

INTER-MUNICIPAL AGREEMENT

THIS AGREEMENT, made this ____ day of _____, _____, among the CITY OF POUGHKEEPSIE, a municipal corporation with principal offices at Municipal Building, Civic Center Plaza, Poughkeepsie, New York 12602, (hereinafter called “City”), and the TOWN OF POUGHKEEPSIE, a municipal corporation, on behalf of Water Improvement Entity(ies) to be formed, with principal offices at 1 Overocker Road, Town of Poughkeepsie, P.O. Box 3209, Poughkeepsie, New York 12603, and TOWN WIDE WATER IMPROVEMENT AREAS I, II & III, c/o Town Hall, Town of Poughkeepsie, P.O. Box 3209, Poughkeepsie, New York 12603, (hereinafter collectively called the “Town”).

RECITALS

A. The City and Town are currently the owners and operators of a water treatment facility located adjacent to the Hudson River, on Water Works Road in the Town. This facility withdraws water from the Hudson River, treats it to potability, and pumps it into a distribution system for delivery to residents of the City, Town and some users not within the geographical boundaries of the City and Town, for human consumption and use.

B. This facility has the hydraulic and treatment capacity to safely process water withdrawn from the Hudson River at the rate of at least 19.3 million gallons per day.

C. The City and the Town entered into an Inter-Municipal Agreement, dated August 3, 1995, after the completion of a Generic Environmental Impact Statement, that provided for the formation of a Joint Water Project to furnish sufficient quantities of potable water to meet the parties long term water demand on a cost effective basis.

D. The Town and the City have each determined their own long term need for water. The City will need at least 10.66 million gallons per day (MGD), while the Town needs a total of at least 8.64 MGD from the Joint Water Board water treatment facility. The City and Town have further determined that their respective best interest will be served by implementing a joint water project that provides, *inter alia*, the City will have reserved to its continuous, exclusive use and benefit a reserved capacity of 10.66 MGD, and the Town will have reserved to its continuous exclusive use and benefit a reserved capacity of 8.64 MGD.

E. The terms and conditions of this Agreement are intended to modify, amend and supersede the August 3, 1995 Inter-Municipal Agreement, but the modifications make no

changes to the Agreement which would have significantly changed the generic impacts on the environment.

F. The substantive changes to the August 3, 1995 Inter-Municipal Agreement are:

G. The City and the Town have determined that to further their respective best interests and administrative structure operated and controlled by a Joint Board to be made up of three (3) persons selected by the City and three (3) persons selected by the Town should be established. The Joint Board will coordinate and effectuate planning, design and construction of the facility to take the greatest possible advantage of available economies of scale, and to insure that the water to be supplied to the respective users will be supplied at the lowest possible price over the life of the agreement.

H. The Joint Board will continue to function as the Joint Water Board facility operator.

I. The parties' have agreed to modify, supersede and replace the August 3, 1995 Inter-Municipal Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, pursuant to the authority vested in them by Article 5-G of the General Municipal Law, the parties hereto agree as follows:

1. DEFINITIONS

- 1.1 "Annual Metered Water Deliveries to the Town" shall mean the total volume of water delivered from the Water Treatment Facility to the Town's transmission and distribution system in a fiscal year.
- 1.2 "Average Daily Usage" shall mean the total volume of metered water delivered per period divided by the number of days in the period.
- 1.3 "Annual average daily usage" shall mean the total volume of metered water delivered for one calendar year divided by the number of days in the year.
- 1.4 "Annual Water Production" shall mean the total volume of water taken from the Hudson River over a calendar year as measured by totalizer readings from the Treatment Facility.
- 1.5 "Approved Capacity" shall mean the maximum amount of water which the regulatory authorities have jurisdiction have approved for withdrawal from the Hudson River for treatment at the water treatment facility currently 19.3 MGD.

- 1.6 “Capital Budget” shall mean the annual budget as provided for in Section 11 of this agreement.
- 1.7 “Capital Costs” as used herein shall include, but not be limited to:
 - 1.7.1 SEQRA compliance costs;
 - 1.7.2 Planning fees and costs;
 - 1.7.3 Permit application fees and costs;
 - 1.7.4 Professional engineering fees for planning design and construction;
 - 1.7.5 Construction costs, including site acquisition, site preparation and demolition;
 - 1.7.6 Administrative expenses, including attorneys’ and legal fees;
 - 1.7.7 Financing costs and interest during construction;
 - 1.7.8 Any other items for which obligations may be issued pursuant to the subdivision (a) of Section 11.00 of the Local Finance Law.
- 1.8 “Capital Fund” shall mean the fund(s) established to provide monies to cover the Capital Budget.
- 1.9 “Water Treatment Facility”, “ shall mean the components of the existing 19.3 MGD Water Treatment Facility, including the low lift pumping station, all treatment facilities, including the Alum Sludge Treatment Plant piping and appurtenances, the high lift pumping station and all lands upon which the above facilities are situated.
- 1.10 “Design Flow” or “Design Capacity” shall mean the maximum day demand, in MGD, which a facility or its appurtenances are expected to receive and safely treat or convey during the design year of the facility.
- 1.11 “Encroachment” shall mean the volume of water delivered to a party on any calendar day in excess of its adjusted reserve capacity, or the volume of water a third party uses in excess of its allocation.
- 1.12 “Fairview Avenue Pump Station” shall mean the pumping station, including land, which is owned and operated by the Town and which pumps finished water into the Town’s transmission system.
- 1.13 “Final Design” shall mean that phase of project development that is undertaken after completion of preliminary design. Services to be provided shall include, but not be limited to:
 - 1.13.1 field surveys.

