

**RESOLUTION APPROVING OPERATIONAL SUPPORT AGREEMENT BETWEEN ASHTABULA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES AND AQUA OHIO, INC.**

WHEREAS, Doug Starkey, Director of the Ashtabula County Department of Environmental Services, has presented the following agreement for the approval of the Board, to-wit:

**Original Agreement Date:** April 1, 2017 and amended October 6, 2020 Resolution # 2020-56SEWA

**Parties:** Ashtabula County Dept. of Environmental Services, 36 W. Walnut St., Jefferson, OH 44047 and the Provider of services, Aqua Ohio, Inc., 6650 South Avenue, Youngstown, Ohio 44512

**Scope:** For the purpose of Aqua Ohio providing Operational Support Services inclusive of certain Planned and Unplanned Maintenance Services and Telemetry Monitoring Services to the Ashtabula County Water System. This agreement replaces both an Operating Contract dated 04/01/17 and Water System Telemetry Monitoring Agreement dated 10/6/2020.

**Term:** This agreement shall be effective January 1, 2023, payable monthly, and shall be in full force until December 31, 2026

**Cost:** Base price “Planned Operational Support and Maintenance Services Annual Cost” shall be paid in twelve (12) monthly installments on or before the fifteenth (15<sup>th</sup>) of each month. The base price will be adjusted upward by 3% on an annual basis, effective on each anniversary date of the effective contract; January 1<sup>st</sup> of each year. Cost per year below.

<b>PLANNED OPERATIONAL SUPPORT AND MAINTENANCE SERVICES ANNUAL COSTS</b>					
<b>Description of Planned Operational Support Services provided in Appendix A of attached contract</b>					
<b>DESCRIPTION</b>	<b>Year 1 / 2022</b>	<b>Year 2 / 2023</b>	<b>Year 3 / 2024</b>	<b>Year 4 / 2025</b>	<b>Yea 5 / 2026</b>
Sampling, Testing and Reporting	\$ 34,525.00	\$ 35,561.00	\$ 36,628.00	\$ 37,726.00	\$38,858.00
Telemetry Monitoring	\$ 25,415.00	\$ 26,177.00	\$ 26,963.00	\$ 27,772.00	\$28,605.00
Contract Management and Coordination	\$ 9,320.00	\$ 9,600.00	\$ 9,888.00	\$ 10,184.00	\$10,490.00
Other	\$ 16,616.00	\$ 17,114.00	\$ 17,628.00	\$ 18,157.00	\$18,701.00
* Other work includes 24 /7 system operation and emergency dispatch, overhead and admin costs					

<b>LABOR</b>				
Description	Hourly Rate			
	Regular	Overtime	Double-Time	
Crew Leader	\$ 57.10	\$ 75.96	\$ 94.22	
Distribution Technician	\$ 53.88	\$ 71.67	\$ 88.90	
Service Technician	\$ 53.45	\$ 71.10	\$ 88.19	
Meter Reader	\$ 48.61	\$ 64.64	\$ 80.21	
Mechanic	\$ 57.09	\$ 75.93	\$ 94.20	
Water Treatment Technician	\$ 56.49	\$ 75.11	\$ 93.19	
Customer Service Specialist	\$ 38.25			
Supervisor	\$ 80.58			

\* Description of Unplanned Maintenance Services are provided in Appendix B of attached contract

<b>EQUIPMENT</b>	
Description	Hourly Rate
Backhoe (with trailer)	\$ 58.00
Dump Truck	\$ 46.00
Crew Truck/Compressor	\$ 35.00
Service Vehicle	\$ 23.00
Power Generator	\$ 35.00

<b>FLAT FEE ITEMS</b>	
Description	Fee
Service Connection for 1" Service Line	\$ 1,800.00
Add to Service Line Cost for Vault for Outside Meter	\$ 578.00

\*County furnishes meters. Includes Inside Meter Set and Installation of Remote

\*The rate shall increase 3.0% annually for the effective period of this fee Schedule commencing on 1/1/2023

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the agreement as noted above is approved in accordance with the copy now on file in this office.

**ASHTABULA COUNTY COMMISSIONERS  
CERTIFICATION PAGE**

Resolution No. 2022-528

December 13, 2022

**RESOLUTION APPROVING OPERATIONAL SUPPORT AGREEMENT BETWEEN  
ASHTAULA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES AND AQUA  
OHIO, INC**

Upon the motion of Kathryn L. Whittington, seconded by Casey R. Kozlowski.

**VOTE:**

J.P. Ducro IV

Absent

Casey R. Kozlowski

Aye

Kathryn L. Whittington

Aye

**CERTIFICATE OF CLERK**

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



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Crystal Sturgill, Clerk of the Board  
Board of County Commissioners  
Ashtabula County, Ohio

# OPERATIONAL SUPPORT AGREEMENT

## ASHTABULA COUNTY BOARD OF COMMISSIONERS & AQUA OHIO, INC.

This OPERATIONAL SUPPORT AGREEMENT ("Agreement") is made and entered into as of December XX, 2022 ("Effective Date") by and between Aqua Ohio, Inc., an Ohio corporation with its principal place of business located at 6650 South Avenue, Youngstown, OH 44512 ("Company") and the Board of Ashtabula County Commissioners, an Ohio governmental body with its principal office located at 25 West Jefferson Street, Jefferson, OH 44047 ("County"), which provides water services as a function of the Ashtabula County Department of Environmental Services (ACDES), which is duly authorized to administer the provisions of this Agreement on the County's behalf.

