

**WILMINGTON WATER DISTRICT**  
**TO**  
**TOWN OF WILMINGTON**  
**WATER SYSTEM PLAN OF MERGER AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between  
WILMINGTON WATER DISTRICT, a political subdivision of the State of Vermont,  
acting by and through its Executive Board, the governing body thereof, hereinafter  
referred to as the “WATER DISTRICT” and TOWN OF WILMINGTON., a  
Vermont Municipality, hereinafter referred to as the “TOWN”.

**RECITALS:**

1. The WATER DISTRICT is the owner of potable water sources, treatment and distribution system (hereinafter referred to collectively as the “Water System” or “System”) known as the Wilmington Water District water system, located within the boundaries of Windham County, Vermont.
2. Pursuant to 24 V.S.A. , Chapter 49, the TOWN is authorized to acquire, construct and maintain water works and water companies.
3. The WATER DISTRICT wishes to merge into the Town and to have the Town take over the System.
4. The TOWN will examine the WATER DISTRICT’S Water System Assets, will examine its existing financial structure, will examine the long-range needs and

goals of the TOWN relative to the provision of water service to its present and future citizens, and will determine if the proposed merger of the Water District into the Town, along with its Water System Assets and liabilities, is in the public interest.

5. The TOWN, subject to the contingencies and inspections set forth herein, desires to put the matter of the merger before the Voters upon the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the above recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS: The above Recitals are true and correct and form a material part of this Agreement.

SECTION 2. PLAN OF MERGER: The Parties agree to the Plan of Merger as set forth in the attached Exhibit A.

SECTION 3. ASSETS: On the effective date of Merger, assuming the contingencies herein have been satisfied, as defined below, the WATER DISTRICT shall sell, assign, transfer, convey, and deliver to the TOWN, and the TOWN shall accept all of the right, title, and interest, in and to the following property and assets (collectively the "Water District Assets"):

3.1 Real Property: Any real property interests ("Property"), owned

or otherwise possessed by the WATER DISTRICT, whereupon all water sources, access driveways, storage and treatment facilities, distribution lines, electrical lines, pumping stations, and all other potable water - service facilities are located, including all real estate owned by the WATER DISTRICT. A partial listing of real property is found in the Exhibit B.

3.2 Plant and Other Facilities: The following asset owned by the WATER DISTRICT: All water sources, storage and treatment facilities, water mains, wells, access driveways, electrical lines, distribution pipelines, meters, and pumping facilities of every kind and description whatsoever, including without limitation, transmission pipes or facilities, valves, meters, service connections, and all other potable water service connections, and all other potable water physical facilities and property installations in use in connection with business of the WATER DISTRICT.

3.3 Equipment: All personal property related in any way to the WATER DISTRICT, except that personally belonging to Water District Operator Chris Lavoy.

3.4 Other Rights: All rights; privileges; easements; licenses; prescriptive rights; rights-of-way; and rights to use public and private roads, highways, streets; and other areas, if any, owned or possessed by the WATER DISTRICT for the construction, reconstruction, expansion, maintenance, and operation of the System of the WATER DISTRICT and the Purchased Assets

(collectively referred to as the "Easements" as shown in the Exhibit B). The TOWN reserves all rights to cancel any contracts for the purchase of lands, and the TOWN shall not be obligated to put the matter of the Merger before the voters until such time as the Town decides upon the Water Supply Options as outlined in the Report prepared by SVE Associates, dated march, 2013. Upon the approval of this Agreement, the WATER DISTRICT agrees to the transfer of the use of any names, website, electronic presence or other symbols associated with the WATER DISTRICT.

3.5    Vendor Contracts: The Plan of Merger is contingent upon the TOWN reviewing all vendor contracts of the WATER DISTRICT. The TOWN has confirmed that there are no vendor contracts.

3.6    Customer and Supplier Lists: The TOWN is satisfied that it has the full list of the Customers and Suppliers maintained by the WATER DISTRICT pertaining to operation of the System.

3.7    Permits and Approvals: All permits, certificates, and other governmental authorizations and approvals necessary to operate and maintain the System in accordance with all governmental requirements, as described in Composite Exhibit attached hereto and incorporated by reference herein. All correspondence relating to their permits and approvals.

3.8    Choses in Action: All choses in action including, but not limited to, warranty claims, claims for damages, the right to sue for any past infringement,

or other cause of action. The WATER DISTRICT has represented that there are none.

3.9 Customer Deposits: The WATER DISTRICT does not hold any deposits from its customers. All payments have been timely entered into the WATER DISTRICT system since July 2019.

3.10 The TOWN shall not be bound by any contracts made by WATER DISTRICT prior to Merger unless TOWN specifically agrees to such in writing. The WATER DISTRICT has represented that there are no outstanding contracts.

#### SECTION 4. [Reserved]

SECTION 5. DUE DILIGENCE: Pursuant to its fiduciary responsibility, the TOWN must perform an inspection and analysis of the WATER DISTRICT, and its assets, system and operation. The WATER DISTRICT will assist the TOWN in this inspection and analysis in any way reasonable.

5.1 Survey: Pursuant to its sole discretion, the TOWN may have prepared, at its expense, for any of the property or Other Rights set out in Composite Exhibit, a current survey by a Vermont-licensed surveyor in accordance with applicable law; the survey will be prepared in accordance with and certified to the TOWN in accordance with the minimum detail standards adopted by the Vermont Society of Professional Land Surveyors. Any defect reflected on such survey including, but not limited to, encroachments of improvements across a

boundary line or onto a WATER DISTRICT strip, evidence of overlaps along a property line, violation of restrictions, easements, setback lines, possession inconsistent with the property boundaries, or any other such defect shall be treated as a title defect under SUBSECTION 6.3 above. The TOWN shall have thirty (30) days after receipt of the said survey to furnish notice to the WATER DISTRICT, as appropriate, of any title defect shown on the survey that does not conform to the status of marketable title described in SECTION 6.3 of this Agreement. If the TOWN shall fail to notify the WATER DISTRICT, as appropriate within the aforesaid thirty (30) days, the TOWN shall be deemed to have accepted the status of the title issues shown on the survey.

5.2 WATER DISTRICT provides to the TOWN full cooperation and access to all property, systems, accounts, records, correspondence and knowledge of the WATER DISTRICT to assist its due diligence inspection of assets of WATER DISTRICT and operation of the system.

5.3 In addition, WATER DISTRICT will provide TOWN with inventories of land records, contracts, insurance documents, infrastructures, real estate, documents, accounts, bank records, etc.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF THE WATER DISTRICT: To induce the TOWN to enter into this Agreement, the WATER DISTRICT represents and warrants that, at time of execution of this Agreement and as of Merger date:

6.1 Organization, Standing, and Power: The WATER DISTRICT is a Vermont Municipality, duly organized, validly existing, and in good standing under the laws of the State of Vermont, and is authorized to do business in the State of Vermont. The WATER DISTRICT has all requisite power and authority to own its properties and the system assets and to conduct its business as it is currently being conducted.

6.2 Authority for Agreement: The WATER DISTRICT has the power and authority to execute and deliver this Agreement and to carry out its respective obligations hereunder. This Agreement has been duly authorized by all action required to be taken by the WATER DISTRICT, has been duly executed and delivered by the WATER DISTRICT, and constitutes a valid and legally binding obligation of the WATER DISTRICT, enforceable in accordance with its terms.

6.3 Good and Marketable Title: The WATER DISTRICT has good and marketable title to the Assets to be merged and taken over by the TOWN.

6.4 No Liens or Encumbrances: Except as otherwise specifically set forth herein, there are no liens, claims, or encumbrances of any type or nature upon or against the Purchased Assets including, but not limited to, financing statements or security instruments filed under the Uniform Commercial Code either in the county where the land is located or with the Secretary of State.

6.5 Litigation: The WATER DISTRICT has no actions, suits, or proceedings at law or in equity, pending or threatened against the WATER

DISTRICT before any Federal, State, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affects or will affect the System or any of the Purchased Assets or the WATER DISTRICT'S right and ability to make and perform this Agreement; nor is the WATER DISTRICT aware of any facts that to its knowledge are likely to result in any such action, suit, or proceeding. The WATER DISTRICT is not in default with respect to any order or decree of any court or of any administrative or governmental agency or instrumentality affecting the System or any of the Assets. The WATER DISTRICT agrees and warrants that it shall have a continuing duty to disclose up to and including the Merger date, the existence and nature of all pending judicial or administrative suits, actions, proceedings, notices of violation, and orders which in any way relate to the operation of the System. Any such matters now known to the WATER DISTRICT shall be initially disclosed within ten (10) days following execution of this Agreement and shall be supplemented each thirty (30) days thereafter, as well as on the Merger date. WATER DISTRICT remains responsible for any debts or liabilities it has incurred prior to the sale of the system to the TOWN.

6.6 Appropriate Zoning: The present zoning of the properties described in Exhibit B does not prohibit the operation of the System on the subject properties.

6.7 Contracts and Agreements: The WATER DISTRICT has no



outstanding contracts.

6.8 New Agreements: The WATER DISTRICT shall not enter into any extension, developers' agreement, agreement concerning the operation of the Water System, agreement concerning water service capacity, or cause any agreement to be modified after the date of execution of this Agreement without the prior written approval of the TOWN.

6.9 Leases: None of the Water System or the Purchased Assets is subject to any interest of any lessor or lessee and will not be so subject as of the Merger date.

6.10 Contracts in Default: There are no existing contracts or commitments with respect to the System and the WATER DISTRICT is not aware of any defaults of any parties to any such agreement.

6.11 No Governmental Violations: The WATER DISTRICT is not aware and has not been notified of the existence of any violations of any governmental rules, regulations, permitting conditions, or other governmental requirements applicable to the ownership, maintenance, or operation of the System.

6.12 No Record Violations: The use of the System or the property set out in Exhibit B is consistent with and does not violate any restrictions or conditions of record.

