

**AGREEMENT BETWEEN  
THE CITY OF NEW YORK AND THE  
TOWN OF NEW PALTZ, NEW YORK, FOR THE  
DESIGN OF TWO GROUNDWATER SYSTEMS**

**THIS AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_, 2015, by and between the **CITY OF NEW YORK** (the “City”), a municipal corporation of the State of New York, acting by and through the **NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION** (“DEP”), having its principal office at 59-17 Junction Boulevard, Flushing, New York 11373, and the **TOWN OF NEW PALTZ** (the “Town”), a municipal corporation of the County of Ulster, in the State of New York, having its principal office at 1 Clearwater Road, P.O. Box 550, New Paltz, New York 12561 (each, a “Party,” and collectively, the “Parties”).

**WHEREAS**, DEP operates and maintains the New York City water supply system and is responsible for providing drinking water to the City and to its upstate customers, including users who primarily rely on a water supply from the Delaware Aqueduct and the Catskill Aqueduct;

**WHEREAS**, pursuant to a 1928 Water Supply Permit issued by DEP to the Village of New Paltz (the “Village”), the Village and portions of the Town, through interconnections with the Village, each rely on a supply of water from the Catskill Aqueduct; and

**WHEREAS**, to ensure the long-term sustainability of its ability to supply water through the Delaware Aqueduct and Catskill Aqueduct, DEP has committed capital funds to make repairs and conduct rehabilitation work to both aqueducts as part of a project called Water for the Future (“WFF”); and

**WHEREAS**, in connection with WFF and to permit DEP to conduct repairs and perform certain rehabilitation work thereto, the Catskill Aqueduct will need to be taken out of service for an extended period of time on multiple occasions; and

**WHEREAS**, to assist the Town and the Village in maintaining an adequate supply of potable water during a shutdown of the Catskill Aqueduct, and based on the recommendations made in the Final Project Report dated September 2014, resulting from the Backup Water Supply

Investigation for the Village that was funded by DEP (the “Final Report”), DEP is willing to provide funding to the Town, to be used toward the design of two groundwater systems, one from a source located at 101 Plains Road (the “101 Plains Road Wellsite System”) and the other from a source located on property currently owned by Mr. Samuel Plessner, located at NYS Route 299 and Paradies Lane (the “Paradies Lane Wellsite System”) (collectively, the “Groundwater Systems”); and

**WHEREAS**, based upon the results of the design of the Groundwater Systems and the environmental studies required herein, DEP would be prepared to enter into an additional agreement to fund the construction of the Groundwater Systems (the “Construction IGA”); and

**WHEREAS**, the Town is willing to manage the design of the Groundwater Systems, including the acquisition of options using funding provided by DEP to purchase the necessary real property rights for their construction and operation and the performance of certain other pre-construction services, and to administer the DEP funding in accordance with the terms of this Agreement; and

**WHEREAS**, DEP is simultaneously negotiating and planning to enter a funding agreement with the Village for the design and preparation for construction of improvements to the Village’s reservoir system and development of a water demand management plan for all customers reliant on the Village system, as part of its effort to assist the Town and the Village in developing an adequate supply of potable water they can rely upon during the anticipated WFF shutdowns of the Catskill Aqueduct and any other future shutdowns; and

**WHEREAS**, the Town and Village are each willing, as a condition of their respective funding agreements with DEP, to enter an inter-municipal agreement with each other under which, among other things, the Town will be required to sell water to the Village, as further detailed below provided this Agreement and DEP’s design funding agreement with the Village are both executed and registered, the environmental review provided for in both agreements is completed, and construction of the projects contemplated in both has been completed;

**NOW, THEREFORE**, in consideration of the respective representations and agreements contained below, the Parties agree as follows:

### **1. Registration Required**

This Agreement shall not take effect until it is registered pursuant to Section 328 of the New York City Charter. The date of registration shall be referred to as the “Effective Date” of this Agreement.

### **2. Expiration, Termination and Extension of Agreement**

Once it becomes effective, the term of this Agreement shall commence as of January 23, 2015, and, unless otherwise extended in a writing signed by both Parties, with the approval of the DEP Agency Chief Contracting Officer (the “ACCO”), shall expire on June 30, 2017, unless terminated sooner pursuant to the terms of this Agreement. All expenses that would otherwise qualify as an Eligible Cost (as defined in Section 6, below), incurred by the Town from the commencement of the term until expiration or earlier termination shall be reimbursed by DEP, subject to the terms and conditions set forth below.

### **3. Performance of the Services**

a) As part of the services to be performed under this Agreement (the “Services”), the Town will complete the design of the two Groundwater Systems, including required treatment, pumping and metering facilities and the necessary infrastructure for connection to the Village’s water distribution system; will acquire options to purchase the parcels of real property and any other property rights determined to be necessary for construction and operation of each of the Groundwater Systems and their connection to the Village distribution system; will create a new water district for the neighborhood surrounding the 101 Plains Road Wellsite System to serve an area initially contemplated hereunder to include the approximately eighty (80) properties in the Plains Road community, which currently rely on individual well water supplies (the “Water District No. 5”); and will extend the boundaries of the existing water district (i.e., Water District No. 3) to include the Plessner property and certain other properties along Paradies Lane, consisting of approximately six (6) properties in the vicinity of the Paradies Lane Wellsite System (“Extension No. 1 of

Water District No. 3”). Maps showing the proposed Water District No. 5 and Extension No. 1 of Water District No. 3 are attached to this Agreement as Exhibit A.

b) The Services shall include all tasks that are necessary for completion of the planning and pre-construction phases of creation of the 101 Plains Road Wellsite System and the Paradies Lane Wellsite System, as set forth in Section 4, below. However, the Services shall not include any actual construction necessary for completion of the Groundwater Systems.

c) The Services shall be performed by the Town through a qualified consultant, and subconsultants as needed, who shall be managed by a professional engineer licensed to practice in the State of New York (the “State”). The Services shall include attendance by the Town and its consultant(s) at bi-weekly, hour-long progress meetings with DEP.

d) Milestones

The Town will be responsible for completing the Services and entering into the inter-municipal agreement with the Village as set forth in Section 5, below, in accordance with the schedule of milestones that is attached to this Agreement as Exhibit B and incorporated herein by reference (the “Milestones”). Except as otherwise provided hereunder, the City may declare an event of default under this Agreement if the Town fails to satisfy its obligations in accordance with the schedule set forth by Exhibit B; provided however, that the City shall first give the Town reasonable notice and opportunity to cure the potential default pursuant to the terms of this Agreement.