### WITNESSETH

WHEREAS, Company is a Corporation and an Ohio Public Utility, specializing in the operation and maintenance of water supply, transmission and distribution facilities, and provides a water supply and water-related services in certain areas within Ashtabula County, said system recognized by Company as the "Lake Shore Division – Ashtabula" and/or "Former Ohio-American Water Company", and/or the "Lake Erie East Division" and which requires continuous monitoring;

WHEREAS, County administers and operates a Water District within the Ashtabula County Sewer District in accordance with ORC § 6103, known as the "Ashtabula County Water System," and operates infrastructure and provides water distribution services within the municipal corporation of the Village of Geneva-on-the-Lake, and certain unincorporated political subdivisions within Ashtabula County; said County System requires continuous monitoring.

WHEREAS, Company provides operational support services inclusive of certain planned and unplanned services and telemetry monitoring services within its service areas, and can facilitate and provide these services to the County under this Agreement.

WHEREAS, an existing Operating Contract dated April 1, 2017 and a subsequent amendment dated October 6, 2020 approved under Resolution Number 2020-56SEWA between the parties is currently in effect.

WHEREAS, the parties wish to supersede and replace the April 1, 2017 Operating Contract in its entirety as herein stated;

NOW, THEREFORE, in consideration of the mutual covenants and conditions described herein, the sufficiency and receipt of which is hereby acknowledged by each of the parties hereto, the County and the Company hereby agree as follows:

### ARTICLE 1 – AGREEMENT

**1.01 Agreement.** This Agreement consists of the terms and conditions set forth in the sections captioned by enumerated article designations ("Articles") and the following appendices, which are incorporated and made part of this Agreement by this reference and are included in any reference to this Agreement.

*Appendix "A": Planned Operational Support & Maintenance Services*

*Appendix "B": Unplanned Maintenance Services*

*Appendix "C": Fee Schedule for Unplanned Maintenance Services (See §3.02(a))*

The Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained within this Agreement.

- 1.02 Term.** This Agreement shall be effective and shall govern the rights and obligations of the parties as of the Effective Date and be in full force and effect until December 31, 2026 with consideration given to Section 3.02(a) herein.
- 1.03 Relationship of the Parties.** Company has been retained by the County as an independent Contractor to provide operational support services for the Department of Environmental Services – Ashtabula County Water System as deemed necessary by the County, in accordance with §3745 of the Ohio Administrative Code and supplemental requirements under the Ohio EPA’s permit to operate the Ashtabula County Water System (Permit ID #OH0400803). County has delegated to Company the support services necessary to maintain an optimal level of uninterrupted water and water-related service to the County’s benefiting users. Neither the Company nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that the Company is the duly authorized Agent of the County to the limited extent that this Agreement expressly grants Company when services under this Agreement are individually requested by the County.
- 1.04 Representatives.** Company and County shall each designate a representative (“Designated Representative”) to act on its behalf in overseeing the performance of this Agreement. Company and County may change their respective Designated Representatives upon written notice to the other party given as provided under this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between the parties that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

Said Designated Representative shall be Mr. Matthew J. Perry, Ashtabula Area Manager on Company’s behalf, and Mr. Doug Starkey, Director of the Ashtabula County Department of Environmental Services on the County’s behalf.

## **ARTICLE 2 – DEFINITIONS**

- 2.01 “Bankruptcy”** shall mean a situation in which (i) a party’s actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party’s creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.
- 2.02 “Base Price”** shall mean the baseline price of Eighty Four Thousand, Eight Hundred Seventy Five and 00/100 Dollars (\$84,875) for Planned Operation, Maintenance and Monitoring of the Water Supply Facilities.

- 2.03** "Business Day" means any day other than a Saturday, Sunday or other day on which government agencies and offices are authorized or required to close in the State of Ohio, and between the hours of 7:00 am and 4:30 pm.
- 2.04** "Capital Expenditures" means the purchase of equipment, fixtures, furnishings or for the construction of new or replacement facilities having extended service life that are classified as capital items in standard accounting practice and would normally be an addition to rate base for an Ohio water utility under the jurisdiction of the Public Utilities Commission of Ohio (PUCO).
- 2.05** "Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 12.03 (Force Majeure). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Water Supply Facilities, which events were not pending on the date of this Agreement.
- 2.06** "Lender(s)" means
- (a) Any person that has made loans to County, its successors or permitted assigns for the financing or refinancing of the Water Supply Facilities (or any part thereof) or which loans are secured by County for the Water Supply Facilities (or any part thereof),
  - (b) The holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders, or
  - (c) Any person or entity that purchases the Water Supply Facilities in connection with a sale-leaseback or other lease arrangement in which the County is the lessee of the Water Supply Facilities pursuant to a net lease.
- 2.07** "Water Supply Facilities" shall include, but are not limited to, pipes, booster pumping stations, valves, meters, hydrants, water storage tanks and any other property, real or personal/public, comprising the Ashtabula County Water System. It is further understood that at the time of this Agreement, approximately 150 miles of water transmission main, 1,100 gate valves, 1,000 fire hydrants, 2 ground storage tanks and 2 elevated storage tanks, 7 booster pumping stations, and approximately 5,600 customer service lines and meters comprise the Water Supply Facilities.
- 2.08** "Minimal Water Treatment" means the addition to the water, as deemed necessary as within applicable water quality standards by licensed operators, of (a) a corrosion inhibitor, (b) chlorine; and/or (c) sequestering agents(s).