- 1.13.2 soils investigations.
- 1.13.3 preparation of Basis of Design Report.
- 1.13.4 preparation of documentation to support construction-related permit applications.
- 1.13.5 all conferences with Joint Board, Town Board, Common Council and regulatory agencies.
- 1.14 “Frank Well Site” shall mean the land and three (3) ground-water wells and associated pumping disinfection and transmission facilities owned and operated by the Town, located off of Overlook road as approved for intermittent withdrawal of 1.7 MGD under Water Supply Application No. 7106, NYSDEC Decision dated August 28, 1981.
- 1.15 “High Lift Pump Station” shall mean the pumping station located at the water treatment facility which pumps potable water into the Joint Project transmission system.
- 1.16 “Joint Board” shall mean the Poughkeepsies’ Joint Water Project Board which has the duty to administer the Joint Project.
- 1.17 “Joint Project or “Poughkeepsies Joint Water Supply Project” shall mean the physical facilities and land associated with the production, pumping and transmission of potable water, including the alum sludge treatment facility, which are jointly owned by the City and Town.
- 1.18 “Operating Budget” shall mean the annual operating and maintenance budget for the Joint Project.
- 1.19 “Operating Fund” shall mean the fund(s) established to provide monies to cover the Operating Budget
- 1.20 “Peak Daily Production” shall mean the maximum production of potable water by the Joint Project over a calendar day as measured by totalizer readings at the High Lift Pumping Station.
- 1.21 “Peak Delivery” shall mean the maximum usage of potable water, in MGD, by any party over a calendar day as measured by meter findings.
- 1.22 “Potable Water” shall mean water which has undergone treatment and is fit for human consumption or use the otherwise complies with the standards and regulations of the Dutchess County and the New York State Health Departments, New York State Department of Environmental Conservation and United States Environmental

Protection Agency and such other regulatory agencies as may from time to time have jurisdiction.

- 1.23 “Preliminary Design” shall mean the initial phase of project development that results in the identification of the recommended conceptual alternative. Preliminary design shall include all planning studies for the project. Services to be provided may include:
- 1.23.1 planning studies including data review and definition of project requirements.
 - 1.23.2 submission of New York State Environmental Quality Review (SEQR) documents and other Permit applications.
 - 1.23.3 preliminary field surveys and soil investigations.
 - 1.23.4 laboratory and/or pilot-scale testing.
 - 1.23.5 economic analysis of alternatives.
 - 1.23.6 submission of a summary report.
 - 1.23.7 all conferences with Joint Board, Town Board, Common Council and regulatory agencies.
- 1.24 “Reserve(d) Capacity” shall mean that portion of the Hudson River withdrawal rate approved by the regulatory authorities having jurisdiction which has been assigned to the use and benefit of each party.
- 1.25 “Start-up Date” shall mean the calendar date when new facilities have been installed and tested and can commence normal operation.
- 1.26 “Third Party” shall mean any user of water from the Joint Project other than one of the parties.
- 1.27 “Throughput Efficiency” shall mean the decimal fraction created by dividing the volume of potable water delivered from the Joint Project by the volume of water withdrawn from the Hudson River.
- 1.28 “Total Operating Costs” shall mean the total annual costs of operating and maintaining the Joint Project and producing and delivering potable water to the parties’ transmission facilities.
- 1.29 “Treatment Capacity” shall mean the maximum quantity of potable water that can be produced expressed as a unit of volume per unit of time.
- 1.30 “Water Improvement Entity(ies)” shall mean a water district, or benefitted area to provide a water improvement or similar entity (including an authorization by statute to

the Town itself) capable of producing or distributing water as contemplated in this agreement.

1.31 “Water Line” shall include appurtenances such as valves, hydrants, service connections, and customer meters.

2. SCOPE OF PROJECT

The parties hereby agree:

2.1 To form, on a cooperative basis, a Joint Project to provide potable water for all residents and areas of the City and the Town outside of the Village of Wappingers Falls.

2.2 The Joint Project shall be located at the site of the present Water Treatment Facility and at other sites as may be acquired.

2.3 The Town will continue to own and use the Frank Well Site pursuant to the terms of the NYSDEC decision dated August 28, 1981.