**4. Scope of Services**

a) The Services shall include all engineering, surveying, scientific and other professional services necessary for design of and preparation to construct the Groundwater Systems in accordance with the Recommended Standards for Water Works [2007 Edition]: Policies for the Review and Approval of Plans and Specifications for Public Water Supplies and with Subpart 5-1 of the State Department of Health (“NYSDOH”) Sanitary Health Code and any

other applicable guidelines set forth by the NYSDOH, unless otherwise approved by DEP, as well as any legal services related to or required for contract drafting, review and administration in connection with such Services and for performance of all necessary environmental review and permit approval process work, including, but not limited to:

**(i) Environmental Review:** all actions necessary to document potential adverse and beneficial impacts on air, land, water and other natural and cultural resources, including coordination of a review in compliance with the State Environmental Quality Review Act ("SEQRA") of the backup water supply project's unlisted action, with the Town acting as the lead agency for itself and the Village in the environmental review; identification and documentation of potential project impacts and proposed mitigation measures; and evaluation of the magnitude and importance of potential project impacts and developing findings that support a determination of significance as that term is defined under SEQRA;

**(ii) Preparation of the Map, Plan and Report for the Establishment/Expansion of Town Water Districts:** all actions necessary for the establishment of Water District No. 5 (101 Plains Road Wellsite System service area) and Extension No. 1 of Water District No. 3 (Paradies Lane Wellsite System service area), including the determination of the new water district boundaries, preparation of required plans, estimate of annual user costs, the preparation of an engineer's report describing each of the new or expanded Town water districts, and, after the requirements of SEQRA and its implementing regulations (6 NYCRR Part 617) have been met, complying with the approval requirements in accordance with the provisions of Article 12 or Article 12-A of the NY Town Law for the establishment of such boundaries as depicted on Exhibit A, and all other necessary steps for the creation/expansion of such water districts;

(iii) **Groundwater Source and Supply Systems Design:** all actions necessary for preparation to construct the two (2) groundwater source and supply systems, including treatment, pumping and metering facilities and the necessary infrastructure to connect with the Village's existing water distribution system, which shall include, without limitation:

(I) Engineering assessment to identify permitting requirements for development of a backup public water supply and the requirements for the necessary pumping and treatment and the location of distribution mains and services to be located within the new and expanded water districts and any necessary pumping, treatment and transmission mains required for the metering and connections to the existing Village water supply infrastructure. Preparation of a Basis of Design Report based on the Final Report, describing the improvements' proposed design criteria and anticipated improvement benefits.

(II) Preparation and updating to the water system network model of the existing New Paltz water system, which is required for permitting support and to ensure new connection design flow and pressure stability.

(III) 101 Plains Road Area Improvements:

(1) Installation, development, well yield pump testing, water quality sampling and laboratory analysis of a mechanical backup well at the 101 Plains Road Wellsite System. Purging and development of the existing site well PW-2 for turbidity reduction.

(2) Design of pumping, treatment process and treatment building at the 101 Plains Road Wellsite System. Installation of four (4) overburden monitor wells with dedicated data loggers.

(3) Design of primary transmission mains, booster pumping facilities, metering and pressure reducing valves, and connection to the existing Village primary transmission main. Design of transmission mains and service connections within the new Water District No. 5 improvement area.

(IV) Paradies Lane Area Improvements:

(1) Performance of well yield pumping, water quality sampling and laboratory analysis of three (3) existing wells. Selection and specification of permanent well pumps.

(2) Design of pumping, treatment process and treatment building at the property currently owned by Mr. Plesser on Paradies Lane. Installation of an overburden monitor well and installation of dedicated data loggers in the new monitor well and three (3) existing onsite wells that will not be used for pumping.

(3) Design of primary transmission mains, metering and pressure reducing valves, and connection to the existing transmission main. Design transmission mains and service connections within the new Extension No. 1 of Water District No. 3.

(V) Development of required permitting information, preparation of applications and reports for water supply source, treatment and

distribution systems, and responses to regulatory agency reviews and revision as necessary to secure all necessary permits.

(VI) Preparation of final biddable construction contract documents, which include technical specifications in such detail as sufficient to solicit public bidding for the construction, procurement and installation of the proposed Groundwater Systems, and which also include a requirement that the successful bidder provide both its own guarantee of workmanship and a manufacturer's warranty for the major pumps needed for operation of the Groundwater Systems, for a period of five (5) years following the date of substantial completion of construction as determined in writing by the Town's Project Engineer (collectively, the "Plans and Specifications").

(VII) Preparation of a State-licensed professional engineer's certified estimate of construction costs of the work covered by the Plans and Specifications, including an estimate of costs of anticipated construction management services (the "Construction Cost Estimate").

(iv) **Real Property and Access Easement Option Agreement Acquisition:** all engineering support, property boundary surveying, title search, legal counsel, real property appraisal or other professional services necessary for identifying and securing option agreement(s) for the land and easements required for the Town to construct, own, access, operate and maintain the proposed Groundwater Systems and related improvements.

(v) **Construction IGA:** all legal and professional services related to the review and negotiation of the anticipated Construction IGA, contemplated hereunder to be ready for execution by the Parties prior to the expiration of this Agreement.

b) Deliverables for DEP Review

The Town shall submit deliverables to DEP for its review as set forth below and in accordance with the Milestones as set forth on Exhibit B.

(i) Submit, via email, monthly progress reports to the DEP Project Manager, summarizing the prior month's progress toward completion of the Services under this Agreement and the plan for the following month, no later than the fifth of each month.

(ii) Submit basis of design report ("BODR") to DEP for review and comment.

(iii) Submit the Plans and Specifications and corresponding Construction Cost Estimate to DEP for review when the Plans and Specifications are ninety percent (90%) complete. DEP shall review and comment within two (2) weeks of receipt. To the maximum extent possible, the Town shall incorporate any revisions necessitated by DEP's comments in the final Plans and Specifications and Construction Cost Estimate.

(iv) Submit a list of necessary real property acquisitions and proposed purchase options to DEP for review. DEP shall review and comment upon the list within two (2) weeks of receipt.

(v) Submit, for each proposed purchase option listed pursuant to subsection (iv) above, (x) the price for an option to purchase and (y) the purchase price including estimated closing costs, and (z) a summary of the material terms to be included in the option agreement(s), for DEP approval. If a required real property interest on the list submitted pursuant to subsection (iv) above is not available for acquisition or is otherwise unduly problematic to acquire, the Town shall notify DEP immediately of such unavailability or complication, and the Parties shall

engage in reasonable measures to jointly identify solutions and/or viable alternatives. In no event shall the inability of the Town to secure a required purchase option or to successfully negotiate the terms of a required purchase be deemed an event of default hereunder, so long as reasonable efforts have been made to do so.

(vi) Submit executed copies of option agreements to DEP.