- 2.09** "Planned Operational Support Services" means the scheduled and/or routine work Company shall provide to the County to assist with the operations of the Water Supply Facilities under the terms of this Agreement, as more particularly described within Appendix "A" to this Agreement.
- 2.10** "Subcontractor" means a person, firm or corporation other than employees of the Company that contract with Company to furnish labor, materials, and/or equipment for performing services under this Agreement.
- 2.11** "Unplanned Maintenance" means unscheduled, but routine, maintenance service as described within Appendix "B" to this Agreement.

### **ARTICLE 3 – COMPENSATION**

- 3.01** Company shall invoice County and County shall pay the Base Price in twelve (12) monthly installments payable on or before the fifteenth (15<sup>th</sup>) of each month during the first year of this Agreement. The Base Price shall be adjusted upward by 3% on an annual basis, effective on each anniversary date of the Effective Date. Company shall invoice County and County shall pay the adjusted Base Price in twelve monthly installments payable on or before the fifteenth of each month in each year after the first year.
- 3.02** Company shall submit invoices to County for Unplanned Maintenance pursuant to the fee schedule in Appendix "C" of this Agreement for Fiscal Years 2022 through 2026; and shall furnish and provide County with copies of work orders, timesheets, material records and other documentation substantiating the Company's costs for Unplanned Maintenance.
- (a) Company and County agree to renegotiate and amend the terms of Appendix "C" based on industry rates and prices within 90 days of the end of Fiscal Year 2026; said amendment shall be mutually agreed upon and added to this Agreement by Amendment.
- 3.03** County shall pay Company within sixty (60) days of receipt of an invoice and shall be subject to penalty at five percent (5%) per annum on all invoices or portions thereof remaining unpaid for more than 60 days.

### **ARTICLE 4 – SCOPE OF SERVICES**

- 4.01 Overall Responsibilities.** Company shall provide the following services to the County:
- (a) Professional and reliable operational support in a cost-effective and business-like manner on a twenty-four (24) hours per day, seven (7) days per week basis, and in accordance with this Agreement.
- (b) Assumption of all responsibility for payment of any fines and/or other action attributable to the Company's specified responsibilities imposed by the Ohio Environmental Protection Agency (OEPA), or any other governmental body or agency resulting from the Company's (i) faulty and negligent operation; (ii) operation not in compliance with applicable law; provided, however, that Company will not assume responsibility for fines and/or other actions imposed by any governmental body or agency resulting from County's failure to comply with applicable law, or resulting from County's failure to authorize Capital Expenditures, Planned Operation & Maintenance, and/or Unplanned Maintenance Services.

- (c) Immediately, but in no event later than four (4) hours or within the period, if any, prescribed by applicable law, whichever is earlier, notify and provide County with any and all information as the same becomes available relative to any non-routine, unplanned or emergency activity, problem, event or circumstance that threatens or may threaten public health, safety or welfare to the residents in the Company's Service Area (inclusive of the County's Water Supply Facilities). This notification requirement is not applicable to events for which the Company has not been selected to perform the work or emergency response. The County reserves the right to establish reasonable notification protocol with which the Company shall comply.
- (d) The County assumes responsibility for annual OEPA License to Operate fees, OUPS fees, monthly water quality monitoring reporting, lead and copper requirements and any other regulatory requirements not identified in Appendix A of this Agreement.

#### **4.02 Planned Operational Support**

- (a) Company shall provide County with, and County shall pay Company for, Planned Operational Support as described in Appendix A during the term of this Agreement.
- (b) Company shall provide management, technical, operational and administrative personnel capable of effectively performing the Planned Operation Support required herein. Operations and maintenance personnel shall meet such applicable Ohio certification regulations for the operation and maintenance of the Water Supply Facilities as may be adopted from time to time.
  - (i) Employees hired by Company to provide service shall be employees of Company and not County, and except as otherwise provided, Company shall be solely liable for the payment of all wages and provisions of all other benefits to such employees in connection with their employment with Company.
  - (ii) Company shall not unlawfully discriminate against any worker, employee or applicant, or any member of the public because of race, color, religion, gender, nationality, age, disability or ancestry, nor commit any other unlawful employment practice and shall comply, to the extent applicable, with federal, state, and local law.
- (c) Company represents that it is knowledgeable about the drinking water standards applicable to the Water Supply Facilities under State and Federal law, and can operationally support the Water Supply Facilities. Company shall perform periodic water testing as described in Appendix A to this Agreement describing Planned Operational Support, in order to ensure that the Water Supply Facilities provide drinking water which meets or exceeds the drinking water standards applicable to the Water Supply Facilities under State and Federal law. If the laws or regulations change resulting in conditions the Water Supply Facilities cannot meet, or if such standards cannot otherwise be met due to conditions not resulting from the Company's responsibilities under this Agreement, Company shall so notify the County and will reasonably recommend to County a course of action to return the quality standards imposed by State and Federal law (however, nothing herein shall obligate the Company to engage in any study or otherwise expend money to develop such a course of action).
- (d) County may, at any time, request additional sampling, monitoring or independent analysis to verify performance and shall bear all costs for the same.
- (e) Company shall furnish equipment, vehicles, supplies and tools necessary to perform Planned Operation Service duties under this Agreement. Company shall use the same purchasing practices that it employs