2.4 The City and the Town may contract with third party users for the sale of surplus water pursuant to this Agreement.

3. REPRESENTATIONS

The parties represent to each other that if either or both of them are called upon to approve, consent, or agree to any action under the terms of this Agreement that such approval, consent or agreement will not be unreasonably withheld.

4. JOINT BOARD

4.1 The Joint Project shall be administered by a Joint Board, to be known as the “Poughkeepsies Joint Water Project Board” (the “Joint Board”).

4.1.1 The Joint Board shall consist of six (6) members, three (3) selected by the City and three (3) selected by the Town.

4.1.2 Each member shall have one vote.

4.1.3 The Joint Board shall maintain by-laws, which shall be consistent with this agreement and with Article 5-G of the General Municipal Law which may be amended from time to time.

4.1.4 The Joint Board members selected by each municipality shall serve for staggered three (3) year terms.

- 4.1.5 The Board shall annually select from among its members a Chairman, a Vice Chairman and a Secretary.
- 4.1.6 Vacancies shall be filled by the Municipality which had initially filled the position on the Board. Members appointed to fill a vacancy shall serve out the term of the member being replaced.
- 4.2 The Joint Board shall have the following powers and duties and the City and the Town delegate such powers and duties to it:
 - 4.2.1 To meet as necessary but at least once each month. The meetings shall not conflict with regularly scheduled meetings of the Common Council of the City or the Town Board of the Town.
 - 4.2.2 To review proposed annual budgets prepared by the Water Plant Administrator and to make recommendations to the City and the Town in regard thereto.
 - 4.2.3 To establish and maintain the capital fund and the operating fund.
 - 4.2.4 To determine the need for capital projects, to review proposed capital expenditures not included in the annual budget and to make recommendations to the City and the Town in regard thereto.
 - 4.2.5 To apportion the capital costs to each party.
 - 4.2.6 To prepare bills for operation, maintenance and capital expenditures in accordance with the terms of this Agreement. Bills shall be sent out by the first day of March, June, September and December.
 - 4.2.7 Before the first day of March, the Joint Board shall retroactively calculate the actual operational, maintenance and capital costs in accordance with the terms of this agreement for the preceding calendar year. The actual costs shall be compared to the payments received from each party or third party for that calendar year and an appropriate credit or debit calculated, the credit or debit shall be included in the March 1st bills.
 - 4.2.8 To review the Water Plant Administrator's five (5) year water use projections and five year capital improvement plan, annually, and to make recommendations to the parties in regard thereto.
 - 4.2.9 To notify the City and the Town of all water use encroachments.

- 4.2.10 To obtain any professional or other contracted services necessary to execute its functions.
- 4.2.11 To obtain any needed regulatory agency approvals required for the initiation and completion of capital improvements to the Joint Project and to cooperate, assist and consult with any party in any application and/or approval process required to be taken by it to obtain the approval of financing plans to fund either the capital or operating budget of the Joint Project.
- 4.2.12 To assist the City and the Town in the negotiations of any proposed agreements with third parties for the sale of water, to review them and make recommendations to the City and the Town.
- 4.2.13 To review agreements for contracted services to the Joint Project on an annual basis.
- 4.2.14 To obtain and provide, within the appropriations limited thereof, administrative services for the operation, maintenance, expansion, replacement and upgrading of the Joint Project.
- 4.2.15 To seek and recommend the hiring, set conditions of employment, and recommend discharge of the Water Plant Administrator to the City and the Town and to seek and hire, set conditions of employment and recommend discharge of other Joint Water Board employees to the Water Plant Administrator.
- 4.2.16 To designate an Acting Water Plant Administrator, during the Water Plant Administrator's absence or inability to act as such or when the position is vacant.
- 4.2.17 To approve attendance at conventions, conferences and schools and approve the payment of travel or other expenses incurred by the Water Plant Administrator.
- 4.2.18 To promulgate necessary rules and regulations, not inconsistent with the Agreement, for the operation, maintenance and control of the Joint Project.
- 4.2.19 To review, the financial records of the receipt and disbursement of funds of the Joint Project and to review and approve the reports prepared for filing with the appropriate agencies of the State of New York pursuant to the

provisions of Article 3 of the General Municipal Law of the State of New York.

- 4.2.20 To review and audit for payment of operating, maintenance, and capital expenditures. In the event the Joint Board has delegated the authority to any municipality to maintain any fund, the Joint Board shall forward certified copies of its resolutions authorizing payments to the fiscal officer of the municipality having custody of the appropriate fund which shall be the authorization to make payments.
- 4.2.21 To obtain, and keep in full force and effect, insurance policies to protect the Joint Project and Joint Board from losses or liabilities incurred.
- 4.2.22 To make claims for any and all Federal or State aid payable or available for payment to the Joint Project, to the City or to the Town. To keep itself fully informed of any State or Federal programs for aid and to make recommendations concerning such programs.
- 4.2.23 To accept such gifts, grants or bequests as may be offered to the Joint Project.
- 4.2.24 To purchase for and make contracts on behalf of the Joint Project, within appropriations made, subject to the provisions of law applicable to municipal corporations.
- 4.2.25 To administer Capital Funds and operation and maintenance funds.
- 4.2.26 To maintain the Joint Project and its appurtenances in good operating condition and to provide all needed maintenance, expansion, replacement and upgrading.
- 4.2.27 To operate the Joint Project in compliance with all local, state and federal law, rules and regulations.
- 4.2.28 To declare by resolution, at a regular or special meeting, the existence of a public emergency, which requires immediate action and which cannot wait competitive bidding. Such resolution shall be delivered to the Town and the City immediately. In case of the declaration of such an emergency, contracts for public works or the purchase of supplies, materials or equipment may be