**5. Required Inter-Municipal Water Sale Agreement**

a) In order to accomplish the purpose of this Agreement of assuring the existence of adequate backup water supply sources to allow the Town and the Village to sustain extended shutdowns of the Catskill Aqueduct, the Town shall enter into an inter-municipal agreement with the Village (the "IMA") by no later than the Milestone set forth on Exhibit B. The IMA shall require that the Town sell water to the Village, and that the Village purchase the water, when necessary for the Village to meet its demand during the outages of the Catskill Aqueduct; provided that, following the completion of the environmental review provided for herein, Construction IGAs with both the Village and Town are executed and registered and the work contemplated thereunder is successfully completed. The price for the water shall be equal to the cost of water to the Town, inclusive of costs of pumping, treating, distribution and system maintenance, plus administrative costs, such administrative costs not to exceed twenty percent (20%) over and above the actual cost of production to the Town, and the term of the IMA shall be a minimum of twenty (20) years.

b) Such IMA shall include a requirement that the Town sell to the Village five hundred (500) gallons of potable water per minute for the duration of such WFF outages, of which DEP will give reasonable advance notice to the Town and the Village. To preserve and allow for the replenishment of the water supply within the Groundwater Systems between outage periods, in no event shall the outages exceed ten (10) non-consecutive weeks during any twelve (12) month period, or ten (10) consecutive weeks during any twelve-month period, provided that the wellfield capabilities have been proven and permitted by the New York

State Department of Environmental Conservation (“NYSDEC”). The IMA shall further include a provision making the City, acting by and through DEP, a third-party beneficiary of the IMA, with the power to enforce its terms against either party thereto, and specifying that it shall not be terminable or amendable by the parties without the prior written consent of the third-party beneficiary.

c) In addition, the IMA shall provide that, during non-outage periods, the Town shall not use the water from the Groundwater Systems for any purpose except to meet the needs of the new Water District No. 5 and Extension No. 1 to Water District No. 3 if such other use would interfere with the ability of the Town to meet its obligations to the Village under the IMA, and only if such additional use has been approved and permitted by NYSDEC.

## **6. Costs**

a) Eligible Costs. Subject to the restrictions set forth in this Section 6, DEP agrees to pay for the reasonable and necessary costs associated with the performance of the Services in accordance with the terms and conditions in this Agreement (“Eligible Costs”). Eligible Costs shall be reimbursed upon receipt of invoices as set forth in Section 7, below. The Eligible Costs shall include:

- (i) the actual cost to the Town to retain consultants to perform any portion of the Services; and
- (ii) the costs of legal services required for contract review, formation and administration: (x) in connection with the preparation, execution, delivery or performance of any portion of the Services; (y) in connection with the preparation, execution and delivery of this Agreement and the IMA; and (z) in connection with performance of tasks needed for SEQRA compliance, but not for defense of any litigation related to this Agreement or arising out of the performance of

the Services; provided however, that the DEP agrees to include as an Eligible Cost reasonable attorney's fees incurred by the Town in the defense of any Article 78 proceeding brought against it arising out of its necessary compliance with the provisions of SEQRA, but only in a total amount not to exceed fifty thousand dollars (\$50,000.00), and only on the condition that a final and non-appealable determination has been issued by a court of competent jurisdiction in favor of the Town; and

(iii) the costs of acquiring the options to purchase interests in real property, as approved by DEP, including closing costs, but only in a total amount not to exceed two hundred and fifty thousand dollars (\$250,000.00).

b) Total Eligible Costs. Notwithstanding anything to the contrary herein, the aggregate total of all Eligible Costs payable by the City hereunder shall not exceed One Million Five Hundred Sixty-Four Thousand Seven Hundred Dollars (\$1,564,700.00) ("Total Eligible Costs").

c) Administration of Funds by the Town. The Town shall manage, coordinate and administer the costs and payments required in connection with the performance of the Services in accordance with the terms hereof, including compliance with the Milestones set forth in Exhibit B. The Town shall deposit all funds received pursuant to this Agreement in an account not to be co-mingled with funds from other sources, and shall use such funds solely to fulfill its obligations hereunder. In no event shall any funds distributed by DEP to the Town under this Agreement be used for any expense other than Eligible Costs.

d) Excess Costs. Any costs or expenses related to the design of the Groundwater Systems or compliance with any requirements of this Agreement that exceed the Total Eligible Costs or are determined by DEP to not qualify as an Eligible Cost shall be borne by the Town, and

any disputes as to DEP's determination of eligibility shall be resolved pursuant to Paragraph 7(c), below.

7. **Payment**

The City shall reimburse the Town for Eligible Costs for Services actually performed as set forth below.

- a) Payment After Receipt of Invoices. The Town shall submit invoices specifying the Services, or portion thereof, performed, and the reimbursement requested, not more frequently than monthly. DEP shall release funds for Services or portions thereof performed only after the Effective Date and after receipt of an acceptable and complete invoice. Such payment will be made within ninety (90) days of date of such an invoice. An invoice is acceptable if it includes appropriate documentation for all Services, or portions thereof, performed (including, but not limited to, invoices for all consultants and subconsultants and a cover letter from the Town verifying that all costs incurred are reasonable and fair and were authorized by the Town in good faith and in accordance with all applicable law), as determined by DEP. Such documentation is subject to review, audit and requests for additional information by DEP. No payments by DEP shall be made under this Agreement in advance of the performance of the Services for which the payment is sought as reimbursement.
- b) Notification and Delivery of Payment. The Town shall submit all invoices to the DEP Project Manager, at the address specified for DEP in Section 12. Funds shall be paid to the Town during the term of this Agreement by electronic funds transfer a financial institution designated by the Town.
- c) Payment Disputes. In the event an item or items in an invoice are disputed, DEP may withhold payment for such disputed item or items and shall notify the Town in writing of the reason and amount of such withholding within thirty (30) days of initial receipt of the

invoice. The Parties shall make a good faith effort to resolve all disputes within forty (40) days of DEP's notice of the disputed item and/or invoice. If the Parties fail to resolve the dispute within such forty-day period, unless the Parties agree to a longer period to resolve the dispute, the dispute shall be referred to the DEP Commissioner (the "Commissioner") as outlined below in this subsection. Absent written notice by DEP to the Town expressing such intent, no dispute under this Paragraph shall prevent or delay the timely payment of any other non-disputed invoice or non-disputed portions of the invoice containing the disputed item.

(i) In the event of an unresolved payment dispute, it is understood and agreed that such dispute shall be brought to the Commissioner and the Commissioner shall determine whether the disputed item(s) shall be reimbursable under this Agreement. The Commissioner shall examine the material submitted by each Party and may, in his or her discretion, convene an informal conference with the Parties and any other designee of the Commissioner to resolve the issue by mutual consent prior to reaching a determination. The Commissioner may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both Parties as he or she deems fit.

d) Right to Examine Books. This Agreement and all books, records, documents, receipts and disbursements of funds pursuant to this Agreement are subject to audit by (i) the City, including the Comptroller and DEP's Office of Engineering Audit, and (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise. The Town agrees to cooperate with any such audit of this Agreement.