when purchasing materials for its own Water Supply Facilities, in order to achieve economies of scale in purchasing materials.

- (f) Capital Expenditures are not included within the Scope of Services under Planned Operational Support.
- (g) Company shall not be liable for any losses incurred or damage resulting from shutdowns or interruptions of operations of the Water Supply Facilities due to causes not attributable to Company's services hereunder or emergency or Force Majeure Events. The Company shall provide notification immediately to County upon determination of said events. During such shutdowns or interruptions, Company may perform emergency assistance work as agreed to by the County and the Company.
- (h) Maintenance and repairs to the Water Supply Facilities required as the result of the occurrence of a Force Majeure Event shall be beyond the scope of Planned Operation, Maintenance and Monitoring. In such case, Company and County shall mutually assess the scope of the work required as a result of the Force Majeure Event and shall conduct good faith discussions to perform the work required to return the Water Supply Facilities to normal operation as quickly as possible.
- (j) Company shall be entitled to set its own schedule for Planned Operational Support activities and general operations within reasonable means and methods.
- (k) Company shall not use subcontractors to perform any of the duties required under this Agreement without first obtaining the express written consent of the County (the Director of the Department of Environmental Services), unless Company has provided County with a list of County-approved subcontractors and the subcontractor is named on the list. County reserves the right to remove a subcontractor from the list at any time.
- (l) Company shall not have obligation to take any action prohibited by State or Federal law.
- (m) The Company shall provide the County with routine information available to Company required by external auditors, and the County's internal auditors and others, for the purpose of verifying requests for payments and preparation of periodic reports.
- (n) Company shall provide management, technical, operational and administrative personnel capable of effectively performing the Water Supply Facilities Telemetry Monitoring. The Company shall perform 24-hours per day, 7 days per week monitoring of the County's Water Supply Facilities by means of its own staffed water treatment facilities and shall maintain records and documentation of such monitoring.
- (o) The Company shall advise and assist the County, as needed, with any integration of new telemetry system components in the County's Water Supply Facilities with the understanding that the County assumes responsibility to ensure that said system can be successfully monitored by the Company and each of the County's Water Supply Facilities.
- (p) The County shall be responsible for all successive upgrades to the County's telemetry facilities and components reasonably necessary for the Company to facilitate monitoring services under this Agreement. Company shall not be liable for any losses incurred or damage resultant from shutdowns or service interruptions due to any failure(s) of the County's telemetry components or monitoring system.

#### **4.03 Unplanned Maintenance Services**

- (a) Upon notification by the County, the Company shall provide County with Unplanned Maintenance services for the purpose of operating and maintaining the Water Supply Facilities. Said services are inclusive, but not limited to, examples as set forth in Appendix B of this Agreement. The County reserves the right to select the providers of Unplanned Maintenance.**
- (b) Company shall provide management, technical, operational, maintenance and administrative personnel capable of performing Unplanned Maintenance Services. Operations and maintenance personnel shall meet all applicable Ohio certification regulations for the operation and maintenance of the Water Supply Facilities as may be adopted from time to time.**
- (c) Company shall furnish personnel, equipment, parts, fixtures and tools necessary to perform Unplanned Maintenance Services. The Company shall use the same purchasing practices that it employs when purchasing materials for its own Water Supply Facilities when purchasing supplies and equipment for Unplanned Maintenance Services.**
- (d) Capital Expenditures are not Included within the Scope of Services under Planned Operational Support. Capital Expenditures may be included within the Scope of Services of Unplanned Maintenance. County shall be solely responsible for payment of all Capital Expenditures. Company shall identify such Capital Expenditures that it deems, in its judgement, to be necessary in the foreseeable future in order to help the County make informed policy decisions relative to the planning for the execution of such Capital Expenditures. County may request Company purchase or perform Capital Expenditures in accordance with procedures set forth in applicable State and Federal laws. All such Capital Expenditures shall be the property of the County.**
- (e) Company shall not be liable for any losses incurred or damage resulting from shutdowns or service interruptions for Unplanned Maintenance Services, emergencies, or Force Majeure Events. The Company shall provide notification Immediately to County upon determination of said events. During such shutdowns or service interruptions, the Company shall perform its responsibilities according to its best means and methods until service returns to normal.**
- (f) County shall pay Company for the Company's costs in performing Unplanned Maintenance pursuant to the fee schedule described in Appendix C to this Agreement, and subsequent amendment thereto as referenced in § 3.02(a) herein.**
- (g) Cost for services under this Section shall be the actual invoiced cost for time and materials plus overhead of ten percent (10%).**
- (h) Company shall not use subcontractors to perform any of the duties required under this Section without first obtaining the express written consent of the County (the Director of the Department of Environmental Services), unless Company has previously provided County with a list of subcontractors (pre-approved by the County) and the subcontractor is named on the list.**
- (i) Schedules of service orders constituting Unplanned Maintenance will be coordinated between the County and the Company.**

**4.04 Performance Criteria.** Company shall provide the services under this Agreement in accordance with the Performance Criteria specified hereunder. Company's failure to meet the Performance Criteria will be grounds for termination of this Agreement pursuant to Article 6.