let by the Joint Board and paid for from budget contingencies, all as provided for in Section 103 of the General Municipal Law of the State of New York.

4.2.29 To declare water usage emergencies and to issue water use restrictions that will be binding on all parties and third parties during such emergencies.

4.2.30 To recommend the purchase of land for future expansions, additional treatment processes, process changes or system changes.

4.2.31 To institute and defend legal actions.

4.2.32 To undertake, do and perform such other acts as are reasonable, necessary and proper.

5. WATER PLANT ADMINISTRATOR

5.1 The Water Plant Administrator shall have substantial experience in the field of operating and administering water supply and treatment facilities. Shall hold a grade 1A SW/GUI Filtration Plant water system operator license issued by State of New York Department of Health with six (6) months of hire date. It shall be preferred, though not required, that the Administrator be a Professional Engineer, duly licensed by the State of New York. (as per the Second Amendment in 2006).

5.2. The City and the Town agree the Water Plant Administrator (WPA) shall have the following powers and duties and delegate such powers and duties to the Water Plant Administrator:

5.2.1 To prepare and annual operating budget for submission to the Joint Board.

5.2.2 A monthly budget report of all income and expenses shall be prepared by the Water Plant Administrator and supplied to the Town, the City and the Joint Board.

5.2.3 To prepare an annual budget, to recommend capital programs and capital expenditures and to prepare and update annually a five (5) year capital plan for submission to the Joint Board.

5.2.4 To recommend to the Joint Board payment of all expenditures.

5.2.5 To prepare and to submit to the Joint Board annually, five (5) year water use projections for the Joint Project. The projections shall separately identify water use projections for each user.

5.2.6 To oversee and administer the day to day operations of the Joint Project.

- 5.2.7 To prepare and transmit required submittals and reports to regulatory agencies having jurisdiction over the Joint Project.
- 5.2.8 To supervise, manage and direct all employees working at the Joint Project, in accordance with the procedures of the Joint Project and the applicable collective bargaining agreement
- 5.2.9 To act as the Joint Board’s representative to any negotiating team bargaining with representatives of Joint Project employees pursuant to the Taylor Law.
- 5.2.10 To approve attendance at conventions, conferences and schools and to approve payment of travel expenses in the performance of official duties by employees of the Joint Project.
- 5.2.11 To invoice the City, Town and any third party for services performed for such party by Joint Project personnel.
- 5.2.12 To recommend reimbursement to either party to this agreement if their respective employees perform services for the Joint Project.
- 5.2.13 To cause the preparation of plans, specifications and contract drawings and to review bids for operation, maintenance, replacement, upgrading, enhancement or expansion of the Joint project and make recommendations to the Joint Board.
- 5.2.14 To administer all aspects of construction projects undertaken by the Joint Project and to review and make recommendations to the Joint Board concerning contractors requests for progress payments, change orders and claims.
- 5.2.15 To coordinate agreements for professional and contracted services and to make recommendations to the Joint Board concerning the payment of vouchers therefor.
- 5.2.16 To make recommendations to the Joint Board concerning the existence of a public emergency for purposes of Section 103 of the General Municipal Law and to recommend special meetings of the Joint Board upon reasonable notice to consider such recommendations.
- 5.2.17 To recommend expenditures from budgeted contingency accounts and unexpended fund balances.

5.2.18 To perform services reasonably necessary to carry forward and professionally administer the Joint Project.

5.2.19 The Water Plant Administrator shall be hired by a resolution adopted by a majority vote of the Town Board and by a majority vote of the Common Council.

5.2.20 The Water Plant Administrator may be discharged or disciplined in any of the following ways:

5.2.20.1 For cause – Upon Resolution adopted by a majority vote of the Joint Board, a hearing officer shall be designated by the City and the Town who will act and function pursuant to the provisions of Section 75 of the Civil Service Law. The appointing authority for purposes of this provision shall be the Common Council and the Town Board, sitting as a whole, and action on the hearing officer's recommendation shall be by majority vote of their combined voting strength.

5.2.20.2 With or without cause – The Water Plant Administrator may be discharged with or without cause in any of the following ways:

5.2.20.2.1 by the unanimous vote of the entire voting strength of the Common Council.

5.2.20.2.2 by the unanimous vote of the entire voting strength of the Town Board.