**8. Independent Contractors**

a) The Town agrees and acknowledges that it and its consultants and subconsultants are independent contractors and not employees of DEP or the City. Accordingly, none of the Town or any of its consultants or any of their respective employees or agents performing services in connection with this Agreement will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, disability benefits coverage, unemployment insurance benefits, Social Security coverage or employee retirement membership or credit.

b) All persons who are employed by the Town and all consultants or independent contractors who are retained by the Town to perform services for the Town in connection with this Agreement are not under contract with the City. The Town is responsible for their work, direction, compensation, and personal conduct while engaged in connection with performance of the Services. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Town and its consultants, other independent contractors, or any of their respective officers, employees, or agents, or for taxes of any nature. Except as specifically stated in this Agreement, or to the extent otherwise required by law, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

**9. Insurance**

a) Prior to the Effective Date of this Agreement, the Town must provide evidence that it has procured, and must maintain throughout the term of this Agreement, the insurance set forth

in Part I of Exhibit C hereto. The City, together with its officials and employees, shall be named as an additional insured on such insurance as set forth in Exhibit C.

b) Before they commence performance of any Services in connection with this Agreement, the Town shall require its consultants and subconsultants to procure and provide evidence of insurance in the types and amounts set forth in Part II of Exhibit C hereto, and require that such insurance be maintained during the entire period of their respective contracts to provide such work. The City, together with its officials and employees shall be named as an additional insured on such insurance as set forth in Exhibit C. Proof of insurance for each and every policy required hereunder, as required in Exhibit C, shall be furnished to DEP for review and approval before the relevant Services are commenced.

#### **10. Indemnification**

a) To the fullest extent permitted by law, the Town shall indemnify, defend and hold the City and its employees and agents (the "Indemnitees") harmless against any and all claims (including, but not limited to, claims asserted by any employee of the Town or any of its consultants and/or subconsultants) and costs and expenses of whatever kind (including, but not limited to, payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of the Town and its consultants and/or subconsultants in the performance of this Agreement or the Town's and/or its consultants' and/or subconsultants' failure to comply with any of the provisions of this Agreement or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section by way of cross-claim, third-party claim, declaratory judgment action or otherwise. The Parties expressly agree that the indemnification obligation hereunder contemplates (i) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (ii) partial indemnity in the event of any actual

negligence or willful misconduct on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

b) The Town shall include a provision in all of its contracts for the provision of Services hereunder requiring that its consultants shall indemnify, defend and hold the Indemnitees harmless to the same extent set forth in paragraph (a) of this Section, immediately above.

c) Indemnification under this Section or any other provision of this Agreement shall operate whether or not the Town and its consultants and/or subconsultants have placed and maintained the insurance required under Section 9.

d) The Town waives all rights against the City for any damages or losses for which either is covered under any insurance required under this Agreement (whether or not such insurance is actually procured) or any other insurance applicable to the operations of a consultant or subconsultant of the Town.

e) The provisions of this Section shall not be deemed to create any new right of action in favor of any third parties against the City.

#### **11. Acceptance of Final Payment**

The acceptance by the Town, or by anyone claiming by or through it, of the final payment under this Agreement, whether such payment be made pursuant to any judgment of any court or otherwise, shall constitute and operate as a release of the City from any and all claims of and liability to the Town for anything heretofore done or furnished by the Town relating to or arising out of this Agreement.

**12. Notices**

All notices required or permitted hereunder shall, unless otherwise specified, be in writing and be delivered by hand, or by overnight mail or by certified mail, return receipt requested, to the Parties at the following respective addresses:

To DEP:

New York City Department of Environmental Protection  
71 Smith Avenue  
Kingston, New York 12401  
Attn: Todd West/Dan Michaud (Project Manager)

With a copy to:

New York City Department of Environmental Protection  
Bureau of Legal Affairs  
59-17 Junction Boulevard, 19<sup>th</sup> Floor  
Flushing, New York 11373  
Attn: General Counsel

To the Town:

Town Supervisor, Town of New Paltz  
[1 Clearwater Road, P.O. Box 550]  
New Paltz, New York 12561

With a copy to:

Joseph M. Moriello, Esq.  
Di Stasi Moriello & Murphy Law PLLC  
400 Upper North Road, P.O. Box 915  
Highland, NY 12528

Either Party may, from time to time, change its address(es) for notices by giving notice of such change to the other Party in the manner specified in this Section.

**13. Compliance with Public Procurement Requirements**

The Town shall, in soliciting or procuring contracts for any of the Services, comply with all public procurement requirements that are applicable to the Town by State or local law, or that would be applicable to the Town under State or local law or any regulations thereunder if the Town were funding such work itself.

**14. Administration of Contracts**

- a) The Town shall be responsible for administering all contracts necessary to perform the Services hereunder in such a manner as to ensure compliance with all applicable laws and regulations. Upon request, the Town shall provide DEP with a copy of any contract entered into by it with respect to any aspect of the Services and of any subcontract entered into by its consultant(s).
- b) The Town agrees that it is fully responsible to DEP for the acts and omissions of its consultants and of persons either directly or indirectly employed by such consultants as it is for the acts and omissions of any person directly employed by it.
- c) The Town shall not in any way be relieved of any of its responsibilities, duties and liabilities under this Agreement by virtue of entering into any contract for the performance of any portion of the Services.

**15. The Town's Representations and Warranties**

- a) The Town represents and warrants that:
  - (i) it has all requisite power and authority to execute, deliver and perform this Agreement;
  - (ii) this Agreement has been duly authorized by all necessary action on the part of the Town, has been duly executed and delivered by the Town

and, assuming due execution and delivery by the City, and registration pursuant to City Charter Section 328, constitutes the legal, valid and binding agreement of the Town, enforceable in accordance with its terms; and

(iii) the execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation or default under any provision of applicable law, charter, ordinance or regulation or to the extent of the Town's knowledge, of any material agreement, judgment, injunction order, decree or other instrument binding upon the Town.

b) Acceptance by the Town of funds from the City hereunder shall be deemed at such time to be a reaffirmation of the foregoing representations and warranties.

#### **16. City's Representations and Warranties**

The City represents and warrants that this Agreement will, when executed by the City and registered pursuant to Section 328 of the City Charter, and assuming the due execution and delivery by the Town, constitute the legal, valid and binding agreement of the City, enforceable in accordance with its terms.

#### **17. No Discrimination**

The Town agrees that it has not and will not, in connection with the performance of this Agreement, engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state or local law with respect to all

employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoffs, termination, and all other terms and conditions of employment.