(a) Service Orders shall be completed to the County's satisfaction within twenty-four (24) hours of acknowledgement by Company of County's request.

#### **ARTICLE 5 – LIMITATIONS ON AUTHORITY**

**5.01 General Limitations.** Notwithstanding any provision in this Agreement to the contrary, unless previously approved by County in writing, Company and any employee, representative, contractor or other agent of Company are prohibited from taking the specified actions with respect to the matters indicated below.

(a) Disposition of Assets. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of County;

(b) Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, County or Company, the cost of which, in the case of Company, would be a billable cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(c) Liens. Create, incur or assume any lien upon the Ashtabula County Department of Environmental Services/Ashtabula County Water System;

(d) Transactions on Behalf of Others. Engage in any other transaction on behalf of County or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement or any other Agreement between the parties.

**5.02 Execution of Documents.** Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of County) to be executed by Company shall be executed by the authorized representative of the Company or, subject to prior written notice to the County, by such other representative of Company who is authorized and empowered by the Company to execute such documents.

#### **ARTICLE 6 – TERMINATION**

**6.01 Immediate Termination by County.** Subject to the terms of any Agreement between the Company and the County, the County may terminate this Agreement immediately (a) upon the Bankruptcy of the Company or (b) upon the occurrence of a Force Majeure event that is not remedied within ninety (90) days of its initial occurrence.

**6.02 Termination Upon Notice by County.** Subject to the terms of any agreements between the parties, County may terminate this Agreement upon 10 days written notice to Company in the event (i) that Company violates, or consents to a violation of, any Laws applicable to the scope of services or the Water Supply Facilities, where the violation has or may have a material adverse effect on the maintenance or operation of the Water Supply Facilities or County's interest, and Company does not cure such violation within 30 days (or, if not curable within

30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Company diligently commences such cure), or (ii) of a material breach by Company in the performance of the services described herein, if Company does not cure such breach within 30 days from the date of Company's receipt of notice from County demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Company diligently commences and pursues such cure).

**6.03 Other Termination upon Notice by County.** Subject to the terms of any agreements between the parties, County may terminate this Agreement with 60 days prior written notice to Company, upon the occurrence of (i) a sale or transfer by County of its rights of the Water Supply Facilities, or a sale or transfer of all or substantially all of the assets of or interests in County, (ii) a determination by the County that, for any reason, it no longer intends to continue operation of the Water Supply Facilities or (iii) a determination by the County that it does not wish to extend this agreement at the expiration of any relevant term. If the Agreement is terminated by the County pursuant to this section, Company shall be compensated for all unpaid fees (or portions thereof) and billable costs up to and including the date of such termination.

**6.04 Termination by Company.** Subject to the terms of any agreements between the parties, Company may terminate this Agreement for cause upon 15 days prior written notice to County in the event of: (i) County's Bankruptcy; or (ii) County's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of County's receipt of a notice from the Company demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that County diligently commences and continues to pursue such cure).

## **ARTICLE 7 – INSURANCE**

### **7.01 Coverage**

- (a) **Obligation to Obtain.** County and Company shall obtain and maintain the insurance set forth in Sections 7.01(b) and 7.01(c).
- (b) **Company's Coverage.** Company shall maintain during the term of this Agreement the insurance described below with insurance companies acceptable to the County and with limits and coverage provisions not less than the limits and coverage provisions set forth below:
  - (i) **General Liability Insurance:** Liability insurance on the basis of claims made for personal injury (including bodily injury and death) and property damage.
  - (ii) **Automobile Liability Insurance:** Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable.
  - (iii) **Workers' Compensation Insurance:** Workers' compensation insurance as required by applicable laws, including employer's liability insurance for all employees of the Company.

- (iv) **Excess Liability Insurance:** Excess liability insurance on the basis of claims made covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii).

The amounts of insurance required in the foregoing subsections (i), (ii), (iii) and (iv) may be satisfied by Company purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of the County, Company may provide equivalent self-insurance in lieu of the requirements set forth in this Section.

- (v) All policies of liability insurance to be maintained by the Company shall provide for waivers of subrogation in favor of the County. These policies shall include the following:
- A. A severability of interests or cross liability clause;
  - B. Insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the County; and
  - C. County, Lenders and such other persons or entities as may be required by County's Agreements named as additional insureds.

All policies of insurance required to be maintained pursuant to Section 7.01 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of the County, without 30 days prior written notice to the County, except for termination for non-payment of premium which shall require 10 days prior written notice to the County. The County has the option in placing the coverages listed above and naming the Company as an additional insured.

- (c) **County's Coverage.** County shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:
- (i) **Liability Insurance:** Liability insurance on the basis of claims made for personal injury (including bodily injury and death) and property damage. County may provide adequate self-insurance in lieu of the requirements set forth in this Section.
- (d) **Cost.** All costs incurred by the Company with respect to payment of any deductible relating to the insurance coverage set forth in this Agreement shall be deemed inclusive of the Base Price.

**7.02 Certificates.** On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

**7.03 Payment of Deductible Amounts.** Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of the Water Supply Facilities or applicable services or otherwise referred to in this Agreement, Company shall promptly pay to County any deductible amount related to any claim against or other cost to County covered under any such insurance policy which arose due to the gross negligence of the Company.

## ARTICLE 8 – LIABILITIES

### 8.01 Environmental Liability

- (a) **Company's Liability.** Company shall not be responsible for claims directly or indirectly related to any hazardous materials present within the Water Supply Facilities before the date of this Agreement, except to the extent the Company acted with respect to such materials in a grossly negligent manner.
- (b) **County's Liability.** County shall not be responsible for claims directly related to hazardous materials within the Water Supply Facilities arising out of the grossly negligent or intentional acts of the Company. This provision of the Agreement shall not be construed to require the Company to take corrective action with respect to any hazardous materials within the Water Supply Facilities before the date of this Agreement.
- (c) **Governmental Actions.** If action is required within the Water Supply Facilities to comply with any applicable environmental laws during the term of this Agreement, the County (with Company's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by the Company with the County's prior written consent, unless a governmental authority requires the Company to incur such costs and expenses prior to obtaining such written consent.

## ARTICLE 9 – LIMITATIONS ON LIABILITY

### 9.01 Limitations

- (a) **Consequential Damages.** Notwithstanding any provision in this Agreement to the contrary, Company and County each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.
- (b) **Damages Limited to Base Price.** The aggregate liability of the Company with respect to claims of the County arising out of the performance or nonperformance of obligations under this Agreement shall, in no event, exceed during the Base Price payable to the Company during such any year within the term of this Agreement.
- (c) **Personal Liability Limited.** Company and County each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of the County or the Company for the payment of any amounts due hereunder, or performance of any obligations hereunder.
- (d) **Survival.** The parties further agree that the waivers and disclaimers of liability, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.
- (e) **Exclusivity.** The provisions of this Agreement constitute Company's and County's exclusive liability, respectively, to each other, and Company's and County's exclusive remedy, respectively, with respect to the

operational support services to be performed hereunder and County hereby releases Company performing operational support services hereunder, and Company hereby releases County performing its obligations hereunder, from any further liability.

#### **ARTICLE 10 – TITLE, DOCUMENTS AND DATA**

- 10.01 Materials and Equipment.** Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by Company on a billable fee basis hereunder shall pass immediately to and vest in the County upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect the Company's obligations as set forth in this Agreement.
- 10.02 Documents.** All materials and documents prepared or developed by the Company, its employees, representatives or contractors in connection with the Water Supply Facilities or performance of the operational support services hereunder, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become the County's property when prepared, and the Company, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the operational support services hereunder, without the County's prior written approval. All such materials and documents, together with any materials and documents furnished to the Company, its agents, employees, representatives, or contractors by the County, shall be delivered to the County upon expiration or termination of this Agreement and before final payment is made to the Company.
- 10.03 Review by Owner.** All materials and documents referred to within this Section shall be available for review by the County or Lenders (including their agents or advisors) at all reasonable times during development and promptly upon completion. The County's approval of materials and documents submitted by the Company shall not relieve the Company of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.
- 10.04 Proprietary Information.** Where materials or documents prepared or developed by the Company or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by the Company or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that the County shall have the right to the same to the extent necessary for operation or maintenance of the Water Supply Facilities.

#### **ARTICLE 11 – DISPUTE RESOLUTION**

- 11.01** The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by mediation, which shall be conducted under any procedure upon which the parties may agree. The parties further agree that their respective good faith participation in mediation is, except as stated herein, a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures. In no event, shall any legal action necessitate mediation as a prerequisite to the extent any statute of limitation or other time bar prevent a legal or other cause of action from being filed if a mediation has not been filed or concluded.
- 11.02** Either party may commence the mediation process by providing to the other party written notice, setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The

mediation shall be conducted by the Ashtabula County Joint Court Mediation Project with its principal offices located at 25 West Jefferson Street, Jefferson, Ohio 44047. The initial mediation session shall be held within thirty (30) days after the initial notice, or as soon as possible within the chosen mediator's schedule. The parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).

- 11.03** The parties further acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- 11.04** The provisions of this section may be enforced by the Ashtabula County Court of Common Pleas.

## **ARTICLE 12 – MISCELLANEOUS PROVISIONS**

- 12.01 Scope.** The parties hereby acknowledge that the purpose of this Agreement is to address certain matters concerning furnishing and providing operational support services to County by Company.
- 12.02 Assignment.** Neither County nor Company may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by the County without such prior consent to any successor of the County, to a person or entity acquiring all or substantially all of the Water Supply Facilities, or to a Lender or any purchaser of the Water Supply Facilities upon the exercise of remedies under a Water Supply Facilities Agreement by a Lender. Company hereby consents to the assignment by the County of a security interest in this Agreement to Lenders. Company further agrees to execute documentation to evidence such consent reasonably required by the Lenders typical for project finance. Company recognizes that such consent may grant certain rights to such Lenders, which shall be fully described in the consent documents.
- 12.03 Force Majeure.** If either County or Company is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is reasonably necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.
- 12.04 Amendments.** No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.
- 12.05 Survival.** Notwithstanding any provisions herein to the contrary, the obligations and limitations of liabilities set forth herein, shall survive in full force despite the expiration or termination of this Agreement.

**12.06 No Waiver.** It is understood and agreed that any delay, waiver or omission by County or Company with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by County or Company of any subsequent breach or default of the same or other required performance on the part of the County or the Company.

**12.07 Notices.** All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth in this Section or at such other address or fax number as hereafter specified as provided in this Section. All Notices shall be (i) delivered personally or (ii) sent by registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to be given upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

**To Company:**

**Aqua Ohio, Inc.**

6650 South Avenue, Youngstown, OH 44512

ATTN: Mr. Robert L. Davis

**To County:**

**Ashtabula County Board of Commissioners**

25 West Jefferson Street, Jefferson, OH 44047

ATTN: Doug Starkey, Director, Department of Environmental Services

**12.08 Fines and Penalties.** If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against Company or County arising from Company's failure to provide operational support services contemplated under this Agreement as pertinent to the Water Supply Facilities in accordance with applicable Laws without the County's prior written consent, such fines and penalties shall, subject to the limitations set forth in Article 9, be the sole responsibility of the County.

**12.09 Representations and Warranties.** Each party represents and warrants to the other party that:

(a) Such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) To the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

(c) There are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

**12.10 Counterparts.** The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

**12.11 Governing Law.** This Agreement is executed and intended to be performed in the State of Ohio and the laws of the State of Ohio shall govern its construction, interpretation and effect.

- 12.12 Partial Invalidity.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.
- 12.13 Dollar Amounts.** All amounts of money in this Agreement are denominated in U.S. currency.
- 12.14 Vendor's Warranties.** For the County's benefit, Company shall obtain from sellers of equipment, material, or third-party services, warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, County releases Company from any further liability arising in respect of such equipment, material or services (other than the operational support services contemplated under this Agreement) to the extent such liability is covered by any such warranty. Company itself shall not be liable for any such warranties, or for any defects or damage caused by such equipment, material or services (other than the operational support services contemplated under this Agreement). Upon the County's request, Company agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by the County for the County's benefit or assignable by Company to County without any further action or consent by or on the part of any third party. Unless otherwise requested, the Company shall administer such warranties and immediately notify the County of any defects discovered or suspected that may be covered by such warranties. When requested, Company shall assign any such warranty to the County and assist the County with the administration and enforcement of such warranty, or, if such warranty is not assignable to the County, assist the County with the administration and enforcement of such warranty.
- 12.15 No Third-Party Beneficiary.** This Agreement is not intended to and shall not be construed to give any Person (other than the parties to this Agreement) any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

[SIGNATURES ON NEXT PAGE]


IN WITNESS WHEREOF, County and Company have caused this Agreement to be duly executed as of the date first written above.

**AQUA OHIO, INCORPORATED**

By:   
Robert L. Davis  
President/Chief Operating Officer

Date: 12-7-2022

**BOARD OF COMMISSIONERS OF ASHTABULA COUNTY, OHIO**

By:   
Casey R. Kozlowski, President  
County Commissioner

Date: 12-13-22

By:   
Kathryn L. Whittington  
County Commissioner

Date: 12-13-22

By: \_\_\_\_\_  
J. P. Ducro IV  
County Commissioner

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**


358 NSXT PR65  
Colleen M. O'Toole, Esq.  
Ashtabula County Prosecuting Attorney

Date: \_\_\_\_\_

**Signature Page**

Agreement Title: Proposed Operational Agreement with Aqua

Approved as to Legal Form Only:

By:  \_\_\_\_\_  
Colleen M. O'Toole,  
Ashtabula County Prosecutor

Contact: Lisa Hawkins, Clerk

Dated: 12/5, 2022

2022-CON-0182

«Reference\_Number»

Reviewed by: Christine Davis on 12/1/2022

## **APPENDIX A**

### **PLANNED OPERATIONAL SUPPORT SERVICES**

Planned Operational Support services, as furnished and provided by the Company and as monetarily quantified as appended hereto by the Company, shall include the following:

1. **Company shall comply with all operation permits, and shall prepare and furnish data pertinent to the following reports for County to submit to the regulatory agencies as required under associative permits:**
  - a. **Monthly Operating Reports as required under the County's Ohio EPA-issued License to Operate**
  - b. **Quarterly Stage 2 Disinfection By-Products (DBP) Reports**
  - c. **Annual Consumer Confidence Report (CCR)**
  - d. **Miscellaneous reports as required of the County's Ohio EPA-issued License to Operate**
2. **Telemetry Monitoring Services as described in Section 4.02 (n) through (p) of this Agreement.**
3. **Company shall provide notification, assistance, and coordination as required to operate the Water Supply Facilities when said Facilities are out of service for emergencies, scheduled maintenance, or repairs.**
4. **Company shall arrange for the purchase by Company of all materials and supplies required for the routine operation of the Water Supply Facilities within the defined limits of this Agreement.**
5. **Company shall secure for and on the behalf of the County such services as the County may determine are reasonable and proper for the economical and efficient operations of the Water Supply Facilities.**
6. **Upon request by the County, Company shall provide and make available compilations and/or trends of all appropriate statistics and data relative to the Water Supply Facilities and the regular operations thereof, including recommendations and/or reports relative to enhancing the general efficiency of such operations.**
7. **Company shall attend the County's meetings when reasonably requested in writing and deliver such reports as are requested by the County as to the operation and general condition of the Water Supply Facilities.**
8. **Company shall render to the County all reasonable assistance in the promotion of satisfactory relations and goodwill between itself and the municipalities in which the businesses shall be carried on, and between the County and the users of the Water Supply Facilities.**

**APPENDIX A**  
**ASHTABULA COUNTY WATER SYSTEM**  
**OPERATING CONTRACT**  
**AQUA OHIO, INC.**  
**"PLANNED OPERATIONAL SUPPORT AND MAINTENANCE SERVICES"**  
**ANNUAL COSTS**

<u>Description</u>	<u>No.</u>	<u>Year 1 (2022)</u>	<u>Year 2 (2023)</u>	<u>Year 3 (2024)</u>	<u>Year 4 (2025)</u>	<u>Year 5 (2026)</u>
Sampling, Testing, and Reporting	1	\$ 34,525	\$ 35,561	\$ 36,628	\$ 37,726	\$ 38,858
Telemetry Monitoring	2	\$ 25,415	\$ 26,177	\$ 26,963	\$ 27,772	\$ 28,605
Contact Management and Coordination	3	\$ 9,320	\$ 9,600	\$ 9,888	\$	\$
					10,184	10,490
Other	4	\$ 16,616	\$ 17,114	\$ 17,628	\$ 18,157	\$ 18,701
<b>Annual Cost</b>		<b>\$ 84,876</b>	<b>\$ 88,452</b>	<b>\$ 91,106</b>	<b>\$ 93,839</b>	<b>\$ 96,654</b>

**NOTES:**

"Other" work includes 24/7 system operation and emergency dispatch, overhead and administrative costs

Year 1 cost were in effect on 1/01/22 under the previous amended contract dated 10/06/2020

## **APPENDIX B**

### **UNPLANNED MAINTENANCE SERVICES**

Unplanned maintenance services will typically include, but are not necessarily limited to, the following tasks as delegated by the County:

<b>1.</b>	<b>Dispatch, prompt response, and reasonably expedient repair of emergency leaks on mains, valves, hydrants, service lines and/or meters.</b>
<b>2.</b>	<b>Repair or replacement of damaged or broken sections of mains, valves, hydrants, or services.</b>
<b>3.</b>	<b>Repair or replacement of damaged or broken main valve boxes, curb stop boxes and/or meter vaults.</b>
<b>4.</b>	<b>Repair or replacement of hydrants found to be defective by County during inspection and maintenance activities.</b>
<b>5.</b>	<b>Thaw and/or repair of frozen mains, services, hydrants, and meters.</b>
<b>6.</b>	<b>Installation of new service connections, meter vaults, and replacement of existing meter vaults.</b>
<b>7.</b>	<b>Other miscellaneous work items as agreed to by the Designated Representatives of both parties.</b>

## APPENDIX C

### FEE SCHEDULE FOR UNPLANNED MAINTENANCE SERVICES COMMENCING UPON EFFECTIVE DATE AND THROUGH DECEMBER 31, 2026

#### LABOR

Description	Hourly Rate		
	Regular	Overtime	Double-Time
Crew Leader	\$ 57.10	\$ 75.96	\$ 94.22
Distribution Technician	\$ 53.88	\$ 71.67	\$ 88.90
Service Technician	\$ 53.45	\$ 71.10	\$ 88.19
Meter Reader	\$ 48.61	\$ 64.64	\$ 80.21
Mechanic	\$ 57.09	\$ 75.93	\$ 94.20
Water Treatment Technician	\$ 56.49	\$ 75.11	\$ 93.19
Customer Service Specialist	\$ 38.25		
Supervisor	\$ 80.58		

#### EQUIPMENT

Description	Hourly Rate
Backhoe (with Trailer)	\$ 58.00
Dump Truck	\$ 46.00
Crew Truck/Compressor	\$ 35.00
Service Vehicle	\$ 23.00
Power Generator	\$ 35.00

#### FLAT FEE ITEMS

Description	Fee
Service Connection for 1" Service Line	\$ 1,800.00
Add to Service Line cost for Vault for Outside Meter	\$ 578.00

\*COUNTY FURNISHES METERS. Includes Inside Meter Set and Installation of Remote.

NOTE: The Fee Schedule for Unplanned Maintenance Services list above were in effect on 1/01/22 under the previous amended contract dated 10/06/2020. The rate shall increase 3.0% annually for the Effective Period of this Fee Schedule commencing on 1/01/2023.