5.2.20.2.3 by a 2/3 vote of the combined total voting strength of the City's Common Council and the Town's Town Board, sitting as a whole, in joint session.

6. POWERS AND DUTIES OF THE PARTIES

6.1 The City shall have the following powers and duties:

6.1.1 To review, in consultation with the Town, and approve the annual budgets for the Joint Project.

6.1.2 To pay the City's share of the budgeted expenses of the Joint Project.

- 6.1.3 To make quarterly deposits in advance to the appropriate account, on or before the first days of January, April, July and October based on statements received.
- 6.1.4 To approve all capital projects in advance including an apportionment of capital costs between the City and Town.
- 6.1.5 To approve and enter into contracts with any third party for the supply of water from the Joint Project subject to the provisions of Section 13 and the general laws applicable to municipal corporations.
- 6.1.6 To allocate its reserve capacity to the use of a third party.
- 6.1.7 To establish the value of the reserve capacity so allocated in its sole and exclusive discretion.
- 6.1.8 To hire, discipline and discharge the Water Plant Administration, subject to the provision of Sections 5.2.19 and 5.2.20 of this agreement.
- 6.1.9 To appoint and remove, in its sole discretion, and/or all of its three (3) members of the Joint Board.
- 6.2 The City shall not provide or undertake similar or competing facilities, services, activities, projects or undertakings without the participation or the express written consent of the Town.
- 6.3 The City agrees that none of the personnel of the Joint Project are, or will be, officers or employees of the City who have been hired or appointed to permanent positions within the meaning of former Sub-Part A, Section 205 of the Charter Laws of the City of Poughkeepsie.
- 6.4 The Town shall have the following powers and duties:
 - 6.4.1 To review, in consultation with the City, and approve the annual budgets for the Joint Project.
 - 6.4.2 To pay the Town's share of the budgeted expenses of the Joint Project.
 - 6.4.3 To make quarterly deposits in advance to the appropriate account, on or before the first days of January, April, July and October, based on statements received.
 - 6.4.4 To approve all capital projects in advance including apportionment of costs between the City and Town.

- 6.4.5 To approve and enter into contracts with any third party for the supply of water from the Joint Project, subject to the provisions of Section 13 and the general laws applicable to municipal corporations.
- 6.4.6 To allocate its reserve capacity to the use of a third party.
- 6.4.7 To establish the value of the reserve capacity so allocated in its sole and exclusive discretion.
- 6.4.8 To hire, discipline and discharge Water Plant Administrator, subject to the provisions of Section 5.2.19 and 5.2.20 of this agreement.
- 6.4.9 To appoint and remove, in its sole discretion, any or all of its three (3) members of the Joint Board.
- 6.5 The Town shall not provide or undertake similar or competing facilities, services, activities, projects or undertakings, except for the Frank well site, or its in kind replacement without the participation or the express written consent of the City.
- 6.6 Any in kind replacement of the Frank well site shall be for an intermittent withdrawal rate of up to 1.7 MGD and its use shall be subject to the same conditions as specified in Water Supply Application No. 7106, NYSDEC decision dated August 28, 1981.

7. JOINT PROJECT FUNDS AND BUDGETS

- 7.1 Joint Project Operating Budget.
 - 7.1.1 The Water Plant Administrator shall prepare and propose an Operating Budget for the Joint Project by July 15th of each year.
 - 7.1.2 The proposed Operating Budget for the Joint Project shall be delivered to the Joint Board by July 15th and shall be reviewed and modified by the Joint Board by August 16th of each year. If the Joint Board fails to adopt a proposed Operating Budget for the Joint Project by August 16th of each year, the Water Plant Administrator's proposed Operating Budget shall be deemed to be the Joint Board's budget and be submitted to the City and the Town.
 - 7.1.3 The City and the Town shall begin meeting in consultation on the proposed Operating Budget by September 15th of each year.

- 7.1.4 The City and the Town shall adopt the Operating Budgets by December 31st of each year.
- 7.1.5 The Joint Project Operating Budget shall be prepared in accordance with generally accepted accountant procedures and shall include provisions for:
 - 7.1.5.1 Salaries and fringe benefits for Joint Project personnel.
 - 7.1.5.2 All costs reasonable and necessary to assure the proper operation of this Joint Project.
 - 7.1.5.3 All costs reasonable and necessary to assure the proper upkeep, maintenance and repair of the Joint Project.
 - 7.1.5.4 Reimbursement to either party at cost for services to the Joint Project Operating Fund.
 - 7.1.5.5 Contingencies.
 - 7.1.5.6 All incidental expenses for operation, management, inspection and repair of the Joint Project.
 - 7.1.5.7 Replacement reserves.
 - 7.1.5.8 Any other budgetary item reasonably necessary for the operation and maintenance of the Joint Project.
- 7.2 Administration of Joint Project Operating Fund.
 - 7.2.1 The Joint Project Operating Fund shall be administered by the Joint Water Board.
 - 7.2.2 The Joint Project Operating Fund shall be used solely for items in the approved Joint Project operating budget.
 - 7.2.3 The fiscal officer having custody of these monies may temporarily invest them pursuant to Section 11 of the General Municipal Law. Any income from such investments will inure to the benefit of the Joint Project.
 - 7.2.4 The City and the Town shall be supplied with copies of the annual report required to be filed with the State of New York by Article 3 of the General Municipal Law.
- 7.3 Joint Project Capital Budget
 - 7.3.1 All capital expenditures shall be made from and administered through the Capital Fund.

