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CITY OF DANBURY

OFFICE OF THE CORPORATION COUNSEL

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October 22, 2008

Honorable Mayor Mark D. Boughton
Honorable Members of the Common Council
City Hall
155 Deer Hill Avenue
Danbury, Connecticut 06810

Re: Danbury-Bethel Interlocal Utilities Agreement

Dear Mayor and Council Members:

On March 15, 2004, residents of Payne Road petitioned the council for permission to connect to a sewer line that the Town of Bethel was intending to install along their road. The council authorized negotiations, with the intention of exploring the possibility of extending sewer service to these residents as an assessment project. Accordingly, city officials and representatives of the town met several times between 2004 and 2006 to discuss the request. More recently, as Bethel continued work on the plan to bring sewer service to the Payne Road area, town officials approached Danbury with a request for water service to serve fire emergency needs.

Talks resumed and over the past year or so, city and town representatives approved language on a tentative agreement, which the Town of Bethel has approved and which we are now in a position to present to you for your consideration. In anticipation, a common council committee was formed last spring and it is my recommendation that you send the attached proposed agreement to them for their review. By the time the committee meets, a new mail survey sent recently to Payne Road residents should have been returned and the results known.

If the committee reports favorably, the next step in both the interlocal process and the assessment process is to consider the views of Danbury residents and taxpayers at a public hearing. Since the two issues are intertwined, it seems logical to hold one public hearing for both purposes. If you wish to do so, you may save a month by now referring the matter to a public hearing, to be held following the committee meeting.

If you have any questions, please contact me.

Sincerely,

Eric L. Gottschalk
Assistant Corporation Counsel

cc: Antonio Iadarola, Director of Public Works
David Day, Superintendent of Public Utilities

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DANBURY-BETHEL
INTERLOCAL SEWER AND WATER AGREEMENT

This AGREEMENT is made this _____ day of _____, 2008, by and between the Town of Bethel ("Bethel") acting herein by Robert E. Burke, its First Selectman, hereunto duly authorized, and the City of Danbury ("Danbury"), acting herein by Mark D. Boughton, its Mayor, hereunto duly authorized; both Bethel and Danbury ("Municipalities") being municipal corporations situated in the County of Fairfield and State of Connecticut.

WITNESSETH:

Whereas the Municipalities wish to continue their cooperative approach to the economic and efficient use of sewage collection and water transmission facilities within their jurisdictions, including the use of Danbury facilities by property owners in Bethel and the use of Bethel facilities by property owners in Danbury; and

Whereas Danbury desires to provide sanitary sewer service to a new area of the city through lines and facilities to be located in and owned by Bethel; and,

Whereas on October 24, 1978 the parties entered into an agreement (the "Original Agreement") governing the cooperative use of sewage facilities located in both Municipalities; and,

Whereas the Municipalities now wish to amend their Original Agreement to expand the area of service in Danbury; and

Whereas Bethel desires to interconnect the public water systems of the Municipalities, as more particularly shown on Exhibit A attached hereto, in order to enhance fire flows and other emergency water services to its residents.

Now therefore, in consideration of the covenants contained herein the parties do agree as follows:

ARTICLE I. SEWER SERVICES

SECTION 1. NEW AREAS TO BE SERVED

Section 4 of the Original Agreement is hereby amended to read as follows:

4. Bethel agrees to grant Danbury an interest in its sewer system by providing Danbury sufficient capacity in its collection and transmission and appurtenant facilities (hereinafter referred to as the "Bethel Facilities") for conveyance, treatment and disposal of an average daily flow of sewage from two areas located in the City of Danbury, totaling ninety-six thousand (96,000) gallons. A portion of said average daily

flow shall originate from an area known as the "Coal Pit Hill District" and shall be in the amount of seventy-five thousand (75,000) gallons, and a portion of said average daily flow shall originate from an area known as the "Payne Road Area" and shall be in the amount of twenty-one thousand (21,000) gallons. Both areas are more particularly described in "Appendix B" attached hereto and made a part hereof. Said average daily flow of sewage shall be determined on an annual basis as set forth herein.

Appendix B referenced in Section 4 of the Original Agreement and described above is attached hereto and is hereby amended to incorporate both the area known as the "Coal Pit Hill District" and the area known as the "Payne Road Area."

SECTION 2. FINANCING OF BETHEL FACILITIES

Danbury shall pay Bethel the sum of three hundred and fifty thousand dollars ($350,000.00), representing Danbury's proportionate share of the cost of constructing the Bethel Facilities. The first payment of one hundred and seventy five thousand dollars ($175,000.00) shall be deposited with Bethel within ninety (90) days after the signing of this Agreement. The second and final payment of one hundred and seventy five thousand dollars ($175,000.00) shall be made within ninety (90) days after sewage begins to flow from Danbury to Bethel.

