, such judgment to be exercised in a reasonable manner.

ARTICLE IV. ASSIGNMENT, AMENDMENT AND TERMINATION

4.1 Amendment. The provisions, terms and conditions of this Agreement may be modified only by written amendments, executed by both parties with the same formality as this Agreement.

4.2 Successors and Assigns. Consumer may not assign its rights or duties under this Agreement to another Person, unless LBWP consents to such an assignment in writing. If Consumer makes such an assignment, this Agreement shall be null and void. This Agreement shall be binding upon and inure to the benefit of LBWP and its successors and assigns.

4.3 Waiver. Failure of either party to exercise any right under this Agreement shall not be deemed a waiver by such party to exercise at some future time that right or another right it may have under this Agreement.

4.4 Effective Date and Duration. This Agreement shall be effective as of the date first set forth above. Unless Consumer becomes a Taxpayer Customer or transfers title to the Premises, this Agreement shall be in full force and effect and shall be binding on the parties for thirty (30) years from the effective date, as long as Consumer is not in default of its obligations under this Agreement. It is the intent of both parties that on or before the expiration of the term of this Agreement, this Agreement will be renegotiated and extended upon terms mutually agreeable to both parties. In the event that the municipal boundaries of the LBWP are changed to include the Premises, Consumer shall become a Taxpayer Customer and this Agreement shall automatically expire. Likewise, upon a transfer of title to the Premises, this Agreement shall automatically expire.

4.5 Termination. In the event of unforeseen circumstances which materially alter the circumstances upon which this Agreement is based, LBWP shall have the right to terminate this Agreement without liability to Consumer of any sort upon sixty (60) days written notice to Consumer.

4.6 Breach. Either party may terminate this Agreement prior to the date specified in Section 4.4 if the other party has violated any of its agreements or covenants under this Agreement or any of the duties imposed upon it by this Agreement, provided the party seeking to terminate for such cause shall give the offending party ninety (90) days prior written notice, specifying the particulars of the violation claimed; and if at the end of such time the party so notified has not remedied the purported violation, or is not in the process of making a good faith effort to remedy the purported violation or has not contested the existence of the purported violation, then the termination of this Agreement shall be deemed complete. If, however, the party notified of the violation contests the existence of the purported violation, then the parties agree that the matter shall be referred to arbitration in accordance with Section 1.4 hereof for a determination as to whether the purported violation exists and whether the party seeking to terminate the Agreement may do so as a result of said violation.

ARTICLE V. MISCELLANEOUS PROVISIONS

5.1 Status of Former Agreements. This Agreement constitutes the entire agreement between Consumer and LBWP with respect to the subject matter hereof. It supersedes all provisions of any former or currently existing agreements between the parties.

5.2 Severability. If any clause or provision of this Agreement or application thereof shall be held unlawful or invalid, no other clause or provision or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained in this Agreement.

5.3 Status of Legal Representatives, Successors, and Assigns. The benefits and burdens of this Agreement shall inure to and be binding upon the respective legal successors to the parties.

5.4 Third Parties. LBWP assumes no responsibility for any facility not included in its Waterworks, and in the event that a facility of a third party shall be involved in the furnishing of service to Consumer, then Consumer shall look solely to such third party for any such services.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each of which shall be deemed an original, as of the date first above written.

In the Presence of:

CONSUMER:

X _____
Witness

X _____
Sign

Please Print,
Hereunto Duly Authorized

X _____
Witness

X _____
Sign

Please Print,
Hereunto Duly Authorized

LOWER BARTLETT WATER PRECINCT

Witness

By: _____
James Rockett
Its Commissioner
Hereunto Duly Authorized

Witness

By: _____
Bradley Thayer
Its Commissioner
Hereunto Duly Authorized

Witness

By: _____
Robert Muzerall
Its Commissioner
Hereunto Duly Authorized

Being all of the Commissioners
of the Lower Bartlett Water
Precinct