7.3.2 The deposit, use and investment of proceeds from municipal borrowings shall be in accordance with Section 165.00 of the Local Finance Law.

7.4 Capital Budget for Future Improvements.

7.4.1 There shall be a Capital Budget for future capital improvements.

7.4.1.1 The Capital Budget shall be prepared by the Water Plant Administrator and submitted to the Joint Board by July 15th of each year for its review.

7.4.1.2 The Capital Budget shall be reviewed, modified, and acted on by the Joint Board. Should the Joint Board be unable to adopt a proposed capital budget within 45 days from the date it is submitted to it, the capital budget submitted to it shall be deemed recommended. The capital budget shall then be submitted to the City and Town, together with a report stating the reasons for its action.

7.4.1.3 The Town and City shall review and approve or disapprove each line item in the proposed budget, after consultation between the City and the Town. Any line item not receiving approval from both the Common Council and the Town Board shall be deleted from the budget.

7.4.2 Costs of capital improvements shall be shared on a benefit basis.

7.4.3 All capital expenditures shall be made from the administered through Capital Fund.

7.4.4 The deposit, use and investment of proceeds from municipal borrowings shall be in accordance with Section 165.00 of the Local Finance Law.

7.4.5 The Capital fund shall be administered by the City or the Town if delegated by the Joint Water Board.

7.5 Audits

7.5.1 An annual independent audit shall be made of all Joint Project funds sufficient to comply with state requirements. The audit shall be submitted to the Town, City, Joint Board and the Water Plant Administrator.

7.5.2 Either party shall have the right to audit the books and records of any Joint Project Account maintained by the other. Any such audit shall be submitted to the other party, Joint Board and Water Plant Administrator after it is completed.

8. TOWN, CITY & THIRD PARTY WATER CONSUMPTION

8.1 Meters: All master meters measuring water consumption from the Joint Project to the City, Town and Third Parties and the master at the Frank Well site shall monitor and record, at the Joint Project, daily usage fluctuations.

8.2 Town Consumption: the Town water consumption is the total metered volume of water supplied to the Town Water System from the Joint Project, and the Frank Well site minus the total metered volume of water supplied to others from the Town Water System.

8.3 City Consumption: The City water consumption is the total metered volume of water leaving the joint facility minus town consumption and third party consumption.

8.3.1 The method of calculating City consumption may be modified by the Joint Board if the City installs master meter(s) which are suitable substitutes for the method provided in paragraph 8.3 above.

8.4 Third Party Consumption: Consumption of water by any third party shall be measured through one or more master meters.

9. COST RECOVERY

9.1 Capital Cost Recover:

9.1.1 The city and Town shall approve a distribution of future Capital costs between themselves.

9.2 Operating Costs Recovery:

9.2.1 The water rate for the City and Town:

9.2.1.1 The water rate shall apply to all water consumption by the City and the Town. The water rate shall be calculated as follows:

[Total operating costs] –

$$\text{Water rate} = \frac{\text{-----}}{\text{[Annual water production] –}}$$

10. CUSTOMERS

- 10.1 The City shall serve all customers located within the City of Poughkeepsie and the Town shall serve all customers located within the boundaries of the Water Improvement Entity(ies), formed to implement the intent of this agreement.
- 10.2 Third party customers shall include any customer not located in the City or in the boundaries of the Water Improvement Entity(ies).

11. EXISTING WATER LINES AND FACILITIES

- 11.1 All water lines owned by the City situate in the Town shown in Appendix 2 “Water lines to be conveyed by the City to the Town” shall represent all water lines to be conveyed to the Town.
- 11.2 All water lines owned by the Town situate in the City shown in Appendix 4 “Water lines to be conveyed by the Town to the City” shall represent all water lines to be conveyed to the City.

12. RESERVE CAPACITIES, ADJUSTMENTS, ENCROACHMENTS

- 12.1 Reserved capacity and adjusted reserved capacity shall be established as follows:
 - 12.1.1 The Hudson River withdrawal rate, as approved by any and all governmental regulatory agencies having jurisdiction is the approved treatment capacity of water treatment facility, and shall be the basis for reserve capacity.
 - 12.1.2 The City’s reserved capacity shall be 10.66 MGD and the Town’s reserved capacity shall be 8.64 MGD.
 - 12.1.4 A reserve capacity allocation shall be established for each third party.
- 12.2 Reserve Capacities for Third Parties.
 - 12.2.1 Either party has the option to provide up to fifty (50%) percent of the amount of water requested by any third party from their respective reserve capacities or by modifying or expanding the water treatment facility or to provide no portion thereof. If either party decides to provide less than fifty (50%) percent of the amount of water requested, then the other party shall have the option to provide the balance.