SECTION 3. USE, MONITORING, TESTING AND METERING

Section 3.1 In order to minimize the impact of flows from Danbury upon the Bethel Facilities, Danbury shall require that all Payne Road Area users install holding tanks and discharge wastes only during off-peak hours, namely between 12 AM and 6 AM.

Section 3.2 Danbury shall install proper water metering equipment to allow measurement of the effluent discharged by Danbury customers, transported through Bethel and treated by Danbury. Both municipalities shall collect samples of effluent generated within their communities and shall perform testing appropriate to ensure conformity with the terms and conditions of the Danbury NPDES permit, as the same may be amended, in a manner and as at such times or intervals as may be required by DEP with respect to the testing of Danbury influent.

Section 3.3 The Municipalities shall work cooperatively to sample and test effluent within the Bethel Facilities when such sampling and testing is deemed necessary. However, each Municipality reserves the right to take samples and perform tests of effluent within the Facilities of the other at any time to determine compliance with Federal, State and Local sewer standards. The testing Municipality shall notify the other prior to taking any such samples in order to allow it to send a representative to observe said sampling procedure and provide such assistance as may be necessary.

Section 3.4 In the event that tests reveal that effluent discharged into the Bethel Facilities by Danbury customers and conveyed to the Danbury sewer system fails to meet standards and permit requirements of Federal, State or Local Governments,

Danbury shall take all action necessary to correct said condition in its sewer system and compel compliance with said standards and permit requirements by all responsible Danbury sewer users.

Section 3.5 Danbury shall, at all reasonable times and without notice, have the right by its duly authorized agents or employees to inspect the Bethel Facilities to assure itself that construction, operation and maintenance of the Bethel Facilities is being carried out in a satisfactory manner.

SECTION 4. ANNUAL BILLING

Section 4.1 Section 11 of the Original Agreement and Section 4.3 of the "AGREEMENT FOR SEWER SERVICE BETWEEN THE CITY OF DANBURY AND THE TOWN OF BETHEL," dated April 13, 1988, shall be deleted and the following substituted in their place.

> Danbury shall maintain the Danbury Facilities and shall bill Bethel annually for Bethel's proportionate share of the Operation and Maintenance Costs (as defined in the Agreement of April 13, 1988, identified above) of the Danbury Facilities, said proportionate share shall be computed by multiplying the annual Operation and Maintenance Costs to Danbury for the Danbury Facilities, which costs shall be separately tabulated, by the percentage of the total annual flow of sewage into the Danbury Facilities which is attributable to Bethel. Bethel shall also be responsible for its proportionate share of the operation and maintenance cost of any pumping stations located in Danbury that convey sewage generated in Bethel to the Danbury Facilities. At the beginning of each fiscal year Danbury shall estimate Bethel's proportionate share for said ensuing fiscal year and shall notify Bethel of its estimated share. Bethel shall pay said estimated share to Danbury in an annual payment within thirty (30) days of receipt of said notice. At the end of the Danbury fiscal year the sum due Danbury from Bethel shall be determined on the basis of the annual metered flow of sewage from Bethel into Danbury and any balance thus determined to be owing by Bethel shall be promptly paid to Danbury within ninety (90) days. In the event Bethel shall have paid more than its proper share for the preceding year as thus determined, the amount of said overpayment shall be credited against the payment next becoming due from Bethel.

ARTICLE II. WATER SERVICES.

SECTION 1. AREAS OF INTERCONNECTION

Bethel agrees to undertake and Danbury agrees to allow interconnections between their respective water systems in the areas of the Timber Oaks and Chelsea Heights subdivisions. More particular information regarding the location of these

interconnections is shown on Exhibit A attached hereto and made a part hereof. The interconnections shall be performed by and the cost thereof shall be borne by Bethel. In each case, Bethel shall seek approval of the interconnection location and design from the Danbury Engineering Division. Said design shall meet normal and customary engineering standards and specifications. In each case, Bethel shall be responsible for making whatever provisions are necessary to accommodate pressure differences between the two systems, for obtaining whatever licenses, permits or approvals are required in order to accomplish the interconnection, and for complying in all other respects with applicable laws, rules or regulations, whether federal, state or local.

SECTION 2. INTERCONNECTION – SPECIAL PROVISIONS

Bethel anticipates that the interconnection associated with the Timber Oaks development will be undertaken once Bethel has completed construction of a proposed 750,000 gallon water tank in the vicinity of the Eureka Reservoir clear wells, however this interconnection may be undertaken at any time, provided that Bethel's pressure gradient equals the pressure gradient of Danbury's Low Service Area.

The interconnection associated with the Chelsea Heights development may be undertaken at any time, provided that Bethel pays Danbury the sum two hundred and five thousand dollars ($205,000), toward the expense of upgrading the Crows Nest Tanks water supply system. Said system consists of the Shelter Rock pump station, the two (2) Crows Nest tanks and the valve chamber, as described in Exhibit B. Any additional expenses associated with the said upgrades shall be borne by Danbury. Prior to interconnection, Bethel shall deposit said sum with the City of Danbury.

All costs associated with relocating the existing Crows Nest water tank access road made necessary to accommodate the Chelsea Heights development shall be borne by Bethel. Bethel shall provide an access road easement to Danbury, in a form acceptable to Danbury, affording it access to the tank.

Bethel specifically acknowledges and agrees that: (a) the interconnections shall not be used to supply water to meet the normal demands of the Bethel water system; (b) the interconnection valves shall normally be closed; (c) the interconnections shall be metered and the metering equipment so used shall be subject to approval by Danbury; (d) rates and charges for use of water shall be billed to Bethel in accordance with the provisions of the Danbury Code of Ordinances then in effect; (e) any fire pump systems served through the interconnections shall be linked to appropriate instrumentation and monitoring devices at the Danbury West Lake Water Treatment Plant; and, (f) it shall be responsible for operation and maintenance of the fire pump systems served through the interconnections.

ARTICLE III. GENERAL PROVISIONS

SECTION 1. TERMS, SEVERABILITY AND EFFECTIVE DATE

Section 1.1 This Agreement shall not be effective until it has been executed by the First Selectman of Bethel and the Mayor of Danbury, after approval of the appropriate governmental authority of the Town of Bethel and approval by the Common Council of Danbury.

Section 1.2 This Agreement shall remain in full force and effect during the term of the Original Agreement.

Section 1.3 In the event that there shall be a final adjudication that any provision or provisions of this Agreement are or shall be invalid, illegal, or contrary to public policy, such provision or provisions shall be deemed and construed to be severable from the remaining provisions of this Agreement, which shall continue in full force and effect, unless the provision or provisions so adjudicated are so essential to the Agreement as to render performance of the Agreement impossible in their absence.

Section 1.4 This Agreement represents the entire understanding between the Municipalities regarding the expansion of the area of Danbury to be served by sewer facilities extending through Bethel as well as the interconnection of their two public water supply systems. It is the intention of the Municipalities that, except as otherwise provided herein, the terms of the Original Agreement shall remain in full force and effect and shall be read harmoniously with the terms hereof as well as with the terms of all other prior agreements of the Municipalities, including the Agreement of April 13, 1988 and the Agreement of February 25, 1991. In the event that any of the provisions of this Agreement irreconcilably conflict with the terms of the prior agreements described above, the provisions hereof shall govern.

SECTION 2. REPRESENTATIONS AND WARRANTIES

Section 2.1 Bethel hereby represents and warrants to Danbury that (i) Bethel is and will continue to be a body politic and corporate, validly existing under the laws of the State of Connecticut and with the power to execute and deliver this Agreement; (ii) that the execution and delivery by Bethel of this Agreement have been duly authorized by Bethel in conformity with all applicable laws, including its charter, and no proceedings or authority for the execution and delivery of this Agreement have been repealed, rescinded or revoked; (iii) this Agreement, upon execution and delivery hereof, will be a legal, valid and binding obligation of Bethel enforceable against it in accordance with its respective terms; (iv) no litigation of any nature is now pending or, to the best of Bethel's knowledge, threatened which would restrain or enjoin the execution or delivery of this Agreement or in any manner question the authority or proceedings for the execution or delivery of this Agreement.

Section 2.2 Danbury hereby represents and warrants to Bethel that (i) Danbury is and will continue to be a body politic and corporate, validly existing under the laws of the State of Connecticut and with the power to execute and deliver this Agreement; (ii) that the execution and delivery by Danbury of this Agreement have been duly authorized by Danbury in conformity with all applicable laws, including its charter, and no proceedings

or authority for the execution and delivery of this Agreement have been repealed, rescinded or revoked; (iii) this Agreement, upon execution and delivery hereof, will be a legal, valid and binding obligation of Danbury enforceable against it in accordance with its respective terms; (iv) no litigation of any nature is now pending, or to the best of Danbury's knowledge, threatened which would restrain or enjoin the execution or delivery of this Agreement or in any manner question the authority or proceedings for execution or delivery of this Agreement.

In Witness Whereof, the Municipalities have caused this Agreement to be executed by their authorized officers and their respective seals to be hereunto affixed as of the date first written above.

In the presence of:

_____

_____

_____

_____

TOWN OF BETHEL, CONNECTICUT

By: _____
Robert E. Burke
First Selectman

CITY OF DANBURY, CONNECTICUT

By:_____
Mark D. Boughton, Mayor