**18. Compliance with Law**

The Town agrees that it will comply with all federal, State and local laws, rules and regulations in performing its obligations hereunder and in prosecuting and ensuring the completion of the Services.

**19. Incorporation of Applicable Laws**

The Parties agree that each and every provision of federal, State or local law, rule, regulation or order applicable to this Agreement, that is required to be included in this Agreement, is incorporated herein by this reference. Furthermore, it is hereby stipulated that every such provision is to be deemed inserted herein, and if, through mistake or otherwise, any such provision is not inserted or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either Party, be amended by any such insertion so as to comply strictly with such law, rules, regulation or order and without prejudice to the rights of either Party.

**20. Cooperation with Investigations**

The Parties agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency or entity that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

**21. Copyrights and Access to Information**

The City shall have the right to use all written materials, documents, data and information that are gathered or prepared pursuant to the Agreement for any purpose deemed appropriate by the City. In furtherance thereof, the Town hereby grants to the City a royalty-free, worldwide, non-exclusive, perpetual, irrevocable license to use, execute, reproduce, make, modify, adapt, display, perform and create derivative works of all written material, documents, data and information that are gathered or prepared pursuant to this Agreement, including, but not limited to, all designs, plans, specifications and models created hereunder.

**22. Infringements**

The Town shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for any damages and from the costs and expense to which the City may be subject or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Town, its consultants and/or subconsultants of any copyright, trademark, trade secrets or patent rights or any other property or personal right of any third party in the performance of this Agreement. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by the Town, the City shall be partially indemnified by the Town to the fullest extent permitted by law.

**23. No Claim Against Officers, Agents or Employees**

Absent any willful misconduct, no claim whatsoever shall be made by either Party against any individual officer, agent or employee of the other Party for, or on account of, anything done or omitted in connection with this Agreement.

**24. Waiver**

Neither Party shall be deemed to have waived the observance or performance of any term or provision of this Agreement, or any default hereunder, except pursuant to a written instrument of waiver signed by such Party. No waiver of the observance or performance of any term or provision of this Agreement, or of any default hereunder, shall be deemed to be a waiver of any subsequent failure to observe or perform this Agreement, or of any subsequent default hereunder.

**25. Retention of Records**

- a) The Town agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment under, or termination of, this Agreement, whichever is later. City, State and federal auditors and any other persons duly authorized by DEP or the Town shall have full access to and the right to examine any of said materials during said period, including ensuring that any funds administered under this Agreement were applied in accordance with the terms and conditions herein. The Parties shall have the right, at any time during normal business hours, to inspect, examine and/or make copies of any such books, records or other documents. The same right shall be afforded to representatives of the State Comptroller or the City Comptroller, or any other person duly authorized by DEP or the Town.
- b) All receipts, management and disbursements of funds provided by the City pursuant to this Agreement, and the records and accounts evidencing such receipts, management and disbursements, shall be subject to audit by the State Comptroller and by the City, including the City Comptroller, pursuant to the rights and powers of such officials as conferred upon them by State and City law. The Town agrees to cooperate with any such audits.
- c) The Town shall prepare and maintain its records and accounts of receipts, management and disbursements of funds under this Agreement in accordance with generally accepted

government accounting standards and shall provide a summary of such records and accounts to DEP as requested.

**26. Early Termination**

The City may terminate this Agreement upon written notice to the Town in the event that:

- a) any litigation has been filed that would, in DEP's opinion, adversely affect the Town's ability to fulfill the obligations herein and meet the Milestones in Exhibit B; or
- b) in DEP's opinion, the Town's progress reports indicate it is likely to fail to meet one of the Milestones in Exhibit B.

The circumstances warranting early termination under this Section shall not, by themselves, be considered an event of default, provided that the Town has engaged in reasonable efforts to prevent such delays warranting early termination. Upon such early termination, subject to receipt of proper invoice(s), DEP shall reimburse the Town for any and all costs and expenses incurred by the Town prior to its receipt of the notice of early termination in connection with performance of the Services hereunder that would otherwise be deemed Eligible Costs.

**27. Default**

- a) If either Party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than fifteen (15) calendar days after written notice of such default is received by the defaulting Party from the non-defaulting Party, the non-defaulting Party may, in addition to any other rights or remedies available at law or in equity, suspend its performance or terminate this Agreement by written notice of suspension or termination to the defaulting Party, specifying a date of suspension or termination which shall not be less than five (5) business days from the date such notice is sent. However, if such default cannot reasonably be cured within fifteen (15) calendar days, the Agreement may not be terminated if: (i) the defaulting Party commences appropriate actions to cure the

default prior to the end of the fifteen (15) day period, (ii) such actions have been approved in writing by the non-defaulting Party, and (iii) the defaulting Party thereafter diligently prosecutes the actions necessary to cure the default to the complete satisfaction of the non-defaulting Party.

b) Specific Performance

The Parties each hereby agree that irreparable damage would occur in the event that any provision of this Agreement (other than those requiring the payment of money) were not performed in accordance with its specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. Accordingly, the Parties acknowledge and hereby agree that, unless this Agreement has been terminated in accordance with the terms set forth herein, in the event of any breach or threatened breach by the Town or the City of any of their respective covenants or obligations set forth in this Agreement, and unless the breach or threatened breach is attributable to an event of force majeure, as defined below, then the non-breaching party shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other under this Agreement.

c) Force Majeure

The period of time during which either Party is prevented or delayed in any performance or fulfilling of any obligation under this Agreement, other than the payment of money, due to unavoidable delays caused by fire, catastrophe, strikes or labor trouble, civil commotion, Acts of God, prohibition by a governmental agency of proper jurisdiction enacted or issued after the date of execution of this Agreement (not including a failure to obtain a necessary approval), acts of the public enemy or acts of terrorism, shall not be considered a basis for

default under this Agreement. Notwithstanding the occurrence of such a force majeure event, in the event that the City determines that the Town will not be able to meet the milestones in Exhibit B hereto, or in the event of a prohibition by a governmental agency, the City may terminate this Agreement in accordance with the terms herein. As a condition to the Town's right to avail itself of a force majeure defense, it must give the City written notice of such claimed force majeure event not later than three (3) business days following the occurrence of such force majeure event.

**28. Amendments**

This Agreement may not be modified or amended except by an instrument in writing signed by both of the Parties and approved as to form and certified as to legal authority by the Office of the City's Corporation Counsel.

**29. No Third-Party Beneficiaries**

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

**30. Assignment**

This Agreement may not be assigned, in whole or in part, except pursuant to a written instrument signed by both of the Parties.

**31. Cooperation; Obligation to Provide Documents**

Both Parties acknowledge and agree that during the term of this Agreement each shall cooperate with the other and provide each other promptly with all documentation, reports, and information that may be necessary to carry out their respective obligations under this Agreement.

**32. Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the State. To the fullest extent permitted by law, the Parties consent to the jurisdiction of the Supreme Court of the State of New York in connection with any action by either Party against the other pursuant to this Agreement.

**33. Severability; Entire Agreement**

- a) If any provision of this Agreement or its application is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not in any way be affected or impaired.
- b) This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect to such subject matter, whether written or oral.

**34. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **CORPORATION COUNSEL CONTRACT APPROVAL**

Agency DEP

E-PIN 82615T0016001

Contractor TOWN OF NEW PALTZ

Approved as to form

Certified as to legal authority

Electronically Signed By SHARON CANTOR

Date 06/17/2015 16:27

**Acting Corporation Counsel**

**IN WITNESS WHEREOF**, the Commissioner of the New York City Department of Environmental Protection, or his or her designee, on behalf of the City, and the Town Supervisor, on behalf of the Town of New Paltz, have executed this Agreement, in quadruplicate, one part to be filed with the Comptroller of the City of New York, one part to be retained by the Department of Environmental Protection and two parts to be delivered to the Town of New Paltz.

THE CITY OF NEW YORK

THE TOWN OF NEW PALTZ

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name:

Name:

Title:

Title: Town Supervisor

Department of Environmental Protection

Dated: \_\_\_\_\_, 2015

Dated: \_\_\_\_\_, 2015

Approval as to Form and Certification as to Legal Authority:

\_\_\_\_\_  
Corporation Counsel of the City of New York

Dated: \_\_\_\_\_

**State of New York**     )

**ss.:**

**County of**                     )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**State of New York**     )

**ss.:**

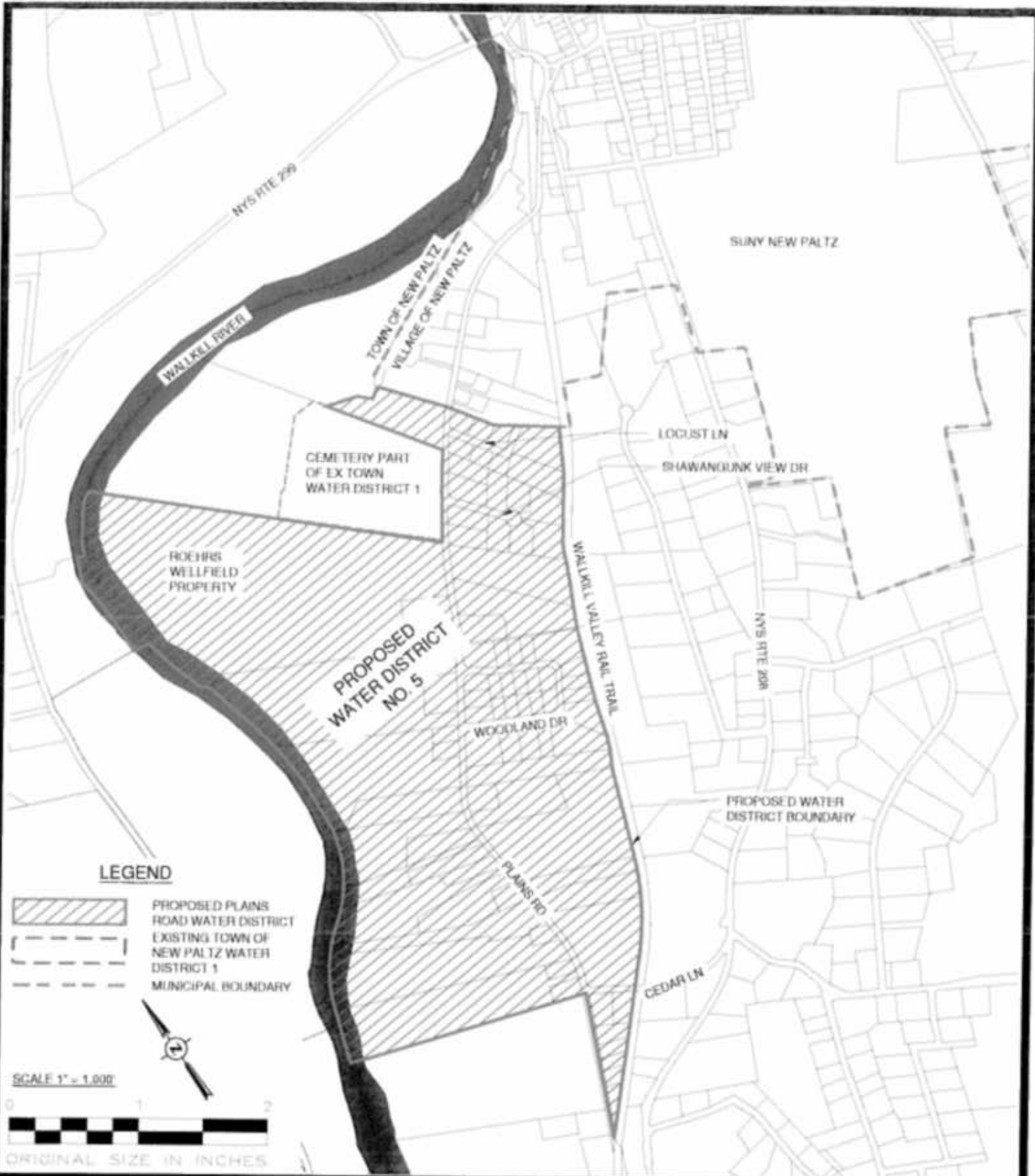

**County of**                     )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2015 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Exhibit A**

**Maps Depicting Proposed Boundaries of Water District No. 5 and of Extension No. 1 of  
Water District No. 3**

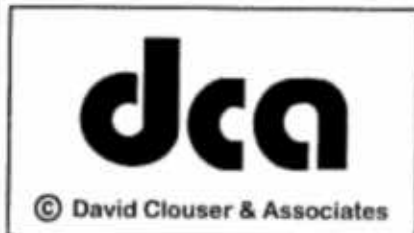
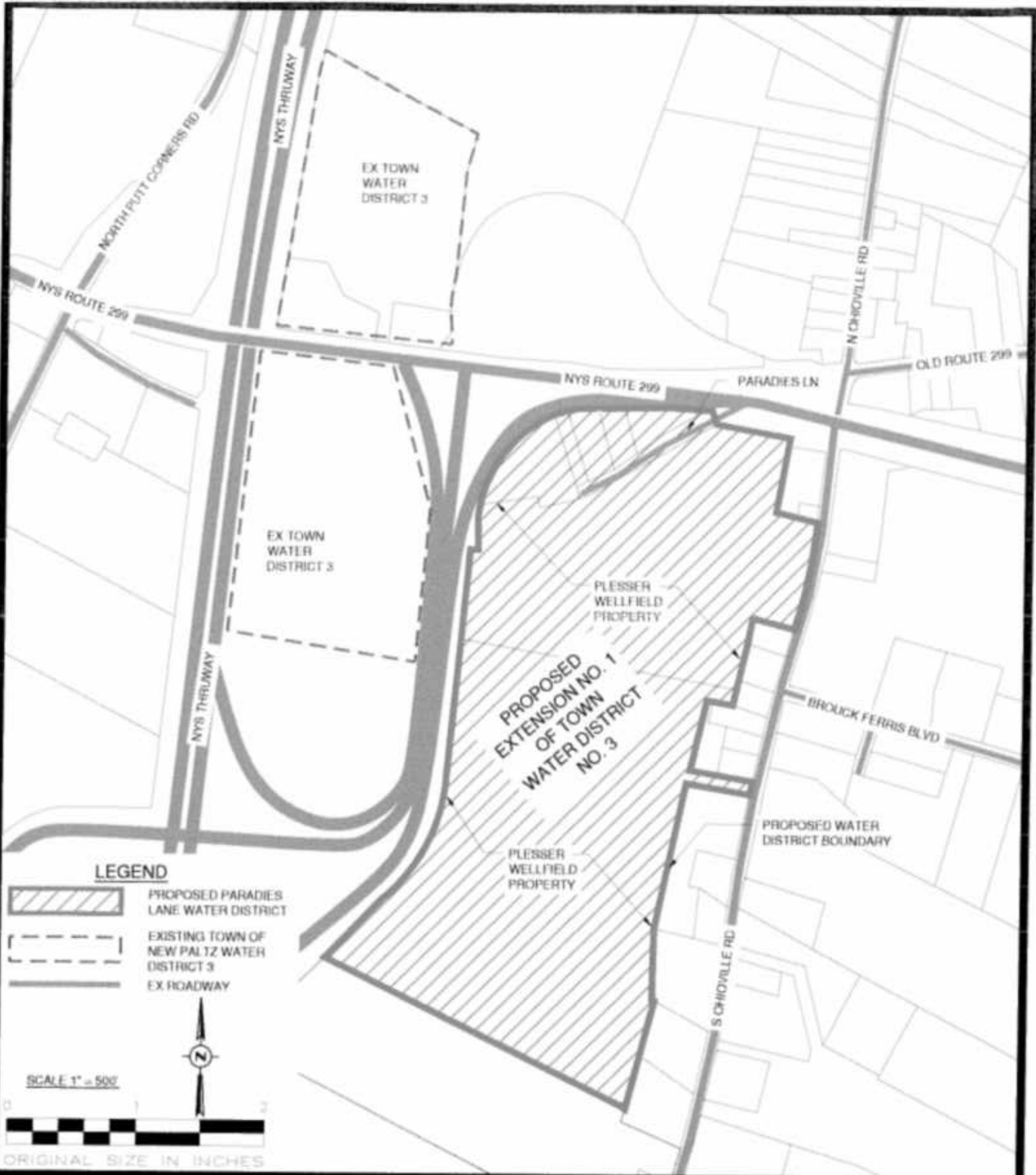
© David Clouser & Associates

**PROPOSED WATER DISTRICT NO. 5**

**PROPOSED ROEHR'S WELLFIELD WATER DISTRICT BOUNDARY MAP**

TOWN OF NEW PALTZ  
ULSTER COUNTY, NEW YORK

DATE	DRAWN BY
02/26/15	MLT
PROJECT NO.	
55008	
SHEET NO.	
<b>WD-1</b>	



**PROPOSED EXTENSION NO. 1 OF  
WATER DISTRICT NO.3  
PROPOSED PLESSER WELLFIELD  
WATER DISTRICT BOUNDARY MAP**

TOWN OF NEW PALTZ  
ULSTER COUNTY, NEW YORK

DATE	DRAWN BY
02/26/15	MLT
PROJECT NO.	
55008	
SHEET NO.	
<b>WD-2</b>	

**Exhibit B**  
**Milestones**

<b>Milestone</b>	<b>Completion Date</b>
Town awards design contract for Groundwater Systems	14 days after Effective Date
Town submits draft IMA (Water Sale Agreement) between Village and Town for DEP review and comment	15 days after Effective Date
Town submits a list of necessary real property purchase options to DEP for review	30 days after Effective Date
Town submits executed IMA between Village and Town in a form acceptable to DEP	30 days after Effective Date
Town submits option price and purchase price, and terms of option agreements for necessary real property	60 days after Effective Date
Town submits Basis of Design Report for Groundwater Systems to DEP for review	60 days after Effective Date
Town acquires options to purchase real property interests necessary for the Groundwater Systems	90 days after Effective Date
Town completes SEQRA review and issues appropriate determination	110 days after Effective Date
Town acquires all necessary approvals to establish Water District No.5	150 days after Effective Date
Town acquires all necessary approvals to expand Water District No. 3	150 days after Effective Date
DEP and Town complete negotiation of Construction IGA	150 days after Effective Date
Town submits 90% Plans and Specifications and Construction Cost Estimate to DEP for review	150 days after Effective Date
Town submits 100% design/construction bid documents for Groundwater Systems, together with evidence that all necessary permits and regulatory approvals have been obtained	No later than July 15, 2016

**Exhibit C**  
**Insurance Requirements**

**Note:** All certificate(s) of insurance submitted pursuant to Section 9 of the Agreement must be accompanied by a Certification of Insurance Broker or Agent consistent with the form at the end of this Exhibit C and include the following information:

- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below;
- Additional insureds or loss payees consistent with the requirements listed below; and
- The name of this Agreement and the number assigned to it by the City (in the “Description of Operations” field).

All such certificate(s) of insurance (including Certification(s) of Broker, where required) must be sent to the New York City Department of Environmental Protection, Bureau of Legal Affairs, ATTN: General Counsel, 19th Floor, 59-17 Junction Boulevard, Flushing, New York 11368.

**I. Specific Types of Insurance Coverage Required to be Maintained by the Town of New Paltz (Agreement, Section 9):**

- |                                 |  |
|---------------------------------|--|
| • Worker’s Compensation         | Statutory per New York State Law without regard to jurisdiction<br>(See Part III(1), below)  |
| • Employer’s Liability          | Statutory (See Part III(2), below)   |
| • Disability Benefits Insurance | Statutory (See Part III(1), below)   |
| • Commercial General Liability  | \$2,000,000 per occurrence<br><br>\$4,000,000 aggregate, per project<br>Additional Insureds:<br>City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 or CG 20 26 and CG 20 37<br><br>(See Part III(3), below, for additional requirements) |

- Commercial Automobile Liability  
\$1,000,000 per accident Combined Single Limit  
(See Part III(4), below)

**II. Specific Types of Insurance Coverage Required to be Maintained by Consultants/Contractors Retained by the Town of New Paltz (see Agreement, Section 9) (as per the provisions of this Exhibit C, including, without limitation, the below-listed section), with Minimum Limits and Special Conditions:**

- Workers' Compensation  
Statutory per New York State Law  
without regard to jurisdiction  
(See Part III(1), below)
- Employers' Liability  
Statutory (See Part III(2), below)
- Disability Benefits Insurance  
Statutory (See Part III(1), below)
- Commercial General Liability  
\$1,000,000 per occurrence  
\$2,000,000 aggregate, per project  
Additional Insureds:  
City of New York, including its officials and  
employees, with coverage at least as broad as  
ISO Forms CG 20 10 or CG 20 26 and CG 20  
37  
  
(See part III(3), below)
- Commercial Automobile Liability  
\$1,000,000 per accident combined single limit  
  
If vehicles are used for transporting hazardous  
materials, the contractor shall provide  
pollution liability broadened coverage for  
covered autos (endorsement CA 99 48) as  
well as proof of MCS 90  
  
(See Part III(4), below)
- Professional Liability Insurance  
(for all professional services contracts)  
\$1,000,000 per claim  
(See Part III(5), below)

### **III. General Provisions Applicable to Insurance Coverage:**

In each case below, the reference to “Contractor” shall mean the party required to maintain insurance coverage, and the reference to “Contract” shall mean the contract pursuant to which the consultant or contractor is providing services to the Town pursuant to this Agreement, or, in the case of the Town’s obligation to provide insurance, this Agreement itself.

#### **Section 1      Worker’s Compensation and Disability Benefits Insurance:**

Before performing any work under the Contract, the Contractor shall procure Worker’s Compensation and Disability Benefits Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or services under the Contract.

#### **Section 2      Employer’s Liability Insurance:**

Before performing any work under the Contract, the Contractor shall procure Employer’s Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his or her employment under the Contract.

#### **Section 3      Commercial General Liability:**

The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under the Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office (“ISO”) Form CG 0001. Such insurance shall be “occurrence” based rather than “claims-made” and include, without limitation, the following types of coverage: premises operations; products and completed operations; contractual liability (including the tort liability of another assumed in a contract); broad form property damage; independent contractors; explosion, collapse and underground (XCU); construction means and methods; and incidental malpractice. Such insurance shall contain a “per project” aggregate limit, as specified above, that applies separately to operations under the Contract. Such Commercial General Liability Insurance shall name the City as an Additional Insured. Coverage for the City shall specifically include the City’s officials and employees, be at least as broad as the latest edition of ISO Form CG 20 10 or CG 20 26 and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37.

#### **Section 4      Commercial Automobile Liability:**

(a) The Contractor will provide Commercial Automobile Liability Insurance covering liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired

vehicles to be used in connection with the Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

#### **Section 5    Professional Liability Insurance**

(a) If professional services are provided pursuant to the Contract, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under the Contract in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under the Contract arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(b) All subcontractors of the Contractor providing professional services under the Contractor for which Professional Liability Insurance is reasonably commercially available shall also maintain Professional Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to DEP, at the time of its request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to DEP.

(c) Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

#### **Section 6    Miscellaneous Requirements for Insurance Coverage and Policies**

(a) All required insurance policies shall be procured from companies that are licensed to do business in the State of New York and have an A.M. Best rating of at least A- /VII or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Office of the New York City Corporation Counsel.

(b) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

(c) The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

(d) There shall be no self-insurance program with regard to any insurance required under this Agreement unless approved in writing by DEP. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Exhibit C, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies.

(e) The City's limits of coverage for all types of insurance required under this Agreement shall be the greater of (i) the minimum limits set forth above in this Exhibit C or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

(f) The Contractor may satisfy its insurance obligations under this Agreement through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(g) Policies of insurance provided pursuant to this Agreement, other than those provided pursuant to Sections 1, 2 and 4, above, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

#### **Section 7    Proof of Insurance**

(a) For all types of insurance required by this Agreement, the Contractor shall file proof of insurance in accordance with this Section 7 within ten (10) days of award of the Contract.

(b) For policies provided pursuant to Sections 1 and 2, above, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to DEP. ACORD forms are not acceptable.

(c) For policies provided pursuant to all of this Exhibit C other than Sections 1 and 2, above, the Contractor shall submit one or more Certificates of Insurance on forms acceptable to DEP. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Section 3, that the City is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10 or CG 20 26 and CG 20 37, as applicable; (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number); and (d) the number assigned to this Agreement by the City. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form contained in this Exhibit C or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time

as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Documentation confirming renewals of insurance shall be submitted to DEP prior to the expiration date of coverage of policies required under the Contract. Such proofs of insurance shall comply with the requirements of subsections (b) and (c), immediately above.

(e) The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Agreement upon the demand for such policy by DEP or the Office of the New York City Corporation Counsel.

**Section 8**     Operations of the Contractor:

(a) The Contractor shall not commence the Contract work unless and until all required certificates have been submitted to and accepted by DEP. Acceptance of a certificate does not excuse the Contractor from securing insurance consistent with all provisions of the Contract or of any liability arising from its failure to do so.

(b) The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by the Contract and shall be authorized to perform Contract work only during the effective period of all required coverage.

(c) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Contract work, and shall not recommence work until authorized in writing to do so. Contract time shall continue to run during such periods and no extensions of time will be granted. The Contractor may be declared to be in default for failure to maintain required insurance.

(d) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Exhibit C shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to DEP and (if the Contractor in question is the Town itself) the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Exhibit C.

(e) Whenever notice of loss, damage, occurrence, accident, claim or suit to an insurance company is required under a policy maintained in accordance with this Exhibit C (whether on behalf of the Contractor as Named Insured or the City as Additional Insured), the Contractor shall provide timely notice thereof. Such notice shall comply with all of the following requirements:

(i) The Contractor shall send written notice of any such event to all

insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) days after such event and again no later than twenty (20) days after the initiation of any claim and/or suit resulting therefrom. Such notice shall contain the following information: the number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged. For any policy on which the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured, as well as the Named Insured."

- (ii) Whenever such notice is sent under a policy on which the City is an Additional Insured, the Contractor shall provide copies of the notice to the Comptroller, DEP and the City Corporation Counsel. The copy to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York 10007. The copy to DEP shall be sent to the address set forth at the beginning of this Exhibit C. The copy to the City Corporation Counsel shall be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.
- (iii) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

## CERTIFICATES OF INSURANCE

### Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

## CITY OF NEW YORK

**CERTIFICATION BY INSURANCE BROKER OR AGENT**

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of ..... )  
 ) ss.:  
County of ..... )

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_