

INTERMUNICIPAL
AGREEMENT REGARDING THE SALE OF WATER
BETWEEN THE VILLAGE AND TOWN OF NEW PALTZ

This Intermunicipal Agreement dated as of this ____ day of _____, 2015 (“the Agreement”) by and between the Village (the “Village”) of New Paltz, a municipal corporation with offices located at 25 Plattekill Avenue, New Paltz, New York, and the Town of New Paltz (the “Town”) a political subdivision of the State of New York, with offices at the Town Hall, 1 Clearwater Road, New Paltz, New York, (collectively, “the Parties”):

RECITALS

WHEREAS, the Village owns and operates a primary water treatment facility which provides potable water to citizens, businesses and institutions (“Water Users”), located both in the Village and the portions of the Town; and

WHEREAS, at the current time the largest portion of the water for distribution to its users come from the City of New York (“NYC”) through the “Catskill Aqueduct” system pursuant to the 1928 Water Supply Permit issued to the Village; and

WHEREAS, the Village has been advised by NYC that the NYC Department of Environmental Protection, (the “DEP”), will, in the near future be shutting down regular water flow in the Catskill Aqueduct for at least three separate ten week periods for maintenance and repair, and that the users that obtain water from that aqueduct will need an alternate water supply during those periods; and

WHEREAS, in addition, there is also the identified need for emergency and general backup water sources for the Village water system, and its users both in the Village or the Town; and

WHEREAS, NYC, through DEP, has paid the Village for certain studies that investigated options for the development of supplemental water sources and the improvement of existing water sources to the extent reasonably necessary to provide sufficient water supply for use by

the system during the aqueduct shutdown periods, resulting in a report entitled “Phase II Backup Water Supply Investigation” dated September 30, 2014 (hereinafter “the Report”) which identified certain water potential water sources located within the Town and outside of the Village; and

WHEREAS, pursuant to two planned successive intergovernmental agreements between NYC, acting through DEP, and the Town (a “Design IGA” and then a “Construction IGA”), and an additional planned Design IGA and subsequent Construction IGA between NYC, acting through DEP, and the Village (collectively, the “IGAs”), DEP intends to provide funding for environmental, engineering and economic studies and design and, subsequently, construction (i) to the Village to develop a water demand management program for all customers reliant on the Village system, and to improve its existing reservoir system; and (ii) to the Town to develop certain water wells and related infrastructure that will exploit such identified water sources (or their equivalent) which are located within the Town and outside of the Village, to be used, in part, as an alternate water source for the Village water treatment and distribution system during periods of the DEP’s planned shutdowns of the Catskill Aqueduct; and

WHEREAS, as a condition of that funding, the DEP has required that the Village and Town enter into an agreement providing equitable provisions regarding the short and long term use and sale of water from those Town water sources to the Village for the ultimate consumption by Village and Town Water Users, enforceable by NYC as a third-party beneficiary; and

WHEREAS, the Parties after having negotiated in good faith have agreed to enter into this intermunicipal agreement to memorialize the terms set forth herein regarding both the sale of water and the connection of said wells to the Village water collection and distribution system; and

WHEREAS, at a regular meeting of the Village Board of the Village of New Paltz, held the ___ day of _____, 2015, and at a regular meeting of the Town Board of the Town of New Paltz held the ___ day of _____, 2015, the Parties each approved the terms set

forth herein by an appropriate and binding Resolution and authorized each of their respective Chief Executive Officers to sign this Agreement and to be bound thereby,

NOW, THEREFORE, provided the Design IGA is executed and the environmental studies provided for therein are completed, it is agreed between the Parties:

1. Provided that the water wells and delivery systems that are the subject of the planned IGAs between NYC and the Town (the “Town Water Systems”) are in fact established, the Town agrees to own and operate such Town Water Systems and associated infrastructure and to provide the quantity and quality of potable water to the Village as set forth in this Agreement during anticipated periods of planned aqueduct outages. The Town shall at all times be in full compliance with any applicable laws, rules or regulations duly imposed by any local, county, state or federal entity for such wells. If such DEP-funded wells and systems are not ultimately created pursuant to the IGAs, this Agreement shall be null and void.
2. The Town further agrees that in exchange for the payments to be made to the Town by the Village as hereinafter set forth, it will reasonably maintain the Town Water Systems established for this purpose in such a manner as to enable it to provide, and shall provide to the Village, 500 gallons per minute of potable water during any scheduled “shut down period”, as well as during any “ramp up” or “ramp down” period needed to integrate the well water into or out of the Village’s normal water distribution system, which the Parties acknowledge is conditioned upon the adequacy of the then-current natural condition of the groundwater supply sourcing the Town Water Systems. The Parties agree and understand that the Town’s maintenance obligations shall be generally limited to ordinary and actual use, and that any costs of extraordinary maintenance, including for example, repair and replacement of Village-specific and/or major components of the Town Water Systems or components which do not require regular attention shall be negotiated as needed and in good faith by separate and mutual agreement. The Parties will give DEP prompt notice of any such separate agreements. The Town, pursuant to its Design IGA will commit to the inclusion in its bid

specifications a five (5) year warranty on all major pumps necessary for the operation of its well site in accordance with this Agreement.

3. Pursuant to the terms of the planned IGAs, DEP will give advance notice to the Parties in the event of each scheduled shut down of the Catskill Aqueduct, which shut downs are expected to last not longer than ten (10) consecutive weeks in duration.
 - a. To preserve and allow for the replenishment of the natural groundwater supply to the Town Water Systems, in no event shall the outages exceed ten (10) non-consecutive weeks during any twelve (12) month period, or ten (10) consecutive weeks, until such time as the wellfield capabilities are proven and permitted by the New York State Department of Environmental Conservation for regular use.
 - b. The Town will use all reasonable efforts to assure, but cannot guarantee, the adequacy of the water supply to meet the actual demands of the Village during any such outage, and the Parties hereby agree to work in cooperation with DEP to coordinate outages in consideration of the water source conditions to the best of their ability as intended by the above timing limitations to allow for water source replenishment.
 - c. During the periods of the outages, the Parties will communicate any concerns or issues related to the quantity and quality of water delivered via the Town Water Systems and shall at all times during such outages engage in collaborative efforts to resolve any such problems as they arise and to the best of their ability. In the event, however, despite such efforts and after the existing needs of the Town source-water districts are met, the Town is unable to meet the demands of the Village up to the aforesaid five hundred (500) gallons per minute threshold due to well field performance or yield, then in such event, the Parties agree that the Town will not be required to cover or provide for any such deficiencies
 - d. During all non-outage periods and unless otherwise agreed to in writing by the Parties, with DEP's approval, the Town shall not use the water reserved for the

Village hereunder from the Town Water Systems for any other purpose except to meet the needs of the Town water districts established under the Town's Design IGA with DEP. The Town may, however, contract to provide water to third parties, provided that the Town Water Systems are physically permitted by the governmental authorities having jurisdiction to exceed the combined needs of the Town source-water districts and the 500 gallons per minute reserved for the Village, and further provided that such third-party contracting does not interfere with the ability of the Town to meet its obligations to the Village hereunder.

- e. The Parties also understand that there may be water needs or water emergencies arising while this Agreement is in place other than during the outage periods. The Parties agree to at all times negotiate in good faith regarding the provision to the Village of water from the Town Water Systems for the use of its water system, taking into account all reasonable factors including, but not limited to: the hydrologic status of the well or wells, the needs of the Town water districts served by the wells, water conservation practices implemented by the Village, or any other relevant issue at the time such water is requested.
4. The Village agrees to purchase from the Town the quantity of water necessary to meet its demand during the outages, and pay to the Town Fifty Cents (\$.50) for each One Thousand (1,000) Gallons of water delivered to it under the provisions of this Agreement during the first two years that the Town Water Systems are fully functional. It is understood that this calculation is made upon a projected formula that accounts for the estimated actual cost to the Town of the pumping, chlorine treatment and transportation of the water per One Thousand (1,000) Gallons of water delivered, together with a supplemental Town administrative charge, the same being Twenty Percent (20%) over and above the actual cost of production to the Town, to compensate for the manpower, record keeping and oversight of the water production process during outage as well as non-outage periods. The actual rates of payment due for water delivery may be adjusted from time to time based upon actual cost, and the Village shall have the

right to inspect the books and records of the Town which include data used for the purposes of calculating the such cost. The Town agrees to cooperate with all reasonable requests for such records.

5. The Village agrees to pay the Town for the water supply and administration charges as provided hereunder within thirty (30) days after a valid bill is presented. Any payments not made within that time shall be subject to a late payment charge of one percent (1%) per month calculated from the date of the original bill.
6. The Town agrees that it will accurately monitor the water provided to the Town by the use of a calibrated magnetic flow meter.
7. The Town will regularly monitor the water production facility regardless of whether there is an outage and whether water is currently being provided to the Village under this Agreement, and agrees to notify the Village, and DEP, immediately of any problems that may impact its ability to provide either the quantity or quality of water required under this Agreement in the event of an aqueduct outage.
8. If any conflict should arise regarding invoicing, payments or any provision of this Agreement, the Parties agree to attempt to resolve such issue directly first by agreement between the Village and Town operators of their respective water systems, and if they cannot agree, then by mutual agreement as between the consulting engineers retained by each Party. If any such resolution of a conflict by agreement involves the interpretation of material provisions of this Agreement, the Parties shall obtain DEP's acknowledgment that it does not disagree with the Parties' resolution. If the Parties or their consulting engineers cannot agree, or if DEP does not agree with their agreed-upon interpretation of a material term of this Agreement, then the dispute shall be submitted to DEP for review and recommendation, then, if necessary, to a court of competent jurisdiction within the County of Ulster, New York, for final determination.
9. Indemnification:

- a. The Town agrees to maintain appropriate insurance on the Town Water Systems and will defend and indemnify the Village for any claim or action brought against it by any Village resident directly arising from the Town's operation of said facilities; provided however, that the Village acknowledges that it is solely responsible for its own delivery systems located within and/or under the operative control of the Village, and that the Village shall defend itself against claims or actions brought by Village residents to the extent such claims are the result of its own operation of such Village facilities.
 - b. The Town and Village agree to defend and indemnify the other and the other's employees, officers, directors and agents against all damages for bodily injury, including death, or damage to real or tangible personal property to the extent proximately caused by the indemnifying party in the course of performing this Agreement.
10. The Parties hereby covenant and agree that NYC, acting by and through DEP, is a third-party beneficiary of this Agreement with the power to enforce its terms against either Party hereto, and that this Agreement shall not be terminated or amended by the Parties without the prior written consent of such third-party beneficiary.
11. The term of this Agreement shall be twenty (20) years from the date of signing and acknowledgment by the Parties and acknowledgement by DEP, upon expiration of which the Town may use or dispose of any portion of the water capacity reserved to the Village hereunder by contracting with existing or new (third-party) end-users, provided however, that during the ten (10) years immediately following the expiration of said term, the Town shall first offer to supply water to the Village under the same terms and conditions as are offered by such new or existing end-users. The Village shall then have thirty (30) days during which to accept said offer, and if the Village does not accept said offer within said period, the Town shall be free to accept the new offer and enter into such agreement, which the Parties acknowledge may affect the delivery capacity remaining

and available to the Village under this ten-year right of first refusal. This Agreement shall not be extended without the consent of both Parties.

12. This instrument shall be executed in duplicate and at least one copy thereof shall be permanently filed, after execution thereof, in the office of the Town Clerk of each party.

13. Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto or by DEP:

To Village: Village Clerk
25 Plattekill Avenue
New Paltz, New York 12561

To Town: Town Clerk
1 Clearwater Road
New Paltz, New York 12561

To DEP: _____

14. No waiver of any breach of any condition of the Agreement shall be binding unless the same shall be in writing and signed by the party waiving said breach. No such waiver shall anyway affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

15. This Agreement may not be assigned or sublet, in whole or in part.

16. This Agreement constitutes the complete understanding of the Parties. No modification of any provisions thereof shall be valid unless in writing and signed by both Parties and consented to by DEP.

IN WITNESS WHEREOF, the Village of New Paltz has caused its corporate seal to be affixed hereto and these presents to be signed by Jason West, its Mayor, duly authorized so to do, and to be attested to by the Village Clerk; and

The Town of New Paltz has caused its corporate seal to be affixed hereto and these presents to be signed by Susan Zimet, its Supervisor, duly authorized so to do, and to be attested to by the Town Clerk; both as of the day and year first above written.

Seal of the Village of New Paltz

Attest:

Village of New Paltz

By: _____
Jason West, Mayor

_____, Village Clerk,

Seal of the Town of New Paltz

Attest:

Town of New Paltz

By: _____
Susan Zimet, Town Supervisor

_____, Town Clerk,

Acknowledged by:

New York City Department of Environmental Protection