12.2.2 Town transmission facilities may be required to supply third party users. The Town shall not withhold surplus transmission capacity, as determined by the Joint Board, to supply a third party user. The Town is entitled to recover its transmission costs from a third party including operation, maintenance, overhead and capital.

12.2.3 Town transmission costs shall be computed as follows:

12.2.3.1 The Town shall be compensated for a proportionate share of the cost of the Operation and Maintenance of transmitting water to a third party, on the basis of flow.

12.2.3.2 The Town shall be compensated for a pro rata share of the capital recovery costs for any water transmission system component through which the third party water passes in its most direct path through the Town facilities.

12.2.3.3 The overhead rate established for water production shall be overhead for transmission.

12.2.4 Nothing in this paragraph shall be construed to require the Town to make any capital expenditure to enhance or improve its transmission capacity to accommodate the execution of a Third Party Agreement.

12.3 Encroachments.

12.3.1 An encroachment shall exist whenever daily usage exceeds adjusted reserve capacity.

12.3.2 Encroachment by City or Town.

12.3.2.1 For purposes of determining encroachment by the city or the Town the adjusted reserve capacities of the City and the Town will be effectively increased by their proportionate share of unused third party allocations, at the option of and subject to conditions imposed by the Joint Board.

12.3.2.2 An encroachment that does not restrict water use by any party within the next five calendar years, may continue at the option of and subject to conditions imposed by the Joint Board.

12.3.2.3 If the encroachment will create a restriction on water use on any party within the next five calendar years, as projected by the Water Plant Administrator, the parties shall be so advised, and the encroaching party shall implement one of the following options:

12.3.2.3.1 reduce its metered water deliveries sufficiently to remain within its adjusted reserve capacity.

12.3.2.3.2 purchase additional reserve capacity from the other party.

12.3.2.3.3 provide for an expansion of the Joint Project which is adequate to supply its water needs over the next 20 years, subject to approval by the Joint Board and the capital budget procedures established in Section 7.4 of this agreement.

12.3.2.3.4 obtain additional reserve capacity from any other source, subject to Section 6.2 and 6.5.

12.3.3 Encroachment by Third Party.

12.3.3.1 An encroachment that does not restrict water use by any other user within the next five calendar years, may continue at the option of the Joint Board.

12.3.3.2 If an encroachment will restrict water use by any other user, within the next five calendar years, as projected by the Water Plant Administrator, the encroaching third party shall have the following options.

12.3.3.2.1 reduce its metered water deliveries sufficiently to remain within its adjusted reserve capacity allocation,

12.3.3.2.2 obtain additional reserve capacity by renegotiating its contract as herein provided, or

12.3.3.2.3 be restricted to its adjusted reserve capacity allocation by Joint Board action.

12.4 Surcharge for Encroachment

12.4.1 All encroachments are subject to an encroachment surcharge.

- 12.4.1.1 The surcharge which is to be assessed against the City or the Town for encroachments by either of them shall be calculated as follows:
City or Town Surcharge = Encroachment x Water Rate Per Section 9.2
- 12.4.1.2 The surcharge which is to be assessed against any third party for an encroachment by it:
- 12.4.1.2.1 Shall not be less than 100%, nor more than 200% of the established third party water rate, as determined by the Joint Board in any event.
- 12.4.1.2.2 Shall be not less than 200% nor more than 400% of the established third party water rate, as determined by the Joint Board, if the encroachment will create a restriction on water use on any party within the next five (5) calendar years, as projected by the Water Plant Administrator.
- 12.4.2 Encroachment surcharges shall be determined, billed and paid quarterly to the Joint Board. Such payments shall be in addition to the normal quarterly payments.
- 12.4.3 Encroachment surcharges assessed against either party shall be paid directly to the other party.
- 12.4.4 Encroachment surcharges assessed against any third party shall include a component for production and overhead charges, and a component for transmission.
- 12.4.5 All third party encroachment surcharges shall be paid to the Joint Board.
- 12.4.6 Third party encroachment surcharges assessed and received by the Joint Board, and attributable to the production and overhead component of the third party rate shall be credited to the City and Town accounts as their interest may appear.
- 12.4.7 Third party encroachment surcharges assessed and received by the Joint Board, and attributable to the transmission component of the third party rate shall be credited to the City and Town accounts in proportion to the applicable transmission charges established.

13. THIRD PARTY CONTRACTS

13.1 Any third party contract shall:

- 13.1.1 Be negotiated by the Joint Board or either party to this agreement.
- 13.1.2 Be reviewed by the Joint Board and submitted with recommendations to the City and the Town.
- 13.1.3 Be approved by both the City and the Town.