6.13 Absence of Changes: Since the date of execution of this Agreement, the WATER DISTRICT shall not and has not:

6.13.1 Undergone any change in its condition (financial or otherwise) of properties, assets, liabilities, business, or operations other than changes in the ordinary course of business which have not been, either in any case or in the aggregate, materially adverse.

6.13.2 Declared, set aside, made or paid any dividend or other distribution in respect of its capital stock or purchased or redeemed, directly or indirectly, any capital stock.

6.13.3 Incurred any indebtedness for borrowed money or issued or sold any debt securities.

6.13.4 Suffered any damage, destruction, or loss, whether or not covered by insurance, adversely affecting its properties, assets, or business.

6.13.5 Mortgaged, pledged, or subjected to any lien, lease, security interest, or other change or encumbrance any of its properties or assets, tangible or intangible.

6.13.6 Acquired or disposed of any assets or properties of material value except in the ordinary course of business.

6.13.7 Forgiven or canceled any debts or claims, or waived any rights except in the ordinary course of business.

6.13.8 Entered into any material transaction other than in the ordinary course of business.

6.13.9 Incurred any liability or obligation (whether absolute,

accrued, contingent, or otherwise) except in the ordinary course of business.

6.13.10 Made any prepayment of any obligation or liability.

6.13.11 Received any notice of termination of any contract, lease, or other agreement.

6.13.12 Made any change in accounting policies or practices, including any change in depreciation or amortization policy.

6.14 Financial Statements: The WATER DISTRICT has provided the TOWN records that fairly present the financial condition and results of operations of the WATER DISTRICT at the dates and for the periods of time thereof and the WATER DISTRICT has disclosed all of the assets, liabilities, net worth, revenues, and expenses of the WATER DISTRICT.

6.15 Disclosure: No representation or warranty made by the WATER DISTRICT, to the best of the WATER DISTRICT'S knowledge, in this Agreement contains or will contain any untrue statement of material facts or omits or will omit to state any material fact that would make the statements, herein contained, misleading or untrue.

6.16 Survival of Covenants: The WATER DISTRICT agrees that its representations and warranties set forth herein are true and correct as of the date of the execution hereof, shall be true and correct at the time of Merger, and shall survive the Merger.

6.17 This agreement is specifically contingent upon TOWN obtaining

or transferring a valid operating permit from the State that allows for all provisions of the Merger Agreement.

SECTION 7.        CONDUCT PENDING MERGER: The WATER DISTRICT covenants that pending the Merger:

7.1    Business Conduct: Except as otherwise consented to in writing by the TOWN, for the period beginning on the date of execution of this Agreement and ending on the Merger date, the WATER DISTRICT shall:

7.1.1    Carry on its businesses in, and only in, the usual, regular, and ordinary course and nevertheless comply with and uphold all applicable governmental requirements and law.

7.1.2    Maintain all of its material structures, equipment, and other tangible personal property in good repair, order, and condition, except for depletion, depreciation, ordinary wear and tear, and damage by unavoidable casualty.

7.1.3    Keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it. The WATER DISTRICT shall add the TOWN as an additional insured until the merger is complete.

7.1.4    Perform, in all material respects, all of its obligations under agreements, contracts, and instruments relating to or affecting its properties, assets, and business.

7.1.5 Maintain its books of account and records in the usual, regular, and ordinary manner.

7.1.6 Use its best efforts to maximize the profits of its utilities business.

7.1.7 Comply in all material in respect with all statutes, laws, ordinances, rules, and regulations applicable to it and to the conduct of its business.

7.1.8 Not amend its Certificate or Articles of Incorporation or Bylaws or Partnership Documents.

7.1.9 Not merge or consolidate with, or agree to merge or consolidate with, or purchase substantially all the assets of, or otherwise acquire any business or any corporation, partnership, association, or other business organization or division thereof, or sell all or any of its assets.

7.1.10 Promptly advise the TOWN, in writing, of any material adverse change in its operations or business.

7.1.11 Not enter into any transaction, including without limitation, the purchase, sale, or exchange of property with, or the rendering of any service to the WATER DISTRICT except in the ordinary course of and pursuant to the reasonable requirements of the business of the WATER DISTRICT and upon fair and reasonable terms no less favorable to the WATER DISTRICT than it would obtain in a comparable arms-length transaction with an unrelated third party.

7.1.12 Cooperate with the TOWN in obtaining new permits or

transfer of all permits and governmental authorizations.

7.2 Certain Contracts: Except for written contracts obligating the WATER DISTRICT in an amount not to exceed One Hundred and 00/100 Dollars (\$100.00) and service availability letters in any amount, no contract, commitment, or developer's agreement will be entered into on behalf of the WATER DISTRICT without prior written approval obtained from the TOWN.

7.3 Risk of Loss: The WATER DISTRICT shall bear the risk of loss for the property up to and including the Merger date.

7.4 No Encumbrances: From and after the date of the execution of this Agreement, the WATER DISTRICT will not, without the prior written consent of the TOWN, dispose of or encumber any of the Purchased Assets.

7.5 Access to Records: The WATER DISTRICT will cooperate by opening records and providing access to records and facilities to assist in acquainting the TOWN'S operating and administrative personnel in the operation of the System.

7.6 Performance of Merger Conditions: The WATER DISTRICT shall perform all of the conditions to Merger, which the WATER DISTRICT is required to perform, prior to Merger as provided herein.

7.7 Insurance: Prior to Merger, the WATER DISTRICT shall maintain adequate fire and extended coverage insurance to cover the cost of any repairs to the Purchased Assets that may be necessitated by casualty damage.

7.8 Examination and Inspection: The WATER DISTRICT will permit full examination including, but not limited to, physical testing by the TOWN'S authorized representatives of all existing contractual obligations, physical systems, assets, equipment, real estate, rights-of-way, easements, permits, certificates, and inventories utilized by the WATER DISTRICT in connection with the System. Such facilities will be properly maintained by the WATER DISTRICT within the custom and usage of the industry up until the Merger date.

SECTION 8. REPRESENTATIONS AND WARRANTIES OF THE TOWN: The TOWN represents and warrants as follows:

8.1 Organization, Standing, and Power of the TOWN: The TOWN is a political subdivision of the State of Vermont and has all requisite authority to enter into this Agreement and to carry out and perform the terms and provisions of this Agreement.

8.2 Authority for Agreement: The TOWN has the authority and power pursuant to 24 VSA 871 AND 24 VSA Chapter 49, to Merge with the WATER DISTRICT and to carry out its obligations hereunder. This Agreement has been duly authorized by all TOWN action required to be taken by the TOWN, has been duly executed and delivered by the TOWN, and constitutes a valid and legally binding obligation of the TOWN, enforceable in accordance with its terms.

8.3 Disclosure: No representation or warranty made by the TOWN, to the best of the TOWN'S knowledge, in this Agreement contains or will contain

any untrue statement of material facts or omits or will omit to state any material fact that would make the statements herein contained misleading or untrue.

SECTION 9.        EXPENSES: The cost of recording any releases, satisfactions, or corrective instruments, along with the documentary stamps and surtax, if any, on any corrective deeds, shall be paid by the WATER DISTRICT. Documentary stamps and intangible tax on any mortgage and the cost of recording the deed, mortgage, and UCC-1 financing statements shall be paid by the TOWN. Certified, confirmed, and ratified special assessments or WATER DISTRICT liens as of date of Merger will be paid by the WATER DISTRICT.

SECTION 10.       ENVIRONMENTAL MATTERS:

10.1 The WATER DISTRICT warrants that the property, described in Exhibit B, and the Assets are in a clean and healthful condition; free of environmental contamination; or potentially harmful physical conditions; and no hazardous substance has been improperly stored upon, disposed of, spilled, or otherwise released to the environment on or in the said property or easements by the WATER DISTRICT or, to the best of the knowledge of the WATER DISTRICT after due inquiry, by any other party. For purposes of this Agreement the definition of the term "hazardous substance" shall be that set out in Section 101 (4) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act, except that for purposes of this Agreement, the term shall also include 1) petroleum (crude oil) and natural gas (whether existing as a gas or a liquid); and 2) any



substance defined as hazardous or toxic by any State or local regulatory agency having jurisdiction over the operations of the WATER DISTRICT.

10.2 The WATER DISTRICT warrants that the operation by the WATER DISTRICT of its WATER DISTRICT business and the System complies in all material respects with all applicable Federal, State, and local environmental and occupational health and safety statutes and regulations.

10.3 The WATER DISTRICT warrants that any tanks (whether above or belowground) on or at any of the said property or easements installed or used by the WATER DISTRICT are in sound condition, free of leaks which could permit any release of stored material.

10.4 The WATER DISTRICT warrants that none of the property has been used by the WATER DISTRICT or by any other party, for the processing, storing, or otherwise utilizing asbestos, polychlorinated byphenyls (PCBs), or radioactive substances. The WATER DISTRICT has received no notice that any of the foregoing materials are present on or at any of the said property or easements.

10.5 The WATER DISTRICT warrants that all hazardous wastes, resulting from the operations of the WATER DISTRICT on or at any of the said property or easements, have been disposed of in an environmentally sound and legal manner; and none of those wastes have been disposed of in any site where there has been, is, or, due to the manner of disposition by the WATER DISTRICT, will be released into the environment requiring corrective action; nor has the

WATER DISTRICT received notice from any State or Federal environmental agency of its possible involvement with any disposal site under investigation by such agency.

SECTION 11. TOWN'S INVESTIGATION: Notwithstanding any investigation or other due diligence heretofore conducted by the TOWN or its affiliates, the WATER DISTRICT agrees that the TOWN is entering into this transaction in reliance on the representations and warranties of the WATER DISTRICT set forth in this Agreement, which reliance the WATER DISTRICT acknowledges is intended and justified.

SECTION 12. MERGER DATE: The Merger is contingent on all conditions precedent set forth herein and in the Plan of Merger. The Merger Date shall be July 1, 2021.

SECTION 13. DOCUMENTS AND PROCEDURES:

13.1 Deliveries from the WATER DISTRICT: At least thirty (30) days prior to the Merger date, the WATER DISTRICT as its sole cost shall deliver to the TOWN:

13.1.1 If applicable, true, correct, and complete copies of the Articles of Incorporation and Bylaws or Partnership Documents of the WATER DISTRICT.

13.1.2 Instruments of conveyance, in appropriate recordable form, of all the easements as described in Exhibit B hereof, conveying to the TOWN

all of its right, title, and interest in all such property, together with all WATER DISTRICT improvements thereto; and warranting that such easement rights and rights-to-use dedicated rights-of-way are free and clear of all liens, security interests, encumbrances, leasehold interests, charges or options, covenants, or restrictions other than as specifically agreed to in writing by the parties.

13.1.3 Bills of Sale or other documents of assignment and transfer, with full warranties of title, to all Water System Assets other than those assets agreed to.

13.1.4 Assignments of those vendor accounts that have been specifically requested by the TOWN at least thirty (30) days prior to the Merger date.

13.1.5 All business records.

13.1.6 All permits, governmental authorizations, and approvals as described in Exhibits B and C.

13.1.7 Surveys.

13.1.9 The WATER DISTRICT representatives will conduct themselves in an appropriate fashion through transfer, will operate the system in compliance with all regulatory agencies, and will not reduce the value of the WATER DISTRICT in any manner through the date of transfer.

13.2 At Merger, the WATER DISTRICT shall deliver fully executed originals of all documents listed in SECTION 13.1.

SECTION 14.      RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS: Each party hereto shall be responsible for its own attorneys' fees, engineering fees, accounting fees, and other costs in connection with the preparation and execution of this Agreement.

SECTION 15.      LEGISLATIVE APPROVAL: The Merger of the WATER DISTRICT into the TOWN is contingent upon the Vermont Legislature approving such Merger and adopting the Plan of Merger and setting forth the Merger into new law to become effective July 1, 2021.

SECTION 16.      ASSIGNABILITY: This Agreement shall not be assignable.

SECTION 17.      ACCOUNTS RECEIVABLE: After the Merger, all accounts receivable shall be the accounts receivable of the TOWN.

SECTION 18.      FURTHER ASSURANCES: Each of the parties hereto agrees that, from time to time, upon the reasonable request of the other party and at the expense of the requesting party, without further consideration, it shall execute and deliver to the requesting party any and all further instruments, affidavits, conveyances, and transfers as may be reasonably required to carry out the provisions of this Agreement.

SECTION 19.      NOTICES, PROPER FORM: Any notices required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered

when either 1) hand-delivered to the person hereinafter designated, or 2) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

TOWN: Scott Tucker, Town Manager  
2 East Main Street  
Wilmington, VT 05363

With Copy To:

Edward G. Adrian  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401

WATER DISTRICT: Alexander W. Shriver  
PHILLIPS, DUNN, SHRIVER & CARROLL, P.C.  
147 Western Ave.  
Brattleboro, VT 05301

SECTION 20. ENTIRE AGREEMENT: This instrument, along with its incorporated exhibits, constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

SECTION 21. AMENDMENT: Amendments to and waivers to the provisions herein shall be made by the parties only in writing by formal

amendment.

SECTION 22.      DISCLAIMER OF THIRD PARTY BENEFICIARIES:

This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

SECTION 23.      BINDING AFFECT: All of the provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by legal representatives, successors, and nominees of the TOWN and the WATER DISTRICT.

SECTION 24.      TIME OF THE ESSENCE: Time is hereby declared of the essence to the performance of this Agreement.

SECTION 25.      —APPLICABLE LAW: This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Vermont.

SECTION 26.      TERMINATION: Notwithstanding any other provision hereof, the TOWN may, in its sole discretion, terminate this Agreement without any liability or obligation to the WATER DISTRICT if:

1) any material default under, material breach of, or failure of any agreement, covenant, condition, or term of this Agreement by the WATER DISTRICT shall have occurred; or any material misrepresentation or any material breach of any warranty of the WATER DISTRICT shall have occurred; or

2) on or before the Merger date, any party (other than officers or employees of

the TOWN) shall (a) have appealed the transactions contemplated hereby with any Federal, State or local regulatory agency or commission or court and such appeal shall not have been dismissed or withdrawn before the Merger date; or (b) have timely taken action to nullify the merger through the initiative or referendum process; or

3) after conducting a public hearing or hearings TOWN determines that the acquisition shall not occur. If the TOWN holds an election on the issue of the Merger of the WATER DISTRICT with the TOWN, the merger shall occur no sooner than sixty (60) days after the results of the referendum or election have been officially reported to the TOWN, if the said referendum process or election process results in majority vote in favor of acquisition. If the referendum(s) or special election(s) ultimately result in a majority vote against Merger, the TOWN shall have the option to terminate this Agreement without liability or obligation to the WATER DISTRICT within fourteen (14) days after the results of the said referendum(s) or election(s) have been officially reported to the TOWN. In any event, if the referendum(s) or election(s) have not occurred by March 2, 2021 then the WATER DISTRICT shall have the option to terminate this Agreement. The TOWN agrees to hold the first of any such votes or referendum(s) or election(s) no later than Town Meeting Day, 2021; or

4) after conducting a public hearing or hearings, one or more referendum(s) or special election(s) are held within the TOWN to determine the question of Merger

of the DISTRICT, and the voters of the TOWN ultimately reject the Merger; or

5) At any time following completion of the TOWN'S inspection and examination of the system and related records; or

6) The TOWN does not obtain sufficient state and/or federal funding to Merge with the DISTRICT and improve and operate the system.

9) The TOWN does not obtain all necessary local, state and federal permits to operate a public water system.




SECTION 27.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Agreement on this 9th day of Sept., 2020.

TOWN OF WILMINGTON  
By Its Selectboard

  
Chair  
  
  
  


WILMINGTON WATER DISTRICT  
By Its Commission

  
Chair  
  




## PLAN OF MERGER OF THE WILMINGTON WATER DISTRICT AND THE TOWN OF WILMINGTON

### SECTION 1: MERGER OF THE WILMINGTON WATER DISTRICT AND TOWN

At midnight 30 June 2021 the Wilmington Water District and the Town of Wilmington shall merge into the Town of Wilmington. The Wilmington Water District shall, except as hereinafter provided, cease to exist as a political entity or body corporate and its Charter shall be revoked. This Plan of Merger shall constitute an amendment to the Charter of the Town of Wilmington.

### SECTION 2: APPLICABILITY OF THE GENERAL LAW

- A. All provisions of the constitution and the general law of the State of Vermont relating to towns and their officers shall apply to the Town of Wilmington.
- B. The Town of Wilmington shall have all the powers now or hereafter conferred upon towns and Wilmington Water Districts by the Constitution and the general law of the State of Vermont.
- C. No grant of authority, power or prerogative hereunder shall be construed as being in derogation or limitation of any authority, power or prerogative conferred by the general law upon the town.

### SECTION 3: PROPERTIES TRANSFERRED AND LIABILITIES ASSUMED

Upon the effective date of the merger, all the lands, buildings, easements, funds, uncollected taxes, monies, and other tangible and intangible property of the Wilmington Water District of Town of Wilmington shall become vested in and become the property of the Town of Wilmington. All liabilities, obligations, and indebtedness of the Wilmington Water District shall be assumed by the Town of Wilmington without any further act, deed or instrument being necessary. Indebtedness of the Wilmington Water District assumed by the Town of Wilmington at the time of merger shall be secured by the full faith and credit of the Town of Wilmington with respect to the properties comprising the body corporate of the Wilmington Water District.

### SECTION 4: PROPERTIES HELD IN TRUST

Any and all properties held in trust by the Board of Trustees of the Wilmington Water District, or by any officer thereof, shall become vested in the Select Board of the Town of Wilmington and its successors, or in the respective officer of the said town and that person's successor, as the case may be, and shall continue to be held in trust for the same users as before the merger, all without any further act, deed, or instrument being necessary.

### SECTION 5: SETTLING THE AFFAIRS OF THE WILMINGTON WATER DISTRICT

Prior to the effective date of the merger, the Wilmington Water District shall settle so far as possible its financial affairs and shall, except as hereinafter provided, on said date turn over and deliver to the Administration of the Town of Wilmington all records, books, and documents of the Wilmington Water

District and to the proper officers of the said Town all property of the Wilmington Water District, including a final audit of the Wilmington Water District.

#### SECTION 6: TOWN MANAGER SYSTEM

The Town of Wilmington is and shall continue to be administered by a town manager, as provided in 24 V.S.A., Chapter 37, until such time as such form of administration is revoked by vote of the town as set forth in 24 V.S.A. §1242.

#### SECTION 7: FINANCES

The general fund of the Wilmington Water District shall be added to the general fund of the Town of Wilmington on the effective date of the merger, and shall be held by the Town of Wilmington as a separate Enterprise Fund.

#### SECTION 8: EXISTING LAW, RULES, AND POLICIES

A. Until lawfully amended or repealed, all rules, ordinances, regulations, and by-laws of the Wilmington Water District in effect on the effective date of the merger shall become and continue in full force and effect as rules, ordinances, regulations, and by-laws of the Town of Wilmington for the respective area presently involved, unless in conflict with rules, ordinances, regulations, and by-laws of the town of Town of Wilmington already existing.

B. Whenever power is granted by any such rule, ordinance, regulation, or by-law to an officer of the Wilmington Water District, such power shall be conferred hereby upon the appropriate officer of the Town of Wilmington.

#### SECTION 9: OFFICERS AND ELECTION OF CONSOLIDATED SELECT BOARD

A. The Town of Wilmington shall have the officers as provided for towns by general laws, except as provided by this charter.

B. Members of the Town Select Board in office at the effective date of the merger shall continue in office until the end of their respective terms.

2. Wilmington Water District Trustees whose terms extend beyond the effective date of merger shall have their terms expire on the effective date of the merger.

#### SECTION 10: VOTES REQUIRED FOR EFFECT

This plan of merger shall take effect when approved as follows:

By majority vote of the Town of Wilmington, which includes all voters of the Town and of the Wilmington Water District, voting by Australian ballot at a duly warned Town meeting.

By majority vote of the Wilmington Water District, which includes all voters of the Wilmington Water District, voting by Australian ballot at a duly warned Wilmington Water District meeting.

By the Vermont General Assembly acting in accord with 17 V.S.A. §2645.

#### SECTION 11: WATER DEPARTMENTS

The water system shall be maintained separate from all other departments of the Town. All revenues therefrom not necessary for current expenditures thereof shall be placed in a special fund, no part of which may be used for any purpose other than the operation of the water department as specified in Section 12.

#### SECTION 12: WATER ADMINISTRATION

A. All water rates of the Wilmington Water District of Town of Wilmington in effect on the effective date of the merger shall continue in effect until changed by the Select Board of the Town of Wilmington respectively. Operating costs of the water department shall be paid by the ratepayers.

B. The charges and rates for water service shall be a lien upon real estate, wherever located, furnished with such service in the same manner and to the same effect as taxes are a lien upon real estate under 32 V.S.A. §5061. The owner of such property furnished with water service, wherever located, shall be liable for such charges and rates.

C. All water charges shall be set by the Select Board at rates sufficient to pay the costs of operating and maintaining the systems, to pay debt service on all existing and future debt obligations issued to improve or support such systems, and to fund necessary capital reserves, all as provided by the general law.

D. The Selectboard shall serve as the water commissioners.

#### SECTION 13: SPECIAL FUNDS

The Town Treasurer and/or Finance Director shall keep all revenues derived from the water systems, in accounts separate from any other special funds and from other town funds, and shall honor no warrant upon such account except for the purpose thereof as heretofore specified in Section 12.

#### SECTION 14: SEVERABILITY

If any provision of this Plan shall for any reason be held invalid, such invalidity shall not affect the remaining provisions which can be given effect without the invalid provision. To this end the provisions of this Plan are severable.

**ATTORNEY'S REPORT AND OPINION ON TITLE**

**RECORD OWNER:**

**WILMINGTON WATER DISTRICT**

**PROPERTY DESCRIPTION:**

**PARCEL 1 – 32 Wilmington Heights**

Being all and the same lands and premises with any and all improvements now hereon conveyed to the Wilmington Water District by Warranty Deed of Agnes C. M. Dudley and John H. B. Dudley dated March 17, 1980 and recorded at Volume 82, Page 390 of the Town of Wilmington Land Records and being more particularly described therein as follows:

Being Lot No. 5, as shown on a survey of lots entitled Wilmington Heights, Donald Alba and James Feeley, Wilmington, Vermont, January 3, 1968, revised November 4, 1968, scale one inch equals 50 feet, Aurelius DiBernardo, Surveyor, Bellows Falls and Jamaica, Vermont," a copy of which is on file in the Wilmington Town Clerk's Office, which lots are described as follows:

Lot No. 5: Commencing at an iron pin in the south side of a right of way as shown on said survey map, which iron pin marks the northeast corner of property heretofore conveyed by Donald Alba and James Feeley to John H. Mahon and Edward F. Mahon, being the northeast corner of Lot No. 6 and the northwest corner of the within described lot; thence south  $13^{\circ} 03'$  west 188.0 feet along a stonewall to an iron pin; thence south  $69^{\circ} 42'$  east 247.4 feet along a stonewall to an iron pin in the west line of lands believed to be now or formerly of L.T. Cross; thence north  $11^{\circ} 22'$  east 133.9 feet along said Cross's west line to an iron pin set in the south-west corner of Lot No. 4; thence north  $12^{\circ} 40'$  east 105.0 feet to an iron pin in the south side of said right of way; thence north  $81^{\circ} 33'$  West 235.2 feet to a point; thence north  $82^{\circ} 55'$  west 8.2 feet to the point or place of beginning. Containing 1.19 acres of land be the same more or less.

Said premises are subject to water pipe lines serving properties adjacent to other lands of grantors and the rights of the users thereof to replace and maintain the same, including whatever rights the Town of Wilmington may have, as appears of record and the land records of the Town of Wilmington, Vermont.

Said lot is also sold and conveyed subject to the following restrictive covenants which shall apply to all of said lots individually:



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdt.com](http://www.msdt.com)



- a) Lands hereby conveyed shall not be used for any manufacturing or commercial purposes, including ski lodges, nor any other non-residential purpose whether or not enumerated hereon. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage, greenhouse and a tool and storage house to be used in connection with the maintenance of the lands and premises herein conveyed. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. Nothing herein contained, however, shall be construed to prevent the construction of trellises, arbors, or other structures whether or not attached to the dwelling designed for the pleasure or recreation of the owners hereof, nor of private tennis courts, swimming pools, or of any other private play area.
- b) The ground floor area of a dwelling of one story (not considering a partial sleeping deck to constitute a second floor) shall not be less than 850 square feet. The ground floor area of a dwelling of two and one-half stories shall not be less than 550 square feet. Be (sic) definition, for this agreement, ground floor area does not include porches, garages, or other extensions of the building. Once construction is commenced the exterior of the building shall be completed and finished including painting, windows, doors, roofing, exterior walls, and exterior trim within a period of six months from the date of commencement of construction. Dwelling must substantially conform to other dwelling houses in the immediate neighborhood with respect to cost of construction and quality of architecture.
- c) No building shall be located on any lot nearer to any lot line than fifty feet, provided however, that steps, windows, porches, and other similar projections may be within said distance, and except that no side yard shall be required for a garage or other permitted accessory building. No lot may be subdivided into lots of less than one acre. Such minimum setbacks restrictions may be modified by the grantor or its successors or assigns, if reasonable required by the terrain feature of the premises or easements of water, electric and telephone.
- d) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No unsightly objects shall be displayed thereon.
- e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of said premises, except that household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdyt.com](http://www.msdyt.com)



- f) No part of said premises shall be used or maintained as a dumping ground for rubbish, Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- g) Grantor, its successors and assigns, reserves the right to have an easement over and upon the premises herein conveyed for the purpose of installing, maintaining and repairing utility lines, facilities and services for water, sewer, electricity, gas, and telephone services, whether or not the same will service the demised premises. Nothing contained herein shall require the Grantor, its successors or assigns, to provide any such lines, facilities or services to the demised premises. Purchaser agrees to accept title to said property subject to any easements and restrictions of record, if any, affecting said property.
- h) The clearing of the land shall be done in such a manner as to preserve as far as possible the natural characteristics of the existing woodland and to enable the existing woodland to serve not only as landscaping, but also to provide privacy for the dwelling house to be erected on the premises.
- i) Purchaser shall in no event take possession to the property prior to the time of delivery of the deed. Any violation of this paragraph shall constitute a material breach of this contract.
- j) In the event that the seller is unable to convey title in accordance with the terms of this contract, the sole liability of the seller will be to refund to the purchaser the amount paid on account of the purchase price and upon such refund any payment being made this contract shall be considered cancelled and neither party shall thereafter have any further rights or obligations hereunder as against the other.
- k) All understandings and agreements that are heretofore made between the parties hereto are merged in this contract, which along fully and completely expresses their agreement and the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this contract, made by the other. The purchaser has inspected said property and is thoroughly acquainted with its condition.
- l) Purchaser agrees that any assignment of this contract, or any of his rights hereunder shall not relieve him of any liability hereunder.
- m) These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date of these covenants after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the ten owners of the premises affected thereby had been recorded agreeing to change said covenants in whole or in part.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdrv.com](http://www.msdrv.com)





- n) Enforcement shall be by proceedings to law or in equity by any owner of premises covered by these covenants against any person or persons violating or attempting or threatening to violate any covenant either to restrain violation or remove any violation or to recover damages.
- o) Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- p) Seller agrees to maintain the road from Lots No. 5 and 13 to the Ray Hill Road during the period after a house has been constructed on said lots and until such a time as said right of way shall be accepted as a Town Road.

There is included in this conveyance a right of way in common with grantors and others over the roads as shown on said survey map for the purpose of ingress and egress from said granted lots to the Ray Hill Road so called, until such time as said right of way is accepted by the Town of Wilmington as a public highway.

Also being a portion of the lands and premises conveyed to John H.B Dudley and Agnes C.M. Dudley by Warranty Deed of Donald Alba and James Feeley dated July 3, 1969 and recorded at Volume 49, Page 43 of the aforesaid Land Records.

Parcel 1 is more commonly known as 32 Wilmington Heights, Wilmington.

### **PARCEL 2 – 9 Church Street**

Being all and the same lands and premises, with any and all improvements now hereon, conveyed to the Wilmington Water District by Warranty Deed of William A. Pool and Janet R. Pool dated November 17, 1981 and recorded at Volume 89, Page 88 of the Town of St. Albans land records, and more particularly described therein as follows:

Beginning at a point marked by an iron pin in the ground which pin marks the northwest corner of the premises herein. Thence easterly on a straight line along lands now or formerly owned by Frank Farrington Estate, a distance of 48-1/2 feet to an iron pin in the ground marking the northeast corner of the premises herein. Thence southerly in a straight line along lands formerly owned by C. Nye Johnson and Mary D. Johnson a distance of 58-1/2 feet to an iron pin in the ground marking the southeast corner of the premises herein and being on the northerly side of said Church Street a distance of 65 feet to an iron pin; thence northerly in a straight line a distance of 79 feet 5 inches to the point and place of beginning.

Being the building and portion of the land conveyed by Katherine P. Newton to William A. Pool and Janet R. Pool dated October 1967 and



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdt.com](http://www.msdt.com)



recorded in the Land Records of the Town of Wilmington, Vermont. This land is not to be used as a parking lot and no right of way is to be given across it.

As part of the consideration for this conveyance, Grantee, its successors and assigns covenants and agrees that the premises herein conveyed shall not be used as a parking lot and no rights of ingress and egress shall be granted to others which shall in any way cross said premises.

Parcel 2 is more commonly known as 9 Church Street, Wilmington.

Reference is hereby made to the above instruments and to the reference contained therein in further aid of this description.

The following opinion and report on the title of the Record Owner to the above-described property ("Property") is based on an examination of the appropriate records of the Town of Wilmington. It is furnished in connection with the potential merger of the Wilmington Water District and the Town of Wilmington. This Title Opinion is for the sole use and benefit of the Town of Wilmington and is not transferable.

Based on such examination and the assumption that the records examined are currently and correctly indexed in the general indices, it is our opinion that on the effective date of this report, the title of the Record Owner is marketable title in Fee Simple, including beneficial easements and rights of way necessary for access and utilities, except as noted below.

**1. MUNICIPAL CHARGES:** (Unless otherwise indicated, these are based on oral verification or written summaries furnished by the appropriate municipal officer or department and are reported as given by such department or officer.)

Municipal charges are not applicable.

Parcel 1:      Tax ID 00601054.000  
                  SPAN 762-242-13487

Parcel 2:      Tax ID 02122010.000  
                  SPAN 762-242-13489

**2. CONDOMINIUM/OWNERS ASSOCIATION FEES AND CHARGE:**  
(Unless otherwise indicated, based upon oral verification by property manager or association representative and reported as given by such manager or representative.)

Not applicable.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdt.com](http://www.msdt.com)





### **3. MORTGAGES:**

None of record.

### **4. ATTACHMENTS AND LIENS:**

- 1) Notice of Federal Tax Lien in the amount of \$7,755.17 dated June 15, 2011 and recorded at Volume 349, Page 226. The lien is for 941 tax (Employer's quarterly federal tax return) and lists Wilmington Water District as the "taxpayer" with a residence of 51 Lisle Hill Road, Wilmington. 51 Lisle Hill Road is owned by Christopher Lavoy by Warranty Deed of Raymond W. Langley dated May 20, 2014 and recorded at Volume 311, Page 376.

### **5. EASEMENTS AND RIGHTS-OF-WAY:**

Easements and rights-of-way set forth in the Property Descriptions above, and:

- (a) Parcel 1 is benefitted and subject to easements as set forth in the Easement Deed from Edward F. Mahon and John J. Mahon to Village of Wilmington Water Commissioners dated June 5, 1878 and recorded at Volume 74, Page 568 for a water line through Lot 6, Wilmington Heights to be located on the easterly side of the existing dwelling as more particularly delineated on survey entitled "Wilmington Water District Survey prepared by Merrill Murdell, Jr. Feb. 1974 Sheet 8 of 11" The Village of Wilmington Water Commissioners also released to Edward F. Mahon and John J. Mahon any rights to an older line on Lot 6, Wilmington Heights by Easement Deed dated June 5, 1978, recorded at Volume 74, Page 465.
- (b) Parcel 1 may be encumbered by an Easement Deed from Donald Alba and James Feeley to Green Mountain Power dated December 10, 1968 and recorded at Volume 47, Page 88.
- (c) Easement Deed from Robert G. Grinold to Wilmington Water District dated February 2, 2016 and recorded at Volume 323, Page 550 for a 20' water line easement for construction of a transmission water main.
- (d) Easement Deed from Yvonne Aldrich f/k/a Yvonne Aldrich Livingston to Wilmington Water District dated February 2, 2016 and recorded at Volume 323, Page 548 for a 20' water line easement for construction of a transmission water main.
- (e) Grant of Easement and Agreement dated June 20, 1996 and recorded at Volume 166, Page 477 between New England Power Company and Wilmington Water District granting right and easement to Wilmington Water District to install an 8-inch water main under and across New England Power Company land.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdt.com](http://www.msdt.com)



- (f) Easement Deed from F. Dary Minor and Joan P. Minor to Wilmington Water District dated October 2, 1992 and recorded at Volume 138, Page 216 for a 20' easement for water line transmission.

The following easements were conveyed to the Village of Wilmington and were transferred to the Wilmington Water District by Quitclaim Deed of the Village of Wilmington dated January 12, 1968 recorded at Volume 44, Page 397. Said Quitclaim Deed transferred, "All property and funds which relate to its former water system." The purpose listed for each easement is to dig a ditch and lay pipes for the purpose of conveying water to said Village for domestic and other purposes and to enter grantors premises to make all reasonable repairs on said ditch and pipe and to dig and lay new pipe as circumstances may require, always leaving the surface of the ground above said pipes in a reasonably smooth and even manner and doing no unnecessary damage to said premises.

- Easement Deed from Julia M. Buell and D.A. Buell to the Village of Wilmington dated October 26, 1904 and recorded at Volume 24, Page 45.
- Easement Deed from Chandler M. Russell to the Village of Wilmington dated October 26, 1904 and recorded at Volume 24, Page 46.
- Easement Deed from F.E. Ray to the Village of Wilmington dated October 26, 1904 and recorded at Volume 24, Page 47.
- Easement Deed from J.H. Kidder to the Village of Wilmington dated October 28, 1904 and recorded at Volume 24, Page 48.
- Easement Deed from Deerfield River Company to the Village of Wilmington dated December 23, 1904 and recorded at Volume 24, Page 52.
- Easement Deed from Elizabeth Moore and Frederick Moore to the Village of Wilmington dated December 31, 1904 and recorded at Volume 24, Page 53.
- Easement Deed from John J. Gleason to the Village of Wilmington dated January 11, 1905 and recorded at Volume 24, Page 57.
- Easement Deed from Lucy A. Boyd to the Village of Wilmington dated October 17, 1905 and recorded at Volume 24, Page 91.
- Easement Deed from Sidney O. Morris to the Village of Wilmington dated November 22, 1905 and recorded at Volume 24, Page 96.
- Easement Deed from Clark Chandler, Administrator of the Estate of Warren Boyd and Susan L. Boyd dated January 21, 1905 and recorded at Volume 24, Page 454.
- Easement Deed from Elbie S. Pike to the Village of Wilmington dated February 14, 1905 and recorded at Volume 24, Page 457.
- Easement Deed from Perry M. Davis to the Village of Wilmington dated February 15, 1905 and recorded at Volume 24, Page 458.
- Easement Deed from E.H. Davenport to the Village of Wilmington dated October 27, 1904 and recorded at Volume 24, Page 460.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdlvt.com](http://www.msdlvt.com)



- Easement Deed from Readsboro Chair Manufacturing Company to the Village of Wilmington dated July 7, 1905 and recorded at Volume 24, Page 464.
- Administrator's Deed from F.E. Ray, Administrator of the Estate of William Ray to the Village of Wilmington dated October 26, 1904 and recorded at Volume 24, Page 542.

## **6. PROTECTIVE COVENANTS; OTHER RESTRICTIONS AND CONDITIONS:**

Parcel 1: The conveyance to the Wilmington Water District by Warranty Deed of Agnes C. M. Dudley and John H. B. Dudley dated March 17, 1980 and recorded at Volume 82, Page 390 lists restrictive covenants A-P (detailed in the property description above) that apply to Wilmington Heights lots. Restrictive covenant M states, "These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date of these covenants after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the ten owners of the premises affected thereby had been recorded agreeing to change said covenants in whole or in part."

The following releases were executed and recorded relative to Lot 5:

- 1) A release from all restrictions except c, e, and f by Harry Horn and Joanne Horn, owners of Lot #7, to the Wilmington Water District dated May 28, 1980 and recorded at Volume 83, Page 248.
- 2) A release from all restrictions except c, e, and f by John H. B. Dudley and Agnes C.M. Dudley, owners of Lot #12, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 389.
- 3) A release from all restrictions except c, e, and f by Donald Alba and James Feeley, owners of "Bulk Land," to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 388.
- 4) A release from all restrictions except d, e, and f by Arthur Jones, owner of Lot #4 and Lot #9, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 387.
- 5) A release from all restrictions except c, e, and f by Sonia Delury, owner of Lot #8, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 386.
- 6) A release from all restrictions except c, e, and f by Otto Hassig and Mia Hassig, owners of Lot #3, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 385.
- 7) A release from all restrictions except c, e, and f by Thomas McCarty and Christine McCarty, owners of Lot #6, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 384.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdyt.com](http://www.msdyt.com)



- 8) A release from all restrictions except c, e, and f by John Rosencrans, owner of Lot #2, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 383.
- 9) A release from all restrictions except d, e, and f by Irwin S. Meyer and Joanne Horn, owners of Lot #13 and Lot #14, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 382.
- 10) A release from all restrictions except c, e, and f by William Batchelder and Beatrice Batchelder, owners of Lot #11, to the Wilmington Water District dated March 24, 1980 and recorded at Volume 82, Page 381.

The removal of a restriction requires a "majority of the ten owners of the premises affected thereby." We note that releases 4 and 9 above release all covenants except "d, e, and f," while the remainder release all covenants except "c, e, and f." We also note that while the restrictions reference ten owners affected, the plans for the development show thirteen lots.

Whether or not the restrictions can be released by a majority of the ten properties or thirteen, the eight releases above releasing all but "c, e, and f" meet the requirement for the majority of owners, while the releases referencing "d, e, and f" do not. The following are restrictive covenants "c", "e" and "f" which still encumber the property:

- c) No building shall be located on any lot nearer to any lot line than fifty feet, provided however, that steps, windows, porches, and other similar projections may be within said distance, and except that no side yard shall be required for a garage or other permitted accessory building. No lot may be subdivided into lots of less than one acre. Such minimum setbacks restrictions may be modified by the grantor or its successors or assigns, if reasonable required by the terrain feature of the premises or easements of water, electric and telephone.
- e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of said premises, except that household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes.
- f) No part of said premises shall be used or maintained as a dumping ground for rubbish, Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Parcel 2: Pursuant to the deed from William A. Pool and Janet R. Pool to Wilmington Water District dated November 17, 1981 and recorded at Volume 89, Page 88, the premises shall not be used as a parking lot and no rights of ingress and egress shall be granted to others which shall in any way cross said premises.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdrv.com](http://www.msdrv.com)



**7. LEASE LAND RENT:**

No opinion rendered.

**8. RECORDED LAND USE PERMITS AND/OR ENVIRONMENTAL PROTECTION RULES PERMITS:**

- 1) LUP #2W0924 dated June 18, 1982 and recorded at Volume 137, Page 95. The permit applies to land owned by Green Mountain National Forest Service subject to water easements of the Wilmington Water District. The permit authorizes permittee, Wilmington Water District, to reconstruct 14 existing springs and add 6 new springs to provide potable water to the Wilmington Water District. Permit also specifically approves the replacement of 3,700 feet of waterline beginning at Haystack Point and ending the other side of Binney Brook beyond Reservoir No. 2. The project is located in the vicinity of Haystack Pond in the Town of Wilmington.
- 2) LUP #2W0924-A dated January 27, 2010 and recorded at Volume 275, Page 190. This permit is an administrative amendment to incorporate potable water supply permit WW-2-3575 for re-plumbing an existing floor drain. The waste water permit was applied for by Raymond Lavoy of Ray Hill for a floor drain for Wilmington Water District.
- 3) LUP #2W0924-2 dated June 14, 2016 and recorded at Volume 326, Page 200. This permit is for the extension of the existing spring source water collection system and the installation of nine additional spring source structures.
- 4) Wetland Individual Permit 2016-022 dated April 4, 2016 and recorded at Volume 336, Page 127.
- 5) Wetland Individual Permit 2012-131 dated March 21, 2016 and recorded at Volume 336, Page 125.
- 6) Wastewater permit WW-2-0481 for construction of a 16' x 18' control house for chlorination equipment at Wilmington Heights Road.
- 7) Parcel 1 – Zoning Permit #2014-095 - Memorandum of Municipal Action dated September 11, 2014 and recorded at Volume 313, Page 235.

**9. RECORDED UNDERGROUND TANK NOTICES:**

None of record.

**10. FLOOD ZONE: (Unless otherwise indicated, based upon review of flood maps in Town Clerk's Office.)**

No opinion rendered.

**11. REMARKS:**

- 1) The Village of Wilmington was granted, "All the water and water rights on all that tract, piece, or parcel of land known as Lot Number 8 in Division 5



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

www.msdlvt.com



in the Town of Wilmington being the "Glebe Lot" so called estimated to contain 320 acres be the same more or less" by lease of the Town of Wilmington dated July 14, 1916 and recorded at Volume 25, Page 612. The Glebe Lot is a parcel with Tax ID 00101007.000 and SPAN 762-242-13682.

The lease for water rights on the glebe lot was a ninety-nine (99) year lease which expired July 14, 2015. Consent by the Wilmington Water District was included in a Third Amendment to Lease Agreement between the Town of Wilmington and Raymond J. Obuchowski, Chapter 7 Trustee for Hermitage Inn Real Estate Holding Company, LLC and Hermitage Club, LLC dated December 23, 2019 and recorded at Volume 351, Page 1, and the Wilmington Water District was included as a Defendant in a foreclosure action against Hermitage Inn Real Estate Holding Company, LLC and Hermitage Club, LLC ; however, the Wilmington Water District does not appear to have any rights to the glebe lot at this time.

- 2) There may have been previous representations made that Wilmington Water District owns land surrounding Haystack Pond. This portion of land was conveyed to the Village of Wilmington by Quitclaim Deed of the Connecticut River Development Company dated February 11, 1938 and recorded at Volume 30, Page 553. The land conveyed was, "...a strip of land 200 feet wide around the southerly end of Haystack Lake, the easterly, southerly and westerly sides thereof being a line 200 feet measured from and parallel to the high water line of said lake which is marked by the 'edge of vegetation' and the northerly line as each end of the strip being the northerly line of the 'Mountain Lot' where it joins the 'Glebe Lot'." It seems this parcel of land was transferred to the Town of Wilmington at the time the Village of Wilmington merged with the Town of Wilmington and has merged with the "Glebe Lot."

#### **EXCEPTIONS:**

This report does not cover; and this opinion is subject to:

- a) The existence of any lien for Federal Estate or Gift Taxes for which no record notice is required.
- b) The existence of any lien for transfer taxes under Section 6543 of Title 32, Vermont Statutes Annotated.
- c) Any leases, lettings, or rights of persons, corporations or other entities in possession not of record, including claims of Native American Tribes such as the Western Abenakis for compensation and/or return of ancestral lands due to violation of the Federal Non-Intercourse Act, so-called.
- d) Liens and other consequences of law and regulations not appearing of record and resulting from subdivision or improvement of land without lawful



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdtvt.com](http://www.msdtvt.com)



authority; and any defect in title pertaining to unlawful subdividing and development.

- e) Compliance with Act 250, Vermont's Land Use and development Law, Title 10, Chapter 151, Vermont Statutes Annotated, or any amendments thereto.
- f) Any lien arising out of failure of the present owner to withhold pursuant to Title 32, V.S.A. § 10007, due to any misrepresentations as to the taxability made by any other party.
- g) All applicable statutes, ordinances or regulations of governmental bodies, including use, zoning and building restrictions, imposed by them.
- h) Liens, violations, encumbrances or assessments that do not appear of record; any other matters not properly recorded and indexed in the Town of Swanton Clerk's Office.
- i) Mechanics' or Materialmen's Liens not recorded.
- j) Except where indicated, Probate, Bankruptcy and other Court records, and records of birth, death, marriage and divorce.
- k) Unpaid taxes and assessments, if any, now or hereafter assessed (none of which are currently delinquent) constituting a statutory lien upon the property.
- l) The location of boundaries or the correctness of any claimed amount of acreage, which can only be determined by an adequate survey, and other physical characteristics of the subject premises. Examination is limited to the quality of title as represented in the City of St. Albans Land Records and Town of St. Albans Land Records, within the period of this search.
- m) Any facts that would be disclosed by a physical survey or inspection of the Property.

PERIOD OF SEARCH January 18, 1883, and is effective down to the 19<sup>th</sup> day of August, 2020 at 5:15 p.m.

Respectfully submitted:



MONAGHAN SAFAR DUCHAM PLLC



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080

[www.msdlvt.com](http://www.msdlvt.com)





**Vermont Department of Environmental Conservation  
Drinking Water and Groundwater Protection Division**

*Agency of Natural Resources*

One National Life Drive - Main 2 [phone] 802-828-1535  
Montpelier, VT 05620-3521 [fax] 802-828-1541  
**www.dec.vermont.gov/water**

July 10, 2019

Chris A Lavoy  
Po Box 1927  
Wilmington, VT 05363

Re: Permit to Operate for Wilmington Water District, a Public Community Water System in Wilmington, VT WSID# VT0005310.

Dear Mr. Lavoy,

Enclosed you will find a new permit to operate for the Wilmington Water District. Please notice that while this permit does not have an expiration date, this Division will amend the Permit as it deems necessary to direct the Water System toward compliance with the standards being administered under the Vermont Water Supply Rule, Chapter 21. The permit establishes general requirements that the water system is to adhere to. This operating permit is an amended permit that replaces Permit 5310-15.0 that was last issued by the Division on January 7, 2016. This amended permit contains updated information about the Water System's approved, permitted, infrastructure.

Please pay special attention to the requirements established in Section IV of this permit, which include the requirements for authorizing expansion of the Water System, and a requirement to provide a source protection plan update to the Division.

Please contact me directly with any questions regarding this permit. I may be reached directly by phone at 802-461-5661 or by email at [patrick.smart@vermont.gov](mailto:patrick.smart@vermont.gov).

Sincerely,

A handwritten signature in dark ink that reads "Pat Smart".

Patrick Smart  
System Operations Specialist  
Drinking Water and Groundwater Protection Division

C: Ellen Parr Doering, Assistant Division Director, DWGWP  
Tim Raymond, Operations and Engineering Section Chief, DWGWP  
Rodney Pingree, Water Resources Section Chief, DWGWP  
Ben Montross, Compliance and Support Services Section Chief, DWGWP  
Patrick Smart, Operations Section Supervisor, DWGWP  
Terry Shearer, Springfield Regional Office, DWGWP  
John Fay, Permit Specialist, EAO  
John Goodell, SVE Associates  
WSID File VT0005310

Enc: Permit to Operate





**Vermont Department of Environmental Conservation**  
**Drinking Water and Groundwater Protection Division**  
One National Life Drive - Main 2 [phone] 802-828-1535  
Montpelier, VT 05620-3521 [fax] 802-828-1541  
[www.dec.vermont.gov/water](http://www.dec.vermont.gov/water)

*Agency of Natural Resources*

**Agency of Natural Resources**  
**Vermont Department of Environmental Conservation**  
**Drinking Water and Groundwater Protection Division**

**Public Community Water System Permit to Operate**

PERMIT NUMBER: 5310-19.0

WATER SYSTEM IDENTIFICATION NUMBER: VT0005310

PIN #: NS96-0077

PERMITTEE (Owner): Wilmington Water District

WATER SYSTEM: Wilmington Water District

TOWN: Wilmington

DESIGNATED CONTACT PERSON: Chris A Lavoy

ADDRESS: Po Box 1927  
Wilmington VT 05363

**I. Authority**

This Permit to Operate (Permit) a Public Community Water System, known as **Wilmington Water District** (Water System) is issued to **Wilmington Water District** (Permittee) by the Vermont Department of Environmental Conservation, Drinking Water and Ground Water Protection Division (the Division) on behalf of the Secretary of the Agency of Natural Resources (the Secretary). This permit is issued in accordance with 10 V.S.A. Chapter 56 and the Vermont Water Supply Rule (Rule). Because Vermont has primacy to implement the relevant provisions of the Federal Safe Drinking Water Act and the Rule adopted under that Act regarding public water systems, and because the Rule incorporates the relevant Federal requirements, this Permit is also issued under and implements the provisions of Federal Law.

**II. Findings, Violations, and Compliance Schedule**

Based on the findings from the sanitary survey conducted on October 27, 2016 and a review of the Division's records for the Water System, The Secretary finds that on the date this Permit is issued the Water System is in compliance with the Rule and does not constitute a public health hazard or a significant public health risk.

### III. Water System Description

This Permit authorizes the use of the following components of the Water System, the permitted water system demand, and the other specified aspects of the design and operation of the Water System described below:

**A. Sources:** The Water System utilizes permitted supply sources that have been determined provide groundwater under the direct influence of surface water (GUIDI), a permitted surface water supply source, and a permitted groundwater source. All permitted supply sources combine into a single raw water transmission pipe that conveys water from the permitted sources to the water system's treatment facility. The Water System is subject to the Rule, the Federal Surface Water Treatment Rule, 40 CFR 141.70-141.75; Long Term 1 Enhanced Surface Water Treatment Rule, 40 CFR 141.500-141.571; and the Long Term 2 Enhanced Surface Water Treatment Rule, 40 CFR 141.700 – 141.722. The following permitted sources are connected to and supply water to the Water System:

| Source # | Source Name   | Source Type   | Source Yield (gpm)            | Authorized MDD Rate (gpd)           |
|----------|---|---------------|-------------------------------|-------------------------------------|
| WL001    | Springs 4C, 5A, 5C, C7, 8, 9, 11, 12, 13, TA1 – TA9 | Groundwater   | 63 (combined permitted yield) | 203,040 (combined from all sources) |
| WL003    | Spring 1  | GUIDI         | 42 (combined permitted yield) |                                     |
| WL005    | Spring 16   | GUIDI         |                               |                                     |
| WL004    | Spring 2  | GUIDI         |                               |                                     |
| IN002    | Haystack Pond                                       | Surface Water | 70 (permitted)                |                                     |

**B. Permitted Water System Demand:** The Water System serves a year-round residential population of approximately 700 people and a transient population of approximately 700 people through 263 service connections. The Water System is authorized for a Maximum Daily Demand (MDD) Rate 203,040 gallons per day, and an average daily demand (ADD) rate of 103,040 gallons per day. These authorized rates equate to a combined total flow rate of 141 gallons per minute when the sources and treatment facility are being operated for 24 hours to meet MDD or operated for 12 hours to meet ADD. Source yield and design limitations (ex: treatment capacity, pump size, storage volume, etcetera) of the Water System have been compared against the authorized MDD above to determine the adequacy of the infrastructure to meet the expected demand. Construction Permit C-3160-14.0, issued by the Division on May 12, 2016, documents an approved design capacity of 141 gpm for the Water System's treatment facility (TP001). Safe yield analyses for Springs TA1 – TA9 have not been completed as of the effective date of this permit. At which time the permitted safe yield for these supply sources has been determined, the permittee shall apply for an amended Permit to Operate for the Water System.

**C. Source Protection and Isolation:** Source isolation zones are prescribed by Appendix A, Part 3.3 of the Rule. Land uses within 200 feet of the Water System's permitted sources include forested land, hiking trails, and an access road. All identified land use activities within the sources' recharge areas are subject to a routine vulnerability assessment and are managed by the Water System through a Source Protection Plan Update that is subject to review and approval of the Secretary once every three years.

**D. Treatment Components, Processes, and Capacity:** The Water System's treatment facility (TP001) was designed and permitted (Construction Permit C-3160-14.0) to treat the water produced from all of the Water System's permitted supply sources. Water flows from each permitted source to the raw water transmission main via gravity flow. The raw water transmission conveys the blended raw water through the treatment facility and into the system's storage tank via gravity flow. TP001 includes filtration treatment via three banks of membrane filter elements with progressively smaller pore sizes, including a bank of filter elements that contain membranes with a maximum pore size of 1 micron (absolute). Filtered water flows via gravity from the filters, through a pipeline and into the Ray Hill Reservoir. A hypochlorite solution is added to this pipeline for disinfection treatment, and a soda ash solution is added to this pipeline to adjust pH of the filtered water and provide corrosion control treatment. Disinfection contact time is provided by the Ray Hill Reservoir (ST001).

**E. Storage Components and Capacity:** The Water System includes one storage tank, the Ray Hill Reservoir (ST001). The Ray Hill Reservoir is an 810,000-gallon concrete tank that receives water treated by TP001, provides disinfection contact time, and serves all of the system's 263 service connections via gravity flow from the tank to and throughout the distribution pipe network.

**F. Pump Stations:** The Water System does not include any booster pump stations. All water flows from the permitted sources, through treatment, into the storage tank, and throughout the distribution system via gravity flow.

**G. Distribution System:** The Water System's distribution pipe network includes cast iron pipe installed from 1900 to the 1950s, which ranges in size from 4-inch to 6-inch diameter pipe; and ductile iron pipe installed from the 1970s to 2018, ranging in size from 8-inch to 12-inch diameter pipe.

**H. Fire Protection:** The Water System was designed to provide fire flow protection and has approximately 36 fire hydrants installed throughout the distribution system. Eight of these hydrants (located on Winter Haven Drive, Lisle Hill Road, Church Street, and Castle Hill Road) do not include steamer nozzles and are operated as flushing hydrants. Two hydrants located on North Main Street and Fairview Avenue, are directly connected to 4-inch diameter distribution mains. These hydrants are not capable of providing the minimum fire protection flows required by Appendix A, Part 7.0.1 of the Rule without creating hydraulic pressure conditions in the distribution pipe network that do not meet the requirements of Appendix A, Part 8.1.1 of the Rule. The Permittee shall ensure that these two hydrants are removed from fire protection service via bagging or painting the hydrant bonnets a uniformed color code. The Permittee shall provide the local fire department(s) written notification that identifies the fire hydrants that are not capable of providing fire protection flows.

#### **IV. Special Conditions, Requirements, and Restrictions**

**A. Reserve Capacity Demonstration:** The Water System has sufficient permitted source, treatment, and distribution system capacities to provide for further expansion of the Water System. The Permittee is responsible for monitoring the Water System's water use. The Permittee shall ensure that water use allocations provided to new users, new consecutive systems, or as increased water use allocations to existing users do not exceed the Water System's permitted maximum daily demand flow rate identified in Section III.B of this Permit. The Permittee shall notify the Division immediately when the Water System's water use data exceed 90% of the permitted maximum day demand. Proposed improvements to the Water System are to adhere to the Vermont Water Supply Rule, Chapter 21, and the Vermont

Wastewater System and Potable Water Supply Rule, Chapter 1. The Permittee shall not authorize or provide allocations for any proposed new Service Line to be connected to the Water System unless the Permittee records documentation demonstrating that the proposed Service Line will meet the necessary water quality, quantity, and hydraulic pressure (at the foundation wall) requirements for all units being provided water. This documentation shall be retained in the Permittee's files for the Water System and shall be provided to the Secretary upon request.

A Safe Yield Determination shall be completed for supply sources TA1-TA-9 and the permitted sources capacity amended as necessary pursuant to Section III, B of the Permit.

**B. Continuous Disinfection Required:** The Permittee shall operate its chlorine disinfection system on a continuous basis. The Permittee must maintain measurable free chlorine residual concentrations throughout and to the ends of the distribution system.

**C. Operation of Surface Water Filtration Treatment:** The Water System's treatment facility includes filtration treatment via cartridge membrane filter elements. This filtration component includes three banks of filter elements installed in series; each bank contains filter elements with progressively smaller pore sizes. The pore sizes of filter elements used in the first two filter banks are to be adjusted operationally based on raw water quality; the filter elements in these banks shall not contain pore sizes that exceed 5 microns (nominal). The third bank of filter elements shall contain Harmsco-LT2 filter elements. The Permittee shall ensure the cartridge filtration is operated such that all water treated at this facility must flow through the filter bank containing Harmsco-LT2 filter elements.

**D. Representative Samples Required:** The Permittee shall ensure that routine samples collected from the Water System are representative of all permitted sources identified in Section III. A of this Permit. The Permittee shall develop standard operating procedures that describe typical operating conditions for each of the permitted sources identified in Section III. A of this Permit and the system's treatment facility. These procedures must describe variable conditions that occur seasonally during both periods of high production flows from the spring sources, and during periods of low spring production flows. The Permittee shall submit these procedures to the Division for review and approval as an update to the Water System's approved Operations and Maintenance Manual.

**E. Source Protection Plan Update is Required:** On or before August 31, 2019, the Permittee shall submit an update of the Water System's Source Protection Plan Update to the Division for review and approval.

## **V. General Conditions, Requirements, and Restrictions**

### **A. Water Quality Monitoring.**

**1. Water Quality Monitoring Requirements:** The Permittee shall comply with all of the Drinking Water Quality Monitoring Requirements set forth in the Rule at the frequency described in the Rule. The Permittee shall monitor for contaminants not listed in the Rule if the Secretary determines that the additional monitoring is necessary to protect human health and notifies the Water System of those additional monitoring requirements. The Secretary shall, on at least an annual basis, provide the Permittee with a monitoring schedule in order to assist the Permittee with its obligation to comply with the requirements of the Rule.

**2. Notification of Water Quality Violations:** The Permittee shall notify the Division immediately (and no later than 24 hours) following any test result greater than or equal to the Maximum Contaminant Levels (MCL), Maximum Residual Disinfectant Levels (MRDL), or turbidity levels as specified under 40 CFR, Part 141 (National Primary Drinking Water Regulations), or other water quality adopted by the Agency to protect public health.

**3. Reporting of Water Quality Analytical Testing Results:** The Permittee shall be responsible for the submission of all water quality monitoring analytical testing results in accordance with the reporting timeframes in the Rule.

**B. Reporting Requirements.**

1. The Permittee shall submit a signed report to the Division once a month, no later than ten (10) days following the end of the month, with the following information:

a) A summary of the Public Water System operation, including the total volume of water produced daily the system's permitted sources. Water production summaries shall contain metered data.

b) Daily disinfectant residual entering the distribution system for each day the treatment facility (TP001) is operational.

c) Results of all microbiological and turbidity analyses for raw and finished water. A daily high average should be reported based on either continuous monitoring or a minimum sample frequency every four hours.

d) Results of daily finished water pH analysis.

e) Calculated chlorination disinfection contact time values once per day for every day that TP001 is operational, prepared using the following data:

i. Pipe/storage volume for chlorine contact time prior to the first service connection; and

ii. Highest peak hourly flow/demand each day and the corresponding pH, temperature, and chlorine residual of finished water entering the distribution system.

2. If a chemical disinfectant is applied or if water within the distribution system may contain a chemical disinfectant, the Permittee must report disinfectant residual in the water system at a location and frequency corresponding to the approved total coliform sampling plan and verify the free chlorine concentrations (if no free chlorine is available, the Permittee must measure total chlorine concentration as well) on the laboratory reporting form.

**C. Requirement for Certified Operator:** The Water System is a Class 4B Water System as defined in the Rule. The Permittee shall ensure that the appropriate class of Vermont certified operator is placed in responsible charge of the Water System in accordance with Section 12.2.2 of the Rule. This designation shall be made in writing, signed by both the owner and the certified operator, and available to the Secretary upon request. The certified operator shall hold a valid certification equal to or greater than the classification of the Water System. For Water

Systems which only have one certified operator, the Permittee must notify the Division within 24 hours of changing their certified operator.

**D. Notification of Change in Designated Contact:** The Permittee shall notify the Secretary within 30 days of a change in the Designated Contact Person identified in this Permit. This notification shall include the new name, address, and telephone number of the individual who is authorized by the Permittee to act as the primary contact person for all matters related to the operation of the Water System.

**E. Consumer Confidence Reports:** The Permittee shall prepare and deliver to the customers of the Water System and the Secretary an annual consumer confidence report (CCR) on or before July 1 of each year. The Permittee shall comply with the requirements of 40 CFR Subpart O, including Appendix A, and Subchapter 10 of the Rule as it relates to the preparation, content, and distribution of the CCR.

**F. Operation and Maintenance Manual:** The Permittee shall operate the Water System in a manner consistent with the Water System's Operation & Maintenance (O&M) Manual, approved by the Secretary on April 25, 2019. The O&M Manual shall be amended as needed when significant changes are made to the infrastructure and operations of the Water System. All amendments to the O&M Manual shall comply with the Rule and be approved by the Secretary. The O&M Manual shall be kept in a location so that it is readily available to the Permittee and the operator(s) of the Water System. If the O&M Manual cannot be located during an inspection or sanitary survey by the Secretary, the Permittee shall prepare a new O&M Manual and submit an electronic copy to the Division for approval.

**G. Water System Modification Prohibited Without Required Permits:** The Permittee shall obtain all required Source and/or Construction Permits before proceeding with modifications to the Water System, including, but not limited to, Water System expansions that require a Public Water Supply Permit, source deepening, reconstruction, and new treatment systems.

**H. Reporting of Non-Routine Operating Conditions:** The Permittee shall report to the Division whenever atypical or non-routine operating conditions are experienced by the Water System, including but not limited to deviation from within normal operating distribution system pressure ranges, e.g., significant and unusual fluctuations in distribution system hydraulic pressure; hydraulic pressures of less than 35 psi in the distribution system; failure of critical Water System infrastructure components; water color or odor complaints/observations from system users; or any operating condition that does not meet the standards of Appendix A of the Rule and/or a condition that poses a significant health risk. When experiencing atypical or non-routine operating conditions, Permittee shall:

1. Notify the Division as soon as possible and within 12 hours of becoming aware of the Non-Routine Operating conditions.
2. Take appropriate action(s) to safeguard all users of the Water System, including notification to all users when the water supply becomes vulnerable to contamination (e.g., VT-Alert, Television, Radio, Hand delivery (door to door), other method as advised).
3. Follow all actions and provide all documentation as requested by the Division.

**I. Use of Unpermitted Sources of Water:** The Permittee shall not use or connect an unpermitted and/or unauthorized water source, including hauled bulk water and designated emergency sources, to the Water System unless an emergency operating condition exists. When

experiencing operating conditions that may require the use of an unpermitted or unauthorized source, the Permittee shall:

1. Notify the Division prior to utilizing the unpermitted or unauthorized source of Water.
2. Provide all public notice as recommended by the Division, which may include issuing a Boil Water, Do Not Drink, or a Do Not Use Notification to all users of the Water System. Notifications shall be provided within twelve hours of receiving the Division's recommendation or as otherwise directed by the Division in writing.
3. Follow all actions and provide all documentation as requested by the Division.
4. The unpermitted and/or unauthorized source shall be used for no more than 90 cumulative days unless the Permittee has submitted a written request to the Secretary for an extension and the Secretary has determined that there is good cause for granting an extension.

**J. Maintenance and Periodic Update of Approved Plans:** The Permittee shall comply with the plans approved by the Secretary for the Water System. In the event of significant structural or operational changes to the Water System, the applicable plans shall be revised and submitted to the Secretary for approval. In addition, the plans shall be updated when specified in the Rule. The approved plans for the Water System are:

1. Revised Total Coliform Rule Coliform Sampling Plan, approved by the Division on February 17, 2016;
2. Lead and Copper Sampling Plan, approved by the Division on April 19, 2018;
3. Disinfection Byproducts (DBP) Compliance Monitoring Sampling Plan, Stage 2, approved by the Division on May 15, 2018; and
4. Source Protection Plan, last update approved by the Division on April 6, 2018.

**K. Posting of Permit:** The Permittee shall post the current valid operating Permit in a conspicuous place at the public Water System headquarters or treatment plant.

**L. Permit Modification:** Based upon information received (e.g., findings of a facility inspection, or information submitted by the Permittee), the Secretary shall determine whether one or more of the following causes to modify a Permit exist. If cause exists, the Secretary may modify the Permit, and may request an updated application and/or administrative contacts information if necessary. When a Permit is modified, only the conditions subject to modification are reopened. Cause for modification includes, but is not limited to:

1. Material and substantial additions or alterations to the Water System, or the Water System's operations or any other change in conditions, that occurred after the issuance of the Permit that justify the application of conditions different or absent from this Permit;
2. The receipt of information that was not available when the Permit was issued which justifies the application of conditions different or absent from this Permit;
3. The statutes, standards or Rule, on which the Permit was based, were revised by

adoption or judicial decision after the Permit was issued and those revisions justify the application of conditions different or absent from this Permit;

4. A determination by the Secretary that other good cause exists for amendment, based on the need to protect human health or the environment; or

5. Cause exists for revocation of the Permit, but the Secretary determines that modification of the Permit is appropriate.

**M. Permit Suspension or Revocation:** This Permit may be suspended or revoked in accordance with the Rule.

**N. Transfer of ownership or Control**

1. This Permit is not transferable or assignable without prior written approval of the Secretary. All operating fees must be paid in full prior to any transfer or assignment of the Permit. In the event of a proposed change in control or ownership of the Water System, the Permittee shall provide a copy of this Permit to the prospective owner and/or operator and shall send written notification of the proposed change in ownership or control to the Secretary. The Permittee shall also inform the prospective owner and/or operator of their responsibility to make an application for transfer of this Permit.

2. Any request for transfer of ownership and/or control must, at a minimum, include:

a. A properly completed application form provided by the Secretary including the Permit application fee and administrative contacts information;

b. A written statement from the prospective owner or operator certifying:

i. The conditions of the operation of the Water System will not be materially different under the new ownership or control;

ii. The prospective owner or operator has read and is familiar with the terms of the Permit and agrees to comply with all terms and conditions of the Permit; and

iii. The prospective owner or operator has the technical, managerial, and financial capability to operate and maintain the Water System and remain in compliance with the terms and conditions of the Permit.

c. The date of the sale or transfer; and

d. Any other additional information the Secretary may require in light of the current status of the facility operation, maintenance, and Permit compliance.

**O. Right of Access to the Water System:** By acceptance of this Permit, the Permittee agrees to allow any duly authorized representative of the Secretary, upon presentation of the appropriate credentials, to:

1. Inspect or investigate any portion of the Permittee's property, fixtures, or other appurtenances belonging to or used by the Permittee for the operation and maintenance of the Water System;



2. Sample, monitor, or test the Water System; or
3. Gain access to and copy any records, reports or other documents related to the operation and maintenance of the Water System.

**P. Fees:** The Permittee shall pay the annual operating fees specified in 3 V.S.A. §2822.

**Q. Compliance with the Rule and Other Laws:** Compliance with this Permit does not relieve the Permittee of the need to comply with all applicable provisions of the Rule and all other applicable requirements of Federal, State, and Local laws.

**R. Appeals:** This permit may be appealed to the Environmental Division of the Superior Court within 30 days of the date the final decision is posted to the Environmental Notice Bulletin in accordance with 10 V.S.A., Chapter 220.

**S. Enforcement:** Pursuant to 10 V.S.A. Chapters 56, 201 and 211, any violation of the terms and conditions of this permit, including any compliance schedule, is grounds for the initiation of an enforcement action by the State against the Permittee.

**T. Effective Date:** This Permit becomes effective on the date of signing.

This Operating Permit for the Operation of the Water System located in Vermont is effective on July 10, 2019.

Emily Boedecker, Commissioner  
Department of Environmental Conservation  
Vermont Agency of Natural Resources

By Bryan J. Redmond  
Bryan J. Redmond, Division Director  
Drinking Water and Groundwater Protection Division