13.2 The terms of any third party contract shall:

- 13.2.1 Provide that any third party shall pay for all water deliveries by it at a minimum of the Water Rate (Section 9) plus overhead. Additionally, any third party shall pay for other costs associated with delivering water to it including capital recover and transmission costs.
- 13.2.2 State that the third party will be allocated reserve capacity which shall be adjusted in accordance with Section 12 of this agreement.
- 13.2.3 State that all water sold to the third party is surplus water and that reserve capacity is a term used to define the limit of the intent to purchase and sell.
- 13.2.4 State that daily usage in excess of adjusted reserve capacity shall constitute encroachment.
- 13.2.5 State that an encroachment by a third party user shall result in the imposition of surcharges as defined in Section 12.
- 13.2.6 Provide for quarterly payments for water in advance, on the first days of January, April, July and October, based on bills received, plus applicable encroachment charges.
- 13.2.7 State that water delivered to the third party at the agreed location will be potable and that transmission, potability and treatment of the water after the point of delivery shall be the responsibility of the third party.
- 13.2.8 State that the water meter measuring the deliveries to the third party shall be of the recording type acceptable to the Water Plant Administrator. Construction, maintenance and calibration of the meter shall be at the third party's expense.
- 13.2.9 State that the third party agrees to construct and operate its water system in a manner that is acceptable to the Joint Board.

- 13.2.10 State that the third party shall annually provide the Water Plant Administrator with a report, including calculations certified by a professional engineer, of water usage required to satisfy its needs over the next five (5) years.
- 13.2.11 State that in the event that the approved water withdrawal capacity of the Joint Project is reduced by any regulatory agency having jurisdiction, the allocated third party reserve capacity shall be reduced in direct proportion.
- 13.2.12 State that the third party shall provide the Water Plant Administrator with a plan of its water distribution system served by the Joint Project and shall update said plan annually.
- 13.2.13 Provide that the third party agrees to obtain advance approval by the Joint Board for all modifications of its water distribution system.
- 13.2.14 Provide that the third party agrees to construct all new distribution facilities including pump stations, mains and storage facilities in accordance with Joint Board approved plans, specifications and schedule.
- 13.2.15 State that the third party agrees that no new, other or separate source of water supply or water treatment facility will be undertaken, planned, designed, constructed or participated in by it for customers to be served by the Joint Project without the express written consent of the City and the Town during the life of this agreement.
- 13.2.16 Specify the area to be served.
- 13.2.17 Provide for tax exemptions for the parties' jointly owned real estate and improvements related to the supply and distribution of water in the third party's municipality.

14. BORDERLINE WATER CUSTOMERS

- 14.1 The City and Town agree that customers situate in one municipality but served by the water distribution system of the other shall be identified by the Water Plant Administrator.
- 14.2 The water meter of such customers shall be read at least quarterly and the information shall be transmitted to the Water Plant Administrator.

14.3 The water use of each municipality shall be adjusted by the water use of borderline customers.

14.4 Such customers shall be billed for their water use by their municipality.

15. RIGHT-OF-WAY AND TAX EXEMPTION

15.1 It is specifically agreed that for the duration of this agreement, the real property, right-of-way and improvements related to water production or distribution, including inter-municipal water mains or their appurtenances located within each participating municipality, shall be entirely exempt from real property taxation by said municipality and each municipality agrees to said exemption, and each municipality shall adopt a Tax Exemption Resolution as provided under Section 406 of the Real Property Tax Law of the State of New York.

16. CONDEMNATION

16.1 If property must be condemned to facilitate an expansion or betterment to the Joint Project, each party will assist the other in exercising their respective powers of eminent domain.

17. LAND PURCHASE

17.1 The City and the Town shall each own an undivided ½ interest as tenants in common in real property hereafter purchased for the Joint Project and shall pay ½ of all costs and expenses attributable to the acquisition.

18. ASSIGNABILITY

18.1 This agreement may not be assigned by either party without the express written consent of the other, except the Town may assign its interest to a special district provided that the Town Board of the Town of Poughkeepsie shall sit and act as the commissioner of such special district during the life of this agreement.

19. SEVERABILITY

19.1 Should any provision of this agreement be found by a Court of competent jurisdiction to be for any reason whatsoever, invalid, void or unenforceable, it shall be deemed severed from the balance of this agreement and the balance of the agreement shall remain in full force and effect.

20. WAIVER

20.1 The waiver by either party of the breach of any one or more of the covenants of this agreement is not a waiver of any other provision hereof or of a subsequent breach of the same covenant or covenants.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first written above.

CITY OF POUGHKEEPSIE

BY: _____
City Mayor

TOWN OF POUGHKEEPSIE

BY: _____
Town Supervisor

TOWN WIDE WATER IMPROVEMENT AREA

BY: _____

STATE OF NEW YORK)
) SS.:
COUNTY OF DUTCHESS)

On the ___ day of _____, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) SS.:
COUNTY OF DUTCHESS)

On the ___ day of _____, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
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On the ___ day of _____, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC