Public Works & Capital Projects

RESOLUTION NO. 2015217

RE: AUTHORIZING AGREEMENT WITH DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY

Legislators HUTCHINGS, FLESLAND, BOLNER, BORCHERT, HORTON, SAGLIANO, THOMES, JETER-JACKSON, FARLEY, and STRAWINSKI offer the following and move its adoption:

WHEREAS, pursuant to Resolution No. 202137, the County made and entered into an Agreement with the Dutchess County Water and Wastewater Authority("Authority"), County Contract Number 02-0552-WA, dated June 27, 2002, by the terms of which the County was to acquire excess capacity in the water transmission line for $3,000,000.00 in consideration therefor, and, in addition, agreed to convey to the Authority a 30' construction easement and a 15' permanent easement over the length of the railroad corridor needed for the water main, subject to certain conditions contained therein, and

WHEREAS, pursuant to Resolution No. 204291, the County made and entered into an Agreement with the Authority, County Contract Number 04-0730-WA, dated November 19, 2004, whereby the County and the Authority agreed that the Authority would construct and thereafter maintain the Central Dutchess Water Transmission Main and that the County would acquire a reservation of capacity in the Central Dutchess Water Transmission Main, consisting of one-half of the total capacity of the Central Dutchess Water Transmission Main, such acquisition assuring the availability to the County for future anticipated use of the Central Dutchess Water Transmission Main by municipalities and persons along or connecting to the Central Dutchess Water Transmission Main of a transmission main for the delivery of potable water, as such municipalities and persons may, from time to time, require, and

WHEREAS, the County requires a source of potable water at the Dutchess County Airport located in the northern section of the Town of Wappinger, NY, and the County has decided to elect to utilize a portion of its capacity in the Central Dutchess Water Transmission Line and has selected as a source of the water a connection to the Central Dutchess Water Transmission Line, and

WHEREAS, pursuant to Resolution No. 2015007, the Dutchess County Legislature authorized the issuance of $2,900,000.00 in bonds to pay the cost of the construction of a water main line from the Central Dutchess Water Transmission Line to the County Airport, and

WHEREAS, the County has solicited grants in the amount of $600,000.00 of a possible $1,000,000 Empire State Development grant and $200,000.00 from Central Hudson Gas and Electric Corporation, and

WHEREAS, the County desires to retain the Authority as its agent to act as Program Administrator for the construction project to construct a 12 inch diameter, class 52 cement lined, ductile iron pipeline starting at the Dutchess County Central Dutchess Water Transmission Line and generally following a westerly route across a private parcel with wetland,

then along Airport Drive to NYS Route 376, where it will go northerly along NYS Route 376, crossing NYS Route 376 and terminating at the Airport at Griffith Way with a metering pit required at the connection to the Central Dutchess Water Transmission Line and at the terminus at the Airport (the "Project"), and

WHEREAS, the Authority is qualified and is willing and able to perform such services in a timely manner, and

WHEREAS, New York Public Authorities Law Section 1125(2) regarding the Dutchess County Water and Wastewater Authority provides that "The county...may give, grant, sell, convey...any properties which are useful to the authority to carry out its powers...," and

WHEREAS, upon completion of the Project, the County shall transfer the aforementioned pipeline and all related improvements included in the Project to the Authority for $10.00 and other good and valuable consideration. Such consideration includes the obligation of the Authority to maintain the pipeline and all related improvements in perpetuity, now therefore, be it

RESOLVED, that the Dutchess County Legislature hereby approves the Amendment Agreement between the Dutchess County Water and Wastewater Authority and all the provisions therein, and authorizes the County Executive to execute the same on behalf of the County in substantially the form attached hereto, and it is further

RESOLVED, that the County Executive is hereby authorized to make and execute such additional agreements and documents necessary to complete the project not inconsistent with this resolution.

CA-133-15
CRC/G-0964/G-1598-A
08/11/2015

Fiscal Impact: See attached statement

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 16th day of September, 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this16th day of September, 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

# FISCAL IMPACT STATEMENT

☑ NO FISCAL IMPACT PROJECTED

## APPROPRIATION RESOLUTIONS

*(To be completed by requesting department)*

Total Current Year Cost $ _____

Total Current Year Revenue $ _____
and Source

Source of County Funds *(check one)*: ☐ Existing Appropriations, ☐ Contingency, ☐ Transfer of Existing Appropriations, ☐ Additional Appropriations, ☐ Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount $ _____
Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): _____
Over Five Years: _____

Additional Comments/Explanation:

This resolution is to authorize the County Executive to execute an agreement to allow the Dutchess County Water and Wastewater Authority to serve as Program Administrator for the construction of a water pipeline from the Central Dutchess Water Transmission Line to the Dutchess County Airport. The costs associated with this project were previously approved with the passage of Resolution 2015007.

Prepared by: Rachel Kashimer, Budget Office Prepared On: 8/18/2015

# AMENDMENT AGREEMENT

THIS AGREEMENT made this day of , 2015, by and between the COUNTY OF DUTCHESS, a municipal corporation with its principal office at 22 Market Street, Poughkeepsie, New York 12601 (the "COUNTY") and the DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY, a New York public benefit corporation with offices at 27 High Street, Poughkeepsie, New York 12601 (the "AUTHORITY").

***WITNESSETH:***

WHEREAS, New York Public Authorities Law Title 6-C, Section 1142 established the "Dutchess County Water District," which provides that such district shall have such powers as are provided in and shall be governed in accordance with the provisions of New York County Law Article 5-A, including, without limitation, the power to enter into contracts, and

WHEREAS, New York County Law Article 5-A, Section 250(1) provides that the Dutchess County Legislature may extend county water for the purpose of developing a supply of water for wholesale or retail distribution, and

WHEREAS, the Authority has been established pursuant to the provisions of Title 6-C of the Public Authorities Law (the "Act"), and

WHEREAS, pursuant to the Act, the Authority has the power to accept from the County monies to assist the Authority in fulfilling its powers and purposes under the Act, and

WHEREAS, under the Act, the Authority has the power to enter into contracts with contractors so that the purposes of the Authority can be effectuated, and

WHEREAS, the County and the Authority made and entered into an agreement, County Contract No. 02-0552-WA, dated June 27, 2002, whereby the County agreed to purchase a portion of the excess capacity in the water transmission main and to pay the Authority the sum of $3,000,000.00 in consideration therefore, and, in addition, agreed to convey to the Authority a 30' construction easement and a 15' permanent easement over the length of the railroad corridor needed for the water main, subject to certain conditions contained therein, and

WHEREAS, County Contract No. 02-0552-WA dated June 27, 2002 was amended by County Contract No. 04-0730-WA dated November 19, 2004 (collectively, the "Underlying Agreement"), whereby the County and the Authority agreed that the Authority would construct and thereafter maintain the Central Dutchess Water Transmission Main and that the County would acquire a reservation of capacity in the Central Dutchess Water Transmission Main, consisting of a reservation of one-half of the total capacity of the Central Dutchess Water Transmission Main, such acquisition assuring the availability to the County for future anticipated use of the Central Dutchess Water Transmission Main by municipalities and persons along or connecting to the Central Dutchess Water Transmission Main of a transmission main for the

delivery of potable water, as such municipalities and persons may, from time to time, require, and

WHEREAS, the County requires a source of potable water at the Dutchess County Airport located in the northern section of the Town of Wappinger, NY, and the County has decided to elect to utilize a portion of its capacity in the Central Dutchess Water Transmission Line and has selected as a source of the water a connection to the Central Dutchess Water Transmission Line, and

WHEREAS, the County desires to retain the Authority as its agent to act as Program Administrator for the construction project to construct a 12 inch diameter, class 52 cement lined, ductile iron pipeline starting at the Dutchess County Central Dutchess Water Transmission Line and generally following a westerly route across a private parcel with wetland, then along Airport Drive to NYS Route 376, where it will go northerly along NYS Route 376, crossing NYS Route 376 and terminating at the Airport at Griffith Way with a metering pit required at the connection to the Central Dutchess Water Transmission Line and at the terminus at the Airport (the "Project"), and

WHEREAS, the Authority is qualified and is willing and able to perform such services in a timely manner, and

WHEREAS, the funds necessary to pay for such services are appropriated in the 2015 Adopted County Budget, now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. SCOPE OF SERVICES. The Authority agrees to perform in a manner which is acceptable to the County, consistent with the highest standards of care, and in strict compliance with all applicable federal, state and local laws, regulations and procedures, the services set forth in Exhibit "A" annexed hereto and made a part of this Agreement ("Program Management Services"). If any term, provision, clause or covenant of Exhibit "A" contradicts or creates an ambiguity with any term, provision, clause or covenant of the body of this Agreement the body of this Agreement shall govern.

2. TERM OF AGREEMENT. This Agreement shall be effective September 1, 2015 and shall terminate on April 30, 2018, unless otherwise terminated as set forth herein.

3. PAYMENT. The County has by resolution agreed to bond for the administrative and construction costs of the Project for $2.9 million. Further, the County of Dutchess has solicited grants in the amount of $600,000.00 of a possible $1 million Empire State Development grant and $200,000.00 from Central Hudson Gas and Electric Corporation.

As full and complete consideration for the Program Management services so rendered, the County shall pay a total sum not to exceed ONE HUNDRED TWENTY FIVE THOUSAND and 00/100 ($125,000.00) DOLLARS.

As full and complete consideration for the services so rendered, the County shall pay a total sum not to exceed THREE MILLION SEVEN HUNDRED THOUSAND and 00/100

($3,700,000.00) DOLLARS for Program Management Services plus the approved actual costs of the design and construction of the Project. (collectively "Construction Costs"). ALL TRADE CONTRACTORS AND PROFESSIONALS SHALL BE CHOSEN IN CONSULTATION WITH THE COUNTY.

New York Public Authorities Law Section 1125(2) regarding the Dutchess County Water and Wastewater Authority provides that "The county...may give, grant, sell, convey...any properties which are useful to the authority to carry out its powers..."

Upon completion of the Project, the County shall transfer the aforementioned pipeline and all related improvements included in the Project to the Authority for $10.00 and other good and valuable consideration. Such consideration includes the obligation of the Authority to maintain the pipeline and all related improvements in perpetuity.

Payment of the above consideration shall be made to the Authority upon submission of statements in a form satisfactory to the County. No payment shall be made prior to audit and approval by the County.

4. DEFENSE AND INDEMNIFICATION

PROFESSIONAL SERVICES: For all matters arising out of the Project, the Authority agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, and employees against damages, liabilities and costs, including reasonable attorney's fees, to the extent caused by the negligent performance of the Authority, or third parties under the direction or control of the Authority, in the performance of professional services related to the Project.

GENERAL LIABILITY: For all matters other than those arising out of the Authority's professional services related to the Project(such other matters commonly referred to as "General Liability Claims"), the Authority agrees to the fullest extent permitted by law to defend, indemnify and hold the County and its employees harmless from any and all such losses, claims, liens, demands and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the County on behalf of any party, in connection with or arising directly or indirectly from this Agreement. The Authority shall investigate, handle, respond to and defend any such claims, demands or suits at his sole expense, and shall bear all other related costs and expenses even if such claims, demands or suits are groundless, false or fraudulent. This indemnification section shall survive the expiration or termination of this Agreement.

In any matter in which indemnification hereunder for either professional or non-professional services would violate Section 5-322.1 of the New York General Obligations Law or any other applicable legal prohibition, the foregoing provisions shall not be construed to indemnify the County. New York General Obligations Law Section 5-322.1 provides:

1. A covenant, promise, agreement or understanding in, or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connected therewith, purporting

to indemnify or hold harmless the promisee against liability for damage arising out of bodily injury to persons or damage to property contributed to, caused by or resulting from the negligence of the promisee, his agents or employees, or indemnitee, whether such negligence be in whole or in part, is against public policy and is void and unenforceable; provided that this section shall not affect the validity of any insurance contract, workers' compensation agreement or other agreement issued by an admitted insurer. This subdivision shall not preclude a promisee requiring indemnification for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of a party other than the promisee, whether or not the promisor is partially negligent.

2. A covenant, promise, agreement or understanding in, or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connected therewith, purporting to condition a subcontractor's or materialman's right to file a claim and/or commence an action on a payment bond on exhaustion of another legal remedy is against public policy and is void and unenforceable; provided that this subdivision shall not affect the validity of any insurance contract, workers' compensation agreement or other agreement issued by an admitted insurer.

3. The provisions of this section shall only apply to covenants, promises, agreements or understandings in, or in connection with or collateral to a contract or agreement, as enumerated in subdivision one hereof, entered into on or after the thirtieth day next succeeding the date on which it shall have become a law.

The term "employee" shall include all officers, advisory board members and/or volunteers serving the County.

5. INSURANCE REQUIREMENTS. At all times during the term of this Agreement, the Authority and its contractors providing services described in Exhibit A and their subcontractors, if any, (collectively, "Contracting Parties") shall maintain at its or their own cost the following insurance and shall provide proof thereof to the County, in the form of a Certificate of Insurance, prior to commencing work under this Agreement:

**Worker's Compensation** Employer's Liability (statutory limits). In compliance with the Workers' Compensation Law of the State of New York, the Authority and the Authority and each Contracting Party shall provide:

a. a certificate of insurance on an Acord form indicating proof of coverage for Worker's Compensation, Employer's Liability, **OR**

b. a New York State Workers Compensation Notice of Compliance (Form C-105, Form U-26.3, Form SI-12 or Form SI-105.2P).

c. In the event that a Contracting Party is exempt from providing coverage, he must provide a properly executed copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation Board, Form CE-200.

**Commercial General Liability** Insurance coverage including blanket contractual coverage for the operation of the program under this Agreement with limits not less than $1,000,000 per occurrence and $2,000,000 in the aggregate. This insurance shall be written on an occurrence coverage form and include bodily injury and property damage liability. The County must be listed as additional insured. The additional insured endorsement for the Commercial General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations.

**Automobile Liability** Insurance coverage for all owned, scheduled, hired, and non-owned vehicles with a combined single limit of liability of not less than $1,000,000. This insurance shall include coverage for bodily injury and property damage. The County must be listed as additional insured.

**Professional Liability, if applicable,** with limits not less than $1,000,000 per occurrence; $3,000,000 in the aggregate. In the event of expiration or termination of this Agreement, each Contracting Party providing professional services shall either maintain the abovementioned insurance coverage for a period of not less than three (3) years, or shall provide an equivalent extended reporting endorsement (commonly known as a 'tail policy').

**Excess/Umbrella Liability,** if required, with limits not less than $5,000,000 per occurrence with a $5,000,000 aggregate. The County must be included as additional insured.

The Acord form certificate of insurance must contain the following provisions:

**(A)** The County of Dutchess must be listed as certificate holder and additional insured on the commercial general, umbrella/excess, and automobile liability policies. In addition, the commercial general liability policy must include the additional insured endorsement forms cg 2037 July 2004 edition and the cg 2010 April 2013 edition or their equivalent.

**(B)** The commercial general and automobile policies are primary and noncontributory.

**(C)** The commercial general liability, auto liability and workers compensation policies must contain a waiver of subrogation in favor of the County of Dutchess.

**(D)** The umbrella/excess policy is primary and noncontributory and must contain a waiver of subrogation in favor of the County of Dutchess.

**(E)** If the workers compensation Notice of Compliance is used instead of the Acord certificate of insurance, the Notice of Compliance must indicate that a waiver of subrogation in favor of the County of Dutchess is provided.

Notwithstanding (D) above, the Authority shall exercise commercial reasonable efforts to procure an umbrella/excess policy which provides that it is primary and noncontributory. If after

the exercise of such efforts, the Authority is unable to include such language, this requirement shall be waived.

All policies of insurance referred to above shall be underwritten by companies authorized to do business in the State of New York with an A.M. Best financial strength rating of A- or better. In the alternative, the policies of insurance referred to above may be underwritten by Non-Admitted companies with an A.M. Best financial strength rating of A+ or higher. In addition, every policy required above shall be primary and noncontributory, except as otherwise provided herein. Any insurance carried by the County, its officers, or its employees shall be excess and noncontributory insurance to that provided by the Authority. The Authority and the Contracting Parties shall be solely responsible for any deductible losses under each of the policies required above.

Payment(s) to the Authority may be suspended in the event the Authority or any of the Contracting Parties fails to provide the required insurance documentation in a timely manner.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the County Attorney at the address listed below:

Dutchess County Attorney
County Office Building
22 Market Street
Poughkeepsie, New York 12601

On receipt of such notice, the County shall have the option to cancel this Agreement without further expense or liability to the County, or to require the Authority to replace the cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required by this paragraph is maintained continuously throughout the term of this Agreement in form and substance acceptable to the County. Failure of the Authority to take out or to maintain, or the taking out or the maintenance of any required insurance, shall not relieve the Authority from any liability under this Agreement nor shall the insurance requirements be construed to conflict with or to limit the obligations of the Authority concerning indemnification.

All losses of County property shall be adjusted with and made payable directly to the County.

All Certificates of Insurance shall be approved by the County's Director of Risk Management or designee prior to commencement of any work under this Agreement.

In the event that claims in excess of these amounts are filed in connection with this Agreement, the excess amount or any portion thereof may be withheld from payment due or to become due the Authority until the Authority furnishes such additional security as is determined necessary by the County.

6. BUDGET. The Authority agrees to provide Program Management Services under this Agreement in strict compliance with the budget which is annexed to and made a part of this Agreement as Exhibit "B" and which details all personnel or other costs of services to be rendered by the Authority under this Agreement. Any change or modification of the budget must be in writing and must be approved in advance by the County, which approval shall not be

unreasonably withheld, delayed or conditioned. Notwithstanding any other provision of this Agreement, the Authority agrees that, in the event that his expenditures are less than his total budget and at the termination of this Agreement County funds remain unexpended, he shall return said funds to the County. The County is solely responsible for the payment of approved actual Construction Costs consistent with the limit in Paragraph 3, "Payment," above.

7. AUDIT. The Authority shall maintain an accounting system that enables the County to readily identify assets, liabilities, revenues, expenses and disposition of County funds. Records should include, but not be limited to, those kept by the Authority, its employees, agents, assigns, and subcontractors.

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which the vouchers or invoices are based are subject to review by the responsible department and audit by the County Comptroller. The Authority shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the County. The audits may include examination and review of the source and application of all funds from the county, state, or federal governments. The Authority shall not be entitled to any interim or final payment under this Agreement, and any overpayment may be recouped, if any audit requirements and/or requests have not been satisfactorily met or if any expenditures or fees by the Authority are determined to be irregular by the auditor. This paragraph shall survive the termination of the Agreement.

8. MWBE AND EEO REQUIREMENTS. The Authority shall comply with all applicable MWBE and EEO requirements and include such requirements in all requests for proposals and construction bidding documents, professional service and construction contracts which the Authority lets. Further, the Authority shall prepare all documentation necessary to comply with MWBE and EEO reporting requirements.

9. All other terms and conditions of the Underlying Agreement, and any amendment thereto not expressly amended or altered by this Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the County and the Authority have executed this Agreement by their duly authorized officers as of the date first written above.

APPROVED AS TO FORM:

_____
County Attorney

ACCEPTED: COUNTY OF DUTCHESS

By_____
Marcus J. Molinaro
County Executive

DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY

By_____
Thomas LeGrand
Chairman, Board of Directors

# SCOPE OF SERVICES

## I. GENERAL

### A. Nature of the Project

Dutchess County (DC) requires a source of potable water at the Dutchess County Airport (Airport) located in the northern section of the Town of Wappinger, NY. The County has selected as a source of the water a connection to the Central Dutchess Water Transmission Line (CDWTL). The route of the 12 inch diameter, class 52 cement lined, ductile iron pipeline will start at the CDWTL and generally follow a westerly route across a private parcel with regulated wetlands and streams, then along Airport Drive to NYS Rte. 376, where it will go northerly along NYS Rte. 376, crossing NYS Rte. 376 and terminating at the Airport at Griffith Way. A metering pit will be required at the connection to the CDWTL and at the terminus at the Airport.

### B. Responsibilities

1. Dutchess County (DC) will:
   - Provide all funding for the project.
   - Make payments directly to consultants, subsurface investigation contractor and construction contractors
   - Administer and coordinate any requirements that are required by funding entities such as financial record keeping, independent audits and approval of consultant and contractor payments.
   - Provide any MWBE/EEO requirements of DC or funding entities (via copies of executed funding agreements) for incorporation into requests for proposals and construction bidding documents, professional service and construction contracts, and submission of various MWBE and EEO documentation.
   - Assign Minority Business Officer (MBO) and submit MWBE and EEO documentation as required by funding entities.
   - Process and submit all required applications for permits or approvals from regulatory agencies including the US Army Corps of Engineers, US Fish and Wildlife Service, NYS Department of Environmental Conservation, DC/NYS Department of Health, and the Town of Wappinger, NY based upon documents prepared by DCWWA's Consultants.
   - Provide Bill of Sale and related transfer documents to DCWWA at project completion.
   - Lead all SEQRA activities for the project

- Expediting of reviews and permits of permitting and approval entities.

2. Dutchess County Water and Wastewater Authority (DCWWA) will act as program manager and contracting agent for Dutchess County, NY (DC) for the design, permitting, construction and commissioning of the water line. Activities will be limited to:
    - Develop overall Project Schedule.
    - Amend Project Schedule as project develops.
    - Monitor Project Schedule and provide quarterly status updates.
    - Prepare Project Budget exclusive of DC costs.
    - Amend Project Budget as required as project develops within constraints of project budget set by the legislative resolution.
    - Monitor Project Budget versus expenditures providing quarterly reports during the project and at completion.
    - Issue design consultant, construction administration consultant, subsurface exploration contract and construction contracts for the project as agent of DC.
    - Prepare cash flow projections for the project and update quarterly.
    - Certify consultant and contractor payment requests to DC and provide to DC Department of Planning & Development for payment processing.
    - Oversee preparation of documents for all required permits and approvals.
    - Obtain approvals, execute and file easements based on plats and descriptions provided by Professional Design Consultant.
    - Represent DC before permitting and approval agencies.
    - Obtain from Contractors, review and provide to the County all documentation as may be required to demonstrate compliance with MWBE/EEO requirements of funding agencies.
    - Prepare Request for Proposal for Professional Design Services, obtain proposals, obtain DC concurrence with proposed award, award contract and administer contract in accordance with DCWWA standards.
    - Administer Professional Design Services Contract as agent for DC.
    - Prepare Request for Proposal for Professional Construction Management Services, obtain proposals, obtain DC concurrence with proposed award, award contract and administer contract in accordance with DCWWA standards as agent for DC.
    - Review and comment on Professional Design firm products.

- Coordinate with Design Professional for Subsurface Exploration bidding documents, contracts and bidding activities, obtain DC concurrence with proposed award, award contract and administer contract in accordance with DCWWA standards as agent for DC.
- Coordinate with Design Professional for General and Electrical Construction Contracts bidding documents, contracts and bidding activities, obtain DC concurrence with proposed award, award contracts and administer contracts in accordance with DCWWA standards as agent for DC.

C. Anticipated Contracts

1. Professional Design Services – This cost not to exceed agreement will cover surveying, wetland delineation, and easement plat and description development; drawing layout of the waterline route; development of front end documents, specifications and drawings for bidding of subsurface exploration; participation in the bidding and award of subsurface exploration activities; observation of subsurface exploration activities; performing Threatened and Endangered Species, Wetland, and Historic/Cultural Resource Assessments; support of DC SEQRA activities for the project; preparation of drawings and specifications; probable construction cost estimating; preparation of documents and participating in regulatory agency reviews; preparation of permit and approval applications and participating in permitting application process; progress reporting; participating in project meetings; support of bidding efforts; and services during construction which includes submittal review, responses to requests for information, attendance at the preconstruction meeting and attendance when requested at construction meetings, preparation of all meeting minutes throughout the design, bidding and award of the project. The agreement will allow for reimbursement of reproduction costs; obtaining of documents directly related to the project; messenger and express mail deliveries and travel and tolls. Overnight stay expenses will require preapproval.
2. Professional Construction Management Services – This cost not to exceed agreement will cover preconstruction services; review of bid packages; participation in pre-bid meeting; review of bids; administrative review of contractor submittals; coordination of designer review of contractor submittals; conducting and documenting pre-construction meeting; conducting and documenting weekly coordination meetings; conducting and documenting bi-weekly construction meetings; and coordination of requests for

information, contract change requests and change orders. Field activities include coordination with permitting and regulatory agencies; conducting and documenting field observation activities; monitoring and assuring all permit requirements are implemented; documentation of the location of work in the field; performing field measurements and tracking of quantities for payment purposes; and witness all testing activities. Office services shall include monthly project progress report; assembly and maintenance of files; and maintaining quantity and payment records and review and certification of contractor payment requests. During the post construction phase, activities will include the witnessing of line filling for pressure testing, pressure testing and disinfection of waterline; certification of construction completion to permitting or regulatory agencies; observation of the initial operation of electrical, instrumentation and telemetry equipment; coordination of operator training; and preparation of O&M documentation. Additionally, as constructed records of the contractors will be reviewed and a consolidated set of as constructed records will be prepared.

3. Subsurface Exploration Services – This unit price contract will be performed under NYS Prevailing Wage Rates. Estimated quantities for the various subsurface exploration items will be bid upon, with a final contract change order issued to set the final quantities and costs. This contract will include a final report and as explored locations of explored points. An allowance for additional work will be included in the contract to allow for minor changes in the scope of work.
4. General Construction- This unit price contract will be performed under NYS Prevailing Wage Rates. Estimated quantities for the various work components will be bid upon, with a final contract change order issued to set the final quantities and costs. An allowance for additional work and testing will be included in the contract to allow for minor changes in the scope of work.
5. Electrical Construction- This unit price contract will be performed under NYS Prevailing Wage Rates. Estimated quantities for the various work components will be bid upon, with a final contract change order issued to set the final quantities and costs. An allowance for additional work and testing will be included in the contract to allow for minor changes in the scope of work.

D. Anticipated Permits and Approvals

1. Dutchess County and/or New York State Department of Health approval of Public Water Supply Improvement.

2. New York State Department of Environmental Conservation permits;: freshwater wetlands, Article 15, water supply, storm water pollution prevention plan.
3. United States Fish and Wildlife endangered or threatened species (potential).
4. Army Corps of Engineers federal wetlands (potential).
5. New York State Department of Transportation highway work permit.
6. State Historic Preservation Office review.
7. Town of Wappinger highway work permit.
8. Town of Wappinger Planning Board wetland and storm water approvals.
9. New York State Smart Growth Impact Statement.

## II. DCWWA SERVICES DURING THE DESIGN PHASE

Specific activities that will be performed during the Design Phase of the project:

- Conduct and document the project initiation meeting with the Design Professional to address administrative requirements and scope of services of the Design Professional Service Agreement.
- Review Design Professional's initial schedule for conformance to project schedule.
- Monitor Design Professional's performance against schedule.
- Review and approve Design Professional's payment.
- Provide and review DCWWA standard water design requirements and details with Design Professional prior to beginning of design.
- Provide Design Professional general criteria for routing of the proposed waterline.
- Approve preliminary line routing for Subsurface Exploration work.
- Review and comment on drawings and specifications for Subsurface Exploration work.
- Coordinate with Design Professional for Subsurface Exploration bidding documents, contracts and bidding activities.
- Attend prebid meeting and bid opening for Subsurface Exploration contract.
- Review Design Professional's Subsurface Exploration bid analysis and recommendation prior to award.
- Coordinate with Design Professional the award and execution of Subsurface Exploration Contract.
- Accept final recommended waterline alignment after Design Professionals review of subsurface investigation results.
- Meet with the Design Professional monthly to review and document project status.

- Coordinate Design Professional access for any required field investigations on DC property.
- Review and comment on any draft reports.
- Review and comment on technical specifications.
- Review and comment on drawings.
- Conduct and document a project initiation meeting with the Professional Construction Manager to address administrative requirements and scope of services of the Professional Construction Management Service Agreement.
- Coordinate reviews between Design Professional and Professional Construction Manager.

## III. DCWWA SERVICES DURING THE PERMITTING AND APPROVAL PHASE

Specific activities that will be performed during the Permitting and Approval Phase of the project:

- Review and comment on documents for application to NYS Department of Environmental Conservation (NYS DEC) for SPDES permit during construction.
- Review and comment on documents for Application to NYS DEC for Wetland Disturbance Permit.
- Review and comment on submission of documents for NYS Department of Transportation (NYS DOT) preliminary review for DOT Highway Work Permit.
- Review and comment on documents for application to the Town of Wappinger for Road Work Permits.
- Review and comment on documents for application to the Town of Wappinger for environmental disturbance activities.
- Review and comment on documents for NYS/DC Department of Health (NYS/DC DOH) review and approval of the project.
- Attendance at review meeting between Design Professional and DOH.
- Coordination between DC and permitting and regulatory agencies.
- Coordination between Design Professional and DC in regards to SEQRA activities.
- Review and comment on documents for submittal to the NYS Historic Preservation Office (SHPO.)

## IV. DCWWA SERVICES DURING THE BIDDING PHASE

Specific activities that will be performed during the Bidding Phase of the project:

- Coordinate with Design Professional for General and Electrical Construction Contracts bidding documents, contracts and bidding activities
- Attend prebid meeting and bid opening for General and Electrical Construction Contracts.
- Coordinate bid reviews between Design Professional and Professional Construction Manager.
- Review Design Professional's General and Electrical Construction Contracts bid analysis and recommendation prior to award.
- Prepare contract recommendation memos and award resolutions for General and Electrical Construction Contracts.
- Administer contract preparation and execution, proof of insurance and other documentation required to initiate the construction contracts.
- Coordinate with Professional Construction Manager the award and execution of General and Electrical Construction Contracts.

## V. DCWWA SERVICES DURING THE CONSTRUCTION PHASE

Specific activities that will be performed during the Construction Phase of the project:

- Attend preconstruction meeting conducted by the Professional Construction Manager.
- Attend bi-weekly construction meetings meeting conducted by the Professional Construction Manager.
- Review and comment on monthly project status reports prepared by the Professional Construction Manager prior to issuance.
- Conduct four audits of the Professional Construction Manager for compliance to its Construction Management and Observation Program (CAOP). (Each audit will cover relevant portions of the CAOP at the time of the Audit.)
- Review and approve Professional Construction Manager billings.

## VI. DCWWA SERVICES DURING THE POSTCONSTRUCTION PHASE

Specific activities that will be performed during the Post Construction Phase of the project:

- Review Professional Construction Manager's Certification of Construction completion documents prior to submission to DC DOH.
- Review as constructed documents for adequacy.
- Prepare and obtain approval of Design Consultant Agreement Closeout Change order.
- Audit Professional Construction Manager quantity and payment records prior to preparation of General and Electrical Construction Contract final, closeout, change orders.
- Prepare General and Electrical Construction Contract final, closeout change orders.
- Obtain approval of General and Electrical Contract final closeout change orders.

## VII. DCWWA PROJECT CLOSEOUT

Specific activities that will be performed during the Post Construction Phase of the project:

- Prepare and submit a final accounting of project costs exclusive of DC administrative costs.
- Submit project records to DC.
- Assure all permitting and regulatory agency completion notifications are complete.

## VIII. DCWWA BUDGETING AND EXPENDITURE STATUS

A. Budget – An initial project budget exclusive of DC administrative costs will be created that incorporates the following elements:

- Program Management Service Agreement
- Professional Design Services Agreement
- Subsurface Exploration Contract
- Professional Construction Management Agreement
- General Construction Contract
- Electrical Construction Contract
- Legal Expenses
- Land and Easement Acquisition
- Project Contingency

As each contract is executed, the budget numbers will be actualized, with deficits subtracted or surpluses added to the project contingency.

B. Expenditure Status – Expenditure status will be maintained for each professional service agreement, the subsurface exploration contract, and the General and Electrical Construction Contracts showing each payment request, total to date, and remaining to be paid.

C. Quarterly Reporting –Quarterly Reports of the Budget and Expenditure Status will be issued approximately 30 days after the close of each calendar quarter.

## IX. PROJECT SCHEDULE

A. Initial Schedule Development – An initial project schedule will be developed based upon DCWWA's experience. The schedule will include:
   - Project initiation date will be the execution of the Program Management Service Agreement.
   - Activities to prepare requests for proposals for professional services.
   - Activities to issue, receive, evaluate and award contracts for professional services.
   - Design activities including survey and special investigations.
   - Activities to issue, receive, evaluate and award Subsurface Exploration contract.
   - Subsurface exploration activities.
   - Permitting and Approval activities based upon DCWWA's experience.
   - Construction Contract Bidding Activities.
   - Construction contractor activities.
   - Post Construction Activities.
   - Project Closeout Activities.

B. DC will be responsible to supply durations for its activities related to the project.

C. Schedule Revision – As each agreement is executed, the Schedule will be revised incorporate the agreement or contract schedule.

D. Quarterly Review and Analysis –A formal schedule review and written analysis will be prepared and issued within approximately 30 days of the close of each quarter.

RESOLUTION NO. 202137

RE: APPROVAL OF DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY PROJECT

Legislators KENDALL, REILLY, SEARS, HIGGINS, BABIARZ, HINKLEY, KELLY, LAFRANCE, NOEL, PIZZUTO, QUINN, and SWARTZ offer the following and move its adoption:

WHEREAS, pursuant to Article 5, Title 6-C, Section 1124, Subparagraph 6 of the Public Authorities Law, the Dutchess County Water and Wastewater Authority (the "Authority) has notified the Dutchess County Legislature that the Authority proposes to undertake a project known as the Dutchess Central Utility Corridor, and

WHEREAS, the purpose of the project is to develop a thirteen mile water transmission line and pumping facilities that will enable the transmission of water from the Town of Poughkeepsie transmission line at its connection point at Overocker Road to the Hudson Valley Research Park owned and operated by the International Business Machines Corporation (IBM) in the Town of East Fishkill and, in addition, provide more reliable water service through the Towns of LaGrange, Wappinger, and East Fishkill, some of the County's fastest growing areas, and

WHEREAS, pursuant to the State Environmental Quality Review Act, the Authority, as Lead Agency for review of this action, conducted a coordinated environmental review, issued a positive declaration, completed a Draft and Final Environmental Impact Statement and issued a Statement of Findings, all of which have been filed with the Clerk of the Legislature, available for review, and

WHEREAS, the State of New York has stated its intention to provide grants and loans totaling $11,250,000.00 and IBM has stated its intention to invest $9,000,000.00 in cash or financial guarantees to the project the estimated cost of which is $23,250,000.00, which is subject to submission of bids after final engineering, design and preparation of bid documents, and

WHEREAS, the Authority, the Town of Poughkeepsie, the City of Poughkeepsie, the Joint Poughkeepsie Water Board, and IBM have developed a Memorandum of Understanding (MOU) to implement the project, a copy of which is on file with the Clerk of the Legislature, and

WHEREAS, the County has requested part ownership of the line to the extent of the excess capacity and has agreed to pay $3,000,000.00 for that ownership, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby takes the following actions contingent upon the Town of Poughkeepsie, the City of Poughkeepsie, the Joint Poughkeepsie Water Board and IBM signing the aforementioned MOU:

1. Waives the notice provisions contained in Section 1124, Subdivision 6 of the Public Authorities Law and approves this project in all respects;

2. Shall consider a bond resolution simultaneously with the adoption of this resolution to pay to the Authority the sum of $3,000,000.00 for the purchase of ownership in the additional capacity being constructed in the Line;

3. Approves the Agreement between the Dutchess County Water and Wastewater Authority and all the provisions therein, including the grant of a permanent easement to the Authority, and authorizes the County Executive to execute the same on behalf of the County in substantially the form attached hereto, and it is further

RESOLVED that the County Executive is hereby authorized to make and execute such additional agreements and documents necessary to complete the project not inconsistent with this resolution.

CA-84-02
IGM/ca C-6249
5/14/2002

Fiscal Impact: See attached statement

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date May 15, 2002

*STATE OF NEW YORK*

*ss:*

*COUNTY OF DUTCHESS*

*This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 13th day of May, 2002, and that the same is a true and correct transcript of said original resolution and of the whole thereof.*

*IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 13th day of May, 2002.*

*PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE*

# AGREEMENT

THIS AGREEMENT made this day of May, 2002, by and between the **COUNTY OF DUTCHESS**, a municipal corporation with its offices situate at 22 Market Street, Poughkeepsie, New York, 12601(the "County), and the **DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY**, a public benefit corporation, with offices situate at 27 High Street, Poughkeepsie, New York, 12601, (the "Authority").

## WITNESSETH:

WHEREAS, the Authority is undertaking a project known as the Dutchess Central Utility Corridor (the Corridor), consisting of a water transmission line and necessary pumping capacity(the Line) to be constructed principally along and through the former Maybrook Rail Branch Line (the Maybrook Line), a property now owned by the County, and along public highways and through easements for the transmission of water from the Town of Poughkeepsie transmission line at its connection point at Overocker Road to the Hudson Valley Research Park owned and operated by the International Business Machines Corporation (IBM) in the town of East Fishkill, and

WHEREAS, the Authority, through various agreements with the City of Poughkeepsie, Town of Poughkeepsie, the Poughkeepsies' Joint Water Board and IBM has contracted for the purchase and sale of potable water, together with transmission through City and Town lines to the Town's transmission line at its connection point at Overocker Road, and

WHEREAS, the Authority, through various agreements with the State of New York and IBM has arranged financing for a major part of the cost of construction of the Line, and

WHEREAS, the Authority, at the request of the County, will construct the Line of sufficient size and capacity beyond that otherwise needed and contracted for so that the County will have available for prospective consumers, residential, commercial and industrial, in the Towns of LaGrange, Wappinger and East Fishkill, and such other municipalities as may request connection, and

WHEREAS, the Authority, in order to construct and maintain the Line, requires a permanent easement from the County over the Maybrook Line, Now, therefore, it is hereby agreed between the parties as follows:

1. The Authority, utilizing the funds provided by this agreement and other funds from the State of New York and through financing or moneys provided by IBM, will construct the Line, and in connection therewith, will enter into agreements with the City of Poughkeepsie, Town of Poughkeepsie, the

Poughkeepsie Joint Water Board, IBM and the State of New York to provide for the purchase and transmission of water as well as the financing for the cost of construction of the line.

2. The County, in consideration for the additional capacity being constructed in the Line and being transferred to it and its ownership thereof, shall pay to the Authority the sum of $3,000,000, in manner hereinafter provided.

3. The County, in further consideration for the additional capacity being constructed in the Line and its ownership thereof, shall convey to the Authority an easement for the construction maintenance and repair of the Line for a term of ninety-nine years. Said easement will consist of a thirty foot (30') construction easement and a fifteen foot(15') permanent easement throughout the length of the Line, together with access to the easement at all times for construction, maintenance and repairs. In addition, the County shall grant the Authority licenses for consultants and contractors to conduct borings and other tests along the Line. Work along County roads and rights-of-way other than the Line shall be by permit through the Dutchess County Department of Public Works. The Authority, during construction and throughout the term of the easement shall be responsible to restore the Line surface after any excavation work for construction maintenance and repairs.

4. In order to facilitate construction of the Line, the County agrees to advance to the Authority up to 50% of the cost for engineering, design work and related consulting fees preliminary to construction of the County's interest in the Line. Said payments shall not exceed $1,000,000.00, and shall be made on a dollar for dollar basis with IBM, which will advance the other 50%, which will be out of its commitment for the construction of the Line. Initially, the County will advance to the Authority the sum of $200,000.00, in a lump sum, for cash flow purposes until State moneys are received. This sum will be matched by IBM before any other moneys are advanced by the County. The balance of the moneys to be paid by the County to the Authority for the preliminary work and for construction will be made upon receipt of certifications by the Executive Director of the Authority of the need for funds based upon the progress of the work performed. It is understood that the State of New York will be advancing $5,000,000.00 of the total moneys committed to this project. The Authority, in making payment to consultants and contractors as the project progresses, shall require statement with appropriate supporting material in manner acceptable to the Dutchess County Comptroller, who will have access to all such records for post audit. The County will be entitled to a credit for all moneys so advanced against its total commitment to pay $3,000,000.00, or such additional sum as hereinafter provided.

5. The Authority, in connection with all construction contracts, shall comply with article 5-A of the General Municipal Law as it applies to the Authority,

and, in addition, shall require all contractors and subcontractors to furnish proof of insurance for general liability coverage with limits of not less than $3,000,000.00, each occurrence and naming the Authority and the County each as additional named insured. In addition, the Authority shall require all contractors and subcontractors to file proof of Workers Compensation coverage in the statutory sum and automobile liability insurance with limits of not less than $3,000,000.00, for each occurrence.

6. The Authority shall also require performance and material payment bonds to be filed by each contractor performing work on the project.

7. The Authority, at all times, shall hold the County and its employees harmless from any and all losses, claims, liens, demands and causes of action of any kind or character, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the County on behalf of any party, in connection with or arising directly or indirectly from this Agreement. The Authority shall investigate, handle, respond to, and defend any such claims, demands or suits at its sole expense, and shall bear all other related costs and expenses even if such claims, demands or suits are groundless, false or fraudulent. Pursuant to Section 5-322.1 of the New York General Obligations Law or any other applicable legal prohibition, the foregoing provisions shall not be construed to indemnify the County for damage arising out of bodily injury to persons or to property caused by or resulting from the sole negligence of Dutchess County employees. The term "employee" shall include all officers, their agents, servants, advisory board members and/or volunteers serving the County.

8. The present estimated cost of the Corridor is $23,250,000.00. In the event that the Corridor project costs exceeds said cost estimate, the County Commissioner of Public Works will immediately be notified, be provided an opportunity to review all bids and make suggestions and the County shall be given the opportunity to present the matter to the Dutchess County Legislature to consider authorizing an increase in the County's cost of its interest in the Line. It is understood that all bids shall be open for acceptance for forty-five(45) days only and any action by the County must be taken within such forty-five (45) day period.

9. Engineers from the County Department of Public Works, or persons designated by them shall be given full opportunity to review all bid documents prior to advertisement and shall be invited to all pre bid meetings and placed on notice of all bid openings and shall be invited to any meetings and to participate in any discussions prior to award of contracts. In addition, the County, through its Department of Public Works, shall be invited to participate in any meetings or discussions regarding cost overruns and possible solutions.

10. With the exception of the moneys advanced for engineering and consultant fees, the balance of the moneys due under the terms of this agreement shall be paid by the County to the Authority only after an agreement relating thereto has been entered into concerning the same with the Authority and IBM.

11. If for any reason the project shall be terminated prior to completion and thereafter abandoned, the County's obligations under this agreement shall terminate and any moneys paid by the County remaining in the possession of the Authority shall be refunded to the County after payment by the Authority of all outstanding obligations in connection with the project.

12. If for any reason the Line is not constructed within five years of the date of this agreement and no construction shall have taken place for two years last past, it shall be deemed abandoned and the easement over the Maybrook Line shall terminate and revert back to the County.

13. Conveyance of the easement from the County to the Authority shall be by Quitclaim Deed in form satisfactory for recording and shall be delivered at the Office of the County Attorney, 22 Market Street, Poughkeepsie, New York within ten days of notice and certification by the Authority that all approvals for financing and work are in place and the Authority is ready to proceed with contracts for construction.

14. The grant of the easement to the Authority shall be subject to the County's right to use the Maybrook Line for whatever purpose, including hiking and biking trail, public highway or for whatever purposes the County shall determine to be in the best interests of the citizens of Dutchess County, subject at all times to the Authority's right to construct and maintain the line. With the exception of emergencies the Authority shall give notice to the Commissioner of Public Works at least ten business days prior to commencement of any work on the easement whether for repairs or initial construction.

15. The County, in connection with road construction or installation of any kind of improvements in the Maybrook Line shall be entitled to provide an alternative means of transmission of the water to insure an uninterrupted flow of water at all times.

16. The Authority shall be responsible to maintain the line and to make all repairs necessary to maintain a flow of water. The County shall pay to the Authority the sum of $40,000.00 to establish a fund to pay for the cost of repairs to the Line after IBM money provided for that purpose is exhausted

17. The Authority, in the sale of water to users other than IBM, or to IBM in excess of the original capacity reserved to it, shall charge said users a share of the cost of the capacity purchased and pay same to the County over such

period of time and under such terms and conditions as the Authority and the County shall deem economically feasible until the County is fully reimbursed for the moneys advanced under the terms of this agreement.

IN WITNESS WHEREOF, the County and the Authority have executed this Agreement by their duly authorized officers as of the date first written above.

APPROVED AS TO FORM:

_____
County Attorney

ACCEPTED: COUNTY OF DUTCHESS

By:_____
William R. Steinhaus
County Executive

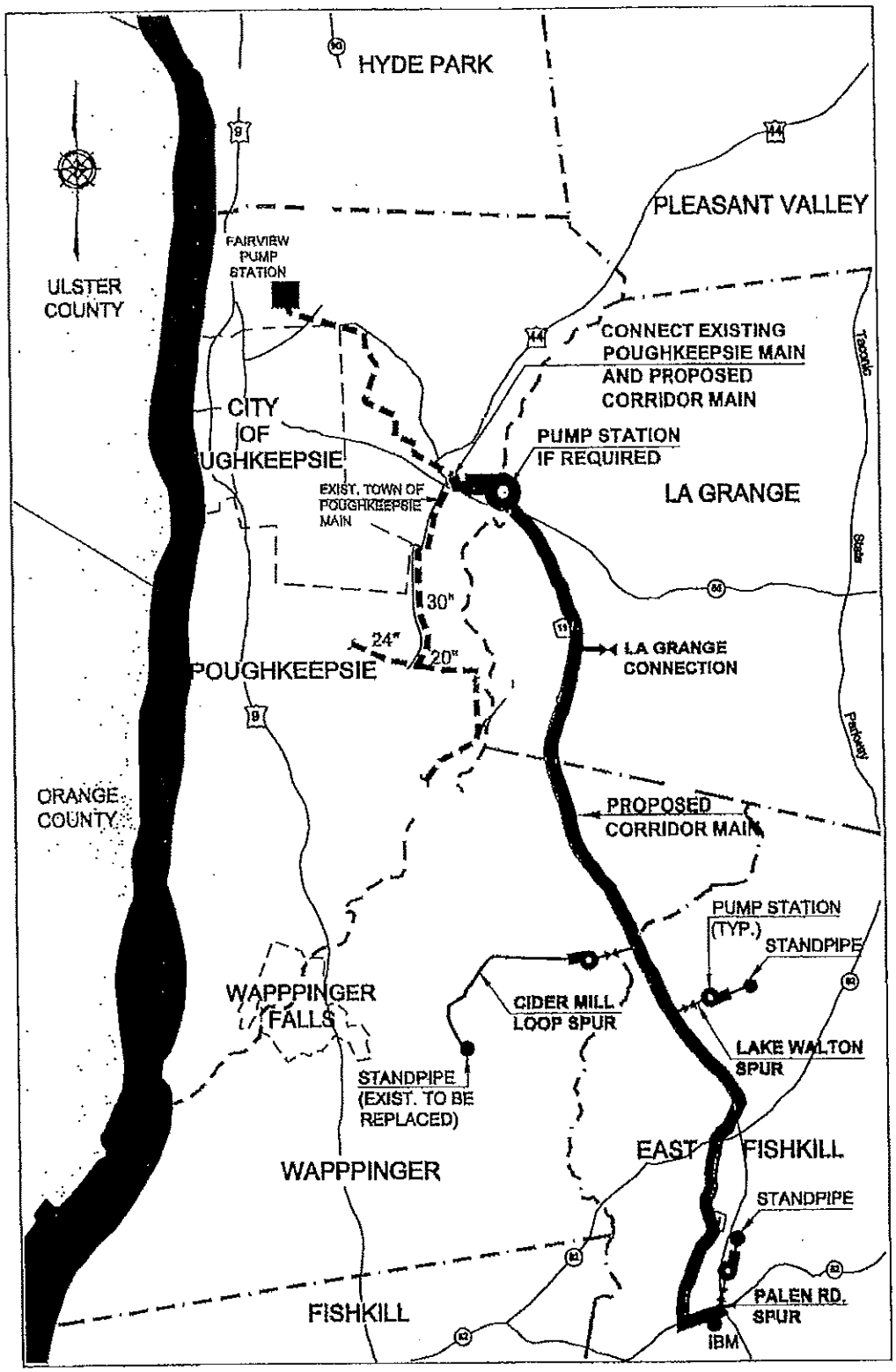
DUTCHESS COUNTY WATER AND
WASTEWATER AUTHORITY

By_____

DUTCHESS COUNTY
WATER AND WASTEWATER AUTHORITY

**DUTCHESS CENTRAL UTILITY CORRIDOR**
**WATER FEASIBILITY STUDY**

UTILITY CORRIDOR



**Dutchess Central Utility Corridor - Project Description 5/2/02**

The Dutchess County Water and Wastewater Authority (hereinafter Authority) is proposing development of an estimated 70,000 linear foot (24 to 30 inch diameter) water supply pipeline and the necessary pump station capacity. The water line will commence in the vicinity of Overocker Road in the Town of Poughkeepsie and follow the County-owned former railroad corridor (Maybrook Rail Branch Line) to the vicinity of Hopewell Junction where the line will move to public highways from the vicinity of NYS Rt. 376 to NYS Rt.52. It is anticipated that some segments may traverse private property in the route from Hopewell Junction to NYS Rt. 52. The proposed pipeline would carry excess water from the jointly owned City/Town of Poughkeepsie Water Plant on the Hudson River to potential residential, commercial, and industrial users in the Towns of LaGrange, Wappinger, and East Fishkill. The Dutchess Central Utility Corridor (hereinafter the Corridor) will provide additional capacity, redundancy, and reliability to the systems able to connect along the corridor enabling the sharing of water resources.

Up to 4.0 million gallons of water per day (mgd) can be supplied from the Poughkeepsie water plant at this time, with additional capacity available if permitted and constructed. The pipeline construction within the corridor will be carried out in a manner that allows the potential for siting future fiber-optic cables, sewer lines and other uses. Following construction of the water supply pipeline, a 10 foot wide paved trail (Rail-Trail) for hiking, biking, and other linear trail activities is planned.

The utility corridor will be used to connect the Poughkeepsie Water Treatment Facilities to the southwestern area of Dutchess County. This regional system has the potential to supply the potable water needs of communities along the route including the Towns of LaGrange, Wappinger and East Fishkill. The IBM Hudson Valley Research Park in East Fishkill will be a major beneficiary of the proposed water supply pipeline with future water needs of up to 5.0 mgd being supplied by the proposed pipeline. The City and Town of Poughkeepsie will also benefit from the sale of unused water at their existing plant and from the upgrade of their pump station.

Schedule - An environmental review under the State Environmental Quality Review Act has been completed for the pipeline project. Detailed engineering design will be initiated when funds are available (anticipated in the summer of 2002). Construction is anticipated to be completed in the 2004 construction season or 2005 depending upon when funding and approvals are obtained.

Project Costs are estimated at $23.25* million with funding from three sources: New York State, IBM, and Dutchess County. The majority of funding ($11.25 million) is anticipated from New York State programs. The next largest funding source ($9 million) will either be an Authority bond repaid through fees from the IBM East Fishkill facilities (IBM - Hudson Valley Office Research Park) or cash from IBM. In return IBM will receive reserved access to 5 mgd of capacity in the pipeline and 4 mgd of capacity

in the expanded Fairview pump station. Dutchess County will be requested to provide $3 million in funding. All funders should recognize that the projected $23.25 million is an estimate. The project will go through a detailed design process including borings for rock quantities and ultimately a bidding process to establish the true project cost.

Anticipated State Funding - The $11.25 million of anticipated State funding is divided into two segments - $5 million will be a grant to Authority and $6.25 million will be a loan to be repaid by future users through water sales by Authority. The $5 million in State grant funding is available as soon as contracts can be implemented. The State funding is structured so that the additional $6.25 million State portion may not be used until after the first $17 million in funding is utilized. Our understanding is that the funds from IBM and the County will have to be used first to obtain the remaining $6.25 million in State funds. The State will require the return of the State funds if the project were not completed.

Authority Bonding - Should the Authority elect to borrow, IBM will be under contract to make annual payments to amortize the debt regardless of their future water use.

County Capital Funding - The Authority will be requesting the County to acquire a $3 million interest in the project. The Authority will need access to a portion of the capital funds for engineering design, legal services, project management services and other "soft" costs early in the project.

Other County Funds - In the unlikely event that the Authority has an insufficient customer base, or there is a catastrophic failure of the pipeline that spills more water than the Authority has funds to cover, the County will also be requested to provide funding for operation and maintenance costs until the costs can be directed to a customer base. Although these events are deemed unlikely, they need to be disclosed and discussed. We recommend that the County appropriate and transfer $40,000 to fund an Authority special operating fund for this project similar to a self insurance fund. This special fund would be deposited in a segregated account to be used only for costs related to operations & maintenance including lost water for this facility until these expenses could be directed to a viable customer base.

*Cost estimates to date are preliminary since no detailed design has been done. Once the design engineer is engaged and has developed a more detailed design, we will have a more definitive cost estimate. If cost estimates show that more money is necessary, we will discuss the need to either increase contributions or consider alternative lower cost designs. The project can not proceed to construction without full funding being in place.

Ht scmaybr pro descrit 050202

**Environment and Community Development**

RESOLUTION NO. 204291

RE: AUTHORIZING AGREEMENT WITH DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY

Legislators KENDALL, REILLY, COOPER, LAFRANCE, HORTON, SWARTZ, HAMMOND, SEARS, McCABE, JETER-JACKSON, GOLDBERG, and HIGGINS offer the following and move its adoption:

WHEREAS, this Legislature, by Resolution No. 202137, approved a project of the Dutchess County Water and Wastewater Authority ("Authority") known as the Dutchess Central Utility Corridor (the "Corridor") for the construction and installation of a thirteen mile water transmission line and pumping facilities for the transmission of water from a connection point in the Town of Poughkeepsie to the Hudson Valley Research Park in the Town of East Fishkill, and

WHEREAS, as a result of the joint efforts of the County and the Authority, the New York State Environmental Facilities Corporation is contributing $11,250,000 to the project, and the IBM Corporation is contributing $11,375,000, and

WHEREAS, as part of its participation in the project this Legislature previously authorized an agreement between Dutchess County (County) and the Authority for the acquisition of excess capacity in the transmission line, and

WHEREAS, pursuant to Resolution No. 202137, the County made and entered into an agreement with the Authority, County Contract No. 02-0552-WA, dated June 27, 2002, by the terms of which the County was to acquire excess capacity in the water transmission line for $3,000,000 in consideration therefore, and, in addition, agreed to convey to the Authority a 30' construction easement and a 15' permanent easement over the length of the railroad corridor needed for the water main, subject to certain conditions contained therein, and

WHEREAS, costs of construction based upon completion of detailed plans and specifications and receipt of bids have now been established, and

WHEREAS $7,860,000 of additional County participation, and, in addition, execution of an agreement amending and replacing County Contract No. 02-0552-WA are required, now, therefore, be it

RESOLVED, that the agreement which amends and replaces County Contract No. 02-0552-WA is hereby approved and the County Executive is hereby authorized to execute said agreement in substantially the form as attached hereto.

CA-220-04 IGM/ca/C-6249 10/14/04Fiscal Impact: See statement attached to bond resolution

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE
Date 10/22, 2004

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 21st day of October, 2004, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 21st day of October, 2004.

Patricia J. Hohmann

PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

204291

2568541_~~13~~14

AGREEMENT

by and between

COUNTY OF DUTCHESS, NEW YORK,

and

DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY

Central Dutchess Water Transmission Main Project

TABLE OF CONTENTS

Page

ARTICLE 1. DEFINITIONS ..... 2

ARTICLE 2. REPRESENTATIONS AND WARRANTIES ..... 4

SECTION 2.1. Representations and Warranties of the County ..... 4
SECTION 2.2. Representations and Warranties of the Authority ..... 5

ARTICLE 3. CONSTRUCTION OF THE CENTRAL DUTCHESS COUNTY WATER TRANSMISSION MAIN ..... 6

SECTION 3.1. Authority's Obligation to Construct ..... 6
SECTION 3.2. Requisition of Installments ..... 6

ARTICLE 4. SALE AND PURCHASE OF COUNTY RESERVATION OF CAPACITY; ACQUISITION OF POTABLE WATER FOR AND OPERATION AND MAINTENANCE OF CENTRAL DUTCHESS WATER TRANSMISSION MAIN ..... 7

SECTION 4.1. Sale of County Reservation of Capacity ..... 7
SECTION 4.2. Acquisition of County Reservation of Capacity ..... 7
SECTION 4.3. Acquisition of Potable Water ..... 7
SECTION 4.4. Provision of Water for Firematic Purposes ..... 8
SECTION 4.5. Temporary Use of Unused Reservation of Capacity ..... 9
SECTION 4.6. Forfeiture ..... 9
SECTION 4.7. New Project ..... 9
SECTION 4.8. Additional County Reservation of Capacity ..... 10

ARTICLE 5. MAINTENANCE AND INSURANCE ..... 10

SECTION 5.1. Minimum Maintenance Standard ..... 10
SECTION 5.2. Insurance Required ..... 12
SECTION 5.3. Additional Provisions Respecting Insurance ..... 13
SECTION 5.4. Obligation to Rebuild ..... 13
SECTION 5.5. Replacement of Parts ..... 13
SECTION 5.6. Alterations Required by Law ..... 14
SECTION 5.7. Permitted Contests ..... 14
SECTION 5.8. Operation and Maintenance Fund ..... 14

ARTICLE 6. INFORMATION AND INSPECTION ..... 14

ARTICLE 7. PRIOR COUNTY/AUTHORITY AGREEMENT ..... 15

ARTICLE 8. MISCELLANEOUS ..... 16

SECTION 8.1. Binding Effect; Successors and Assigns ..... 16
SECTION 8.2. Construction and Applicable Law ..... 16
SECTION 8.3. Third Party Beneficiary Rights of International Business Machines Corporation ..... 16
SECTION 8.4. Severability ..... 16

This Agreement with respect to the construction of, reservation of capacity in and maintenance of the Central Dutchess Water Transmission Main (the "Agreement") made as of _____, 2004, by and between the County of Dutchess, New York, (the "County") and Dutchess County Water and Wastewater Authority, (the "Authority").

WITNESSETH:

WHEREAS, Title 6-C of Article 5 of the Public Authorities Law establishes the Authority (the "Authority Act"). The Authority Act authorizes the authority to construct, sell capacity in and operate and maintain a "water facility", as therein defined (a "Water Facility"). Section 1125 of the Authority Act authorizes the County and the Authority to contract, from time to time, in relation to the reservation of capacity for the County in any Water Facility to be constructed by the Authority to assure the availability to the County of the use of any Water Facility; and

WHEREAS, the Authority has proposed a project, which has been reviewed by the County Legislature of the County pursuant to Section 1124(6) of the Authority Act, which project consists of the construction of a Water Facility consisting of an approximately 13 mile water transmission main with an estimated capacity of ten (10) million gallons per day ("MGD") from a connection point at Overrocker Road in the Town of Poughkeepsie, principally along and through the former railroad corridor right of way commonly known as the Maybrook Rail Branch Line and public highways, to Gate 1 of the IBM Hudson Valley Research Park on the south side of Route 52, Town of East Fishkill (the "Main"), and a certain Authority pump station with an estimated capacity to deliver six (6) MGD (the "Authority Pump Station") to be constructed at a point along such water transmission line (collectively, the "Central Dutchess Water Transmission Main"); and

WHEREAS, the County and the Authority made and entered into an agreement, County Contract No. 02-0552-WA, dated June 27, 2002, whereby the County agreed to purchase a portion of the excess capacity in the water transmission main and to pay to the Authority the sum of $3,000,000 in consideration therefore, and, in addition, agreed to convey to the Authority a 30' construction easement and a 15' permanent easement over the length of the railroad corridor needed for the water main, subject to certain conditions contained therein; and

WHEREAS, costs of construction based upon completion of detailed plans and specifications and receipt of bids have now been established, necessitating the execution of an agreement amending and replacing County Contract No. 02-0552-WA; and

WHEREAS, the County and the Authority, by this Agreement, intend that the Authority will construct and thereafter maintain the Central Dutchess Water Transmission Main and that the County will acquire a reservation of capacity in the Central Dutchess Water Transmission Main, consisting of a reservation of one-half of the total capacity of the Central Dutchess Water Transmission Main, such acquisition assuring the availability to the County for future anticipated use of the Central Dutchess Water Transmission Main by municipalities and person along or connecting to the Central Dutchess Water Transmission Main of a transmission main for the delivery of potable water, as such municipalities and person may, from time to time, require; and

WHEREAS, the Authority has also, by agreements dated even date hereof (the "IBM Agreements"), agreed with IBM to IBM's acquisition of a reservation of one-half of the total capacity of the Central Dutchess Water Transmission Main, the payment therefore by IBM and, after completion of construction thereof, the supply and transmission of potable water by the Authority through the Central Dutchess Water Transmission Main to IBM; and

WHEREAS, in consideration of the premises and the respective provisions and agreements hereinafter contained and other good and valuable consideration, receipt of which is hereby acknowledged, the County agrees to acquire from the Authority and to make certain continuing payments in support of, and the Authority agrees to sell to the County and thereafter maintain, a reservation of capacity of and in the Central Dutchess Water Transmission Main on the following terms and conditions:

## ARTICLE 1.

## DEFINITIONS

Unless the context shall otherwise require, capitalized terms herein have the meaning given to them as follows:

"Act or Authority Act" means Title 6-C of Article 5 of the Public Authorities Law of the State.

"Adjustment Factor" means the aggregate percentage change in the Consumer Price Index - All Urban Consumers for NY-Northern NJ-LI for All Items, Not Seasonally Adjusted (Index) as published by the U.S. Department of Labor, Bureau of Labor Statistics between Index for July 2002 (192.0) and the Index for the July which precedes the January 1 effective date of the annual price adjustment. The Adjustment Factor shall be rounded to four (4) decimal places.

"Alterations" means reconstruction, construction of additions to or any other capital (as opposed to maintenance) improvements to the Central Dutchess Water Transmission Main, including (i) the purchase and installation of Parts, equipment and fixtures ("Capital Costs"), but excluding any Part, equipment or fixture costing less than $10,000, as such cost may from time to time be escalated by the Adjustment Factor, and (ii) any Alteration required pursuant to Section 5.1(a), 5.5 or 5.6 of this Agreement

"Alteration Cost" means the County's share of the annual cost incurred or payable by the Authority during any calendar year for Alterations, as such share is reasonably determined by the Authority, including the "capacity proportionate share" as defined in and in accordance with the IBM Agreements if the same are then in force and effect, as being attributable to the County Reservation of Capacity; provided that the Authority shall not be required to bill the County for such amount and the County shall not be required to pay such amount (i) equal to the amount of the County Reservation of Capacity being utilized by the Authority for water sales to customers until such customers shall be delinquent in payment of such amount for one hundred and twenty (120) days, and (ii) equal to the amount attributable to the County Reservation of Capacity transferred or assigned by the County to another who or which agrees to pay all such

"capacity proportionate share" costs, together with any Capital Costs of closure, temporary or permanent, or "mothballing", of the Central Dutchess Water Transmission Main, preservation and restoration of such asset thereafter.

"Authority" means (i) the Dutchess County Water and Wastewater Authority and its successors and assigns, and (ii) any political subdivision resulting from or surviving any consolidation or merger to which the Authority or its successors may be a party.

"Central Dutchess Water Transmission Main" means the Central Dutchess Water Transmission Main defined in the preambles hereof.

"Condemnation" means the lawful taking of the Central Dutchess Water Transmission Main or any part thereof by a governmental body.

"County" means the County of Dutchess, New York, or its successors or assigns.

"County Acquisition Cost" means the cost to the County of acquiring the County Reservation of Capacity, being the sum of $10,375,000 as the same may be adjusted pursuant to Sections 4.6 and 4.7 hereof. The County Acquisition Cost shall be inclusive of any moneys paid by the County to the Authority pursuant to the Prior County/Authority Agreement.

"County Reservation of Capacity" means the reservation of capacity in the Central Dutchess Water Transmission Main to be acquired by the County from the Authority and sold by the Authority to the County pursuant to this Agreement, constituting a reservation of one-half of the total capacity of the Central Dutchess Water Transmission Main, as the same may be adjusted pursuant to Sections 4.6 and 4.7 hereof.

"Governmental Requirements" means federal, State and local laws, rules, regulations and ordinances applicable at the time to the construction or operation and maintenance of the Central Dutchess Water Transmission Main.

"IBM" means the International Business Machines Corporation.

"IBM Acquisition Cost" means the cost to IBM of acquiring the IBM Reservation of Capacity in the Central Dutchess Water Transmission Main.

"IBM Agreements" means the IBM Agreements specified in the preambles hereof.

"IBM Reservation of Capacity" means the reservation of capacity in the Central Dutchess Water Transmission Main acquired by IBM from the Authority and sold by the Authority to IBM, constituting a reservation of one-half of the total capacity of the Central Dutchess Water Transmission Main, as the same may be adjusted pursuant to the IBM Agreements described in the preamble hereof, together with a reservation of capacity in the "Upgraded Fairview Pump Station" as such term is defined in and as provided in the IBM Agreements.

"Lien" means any sale, transfer, assignment, disposition, mortgage, pledge, security interest, lien, judgment lien, easement or other encumbrances on title.

"Parts" means tangible and intangible chattels incorporated in the Central Dutchess Water Transmission Main.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, a governmental body, political subdivision, municipality or authority or any other group or entity.

"Prior County/Authority Agreement" means that certain agreements made the 27th day of June, 2002 relating to the Central Dutchess Water Transmission Main, therein referred to as the Central Dutchess Utility Corridor, the Corridor or the Line, attached hereto as Exhibit A.

"State" means the State of New York.

"Term" shall mean the term of this Agreement, which shall be ninety-nine (99) years.

Words of masculine gender shall mean and include correlative words of feminine and neuter genders. Words importing the singular number shall mean and include the plural number, and vice versa.

## ARTICLE 2.

## REPRESENTATIONS AND WARRANTIES

SECTION 2.1. Representations and Warranties of the County. The County represents and warrants as follows:

(a) The County is a municipal corporation of the State, constituting a political subdivision thereof, duly created and validly existing under the Constitution and laws of the State.

(b) The County has the right and lawful authority and power to execute and deliver this Agreement, to perform the obligations and covenants contained herein and to consummate the transactions contemplated hereby.

(c) The County has duly authorized, by all necessary actions, the execution and delivery hereof and the performance of the obligations and covenants hereunder and the consummation of the transactions contemplated hereby.

(d) This Agreement constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

(e) This Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby (i) do not and will not in any material respect conflict with, or constitute on the part of the County a breach of or default under (a) any existing law, administrative regulation, judgment, order, decree or ruling by or to which their revenues, properties or operations are bound or subject or (b) any agreement or other instrument to which the County is a party or by which it or any of its revenues, properties or operations are bound or subject, and (ii) except as expressly set forth herein or authorized hereby, will not result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the County's revenues, properties or operations.

(f) All consents, approvals, authorizations or orders of, or filings, registrations or declaration with, any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the County of its obligations hereunder or the consummation of the transactions contemplated hereby, have been duly obtained and are in full force and effect.

(g) No action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of the County, threatened, wherein an adverse decision, ruling or finding might adversely affect the transactions contemplated hereby or the validity or enforceability hereof or of any agreement or instrument to which the County is a party or any revenues or properties of the County and which is used or is contemplated for use in the consummation of the transactions contemplated hereby.

(h) The County has received, has reviewed and has approved the plans and specifications prepared by the Authority for the construction of the Central Dutchess Water Transmission Main.

SECTION 2.2. Representations and Warranties of the Authority. (a) The Authority is a public corporation and a body corporate and politic, constituting a public benefit corporation, duly created and validly existing under the Constitution and laws of the State.

(b) The Authority has the right and lawful authority and power to execute and deliver this Agreement, to perform the obligations and covenants contained herein and to consummate the transactions contemplated hereby.

(c) The Authority has duly authorized, by all necessary actions, the execution and delivery hereof and the performance of its obligations and covenants hereunder and the consummation of the transactions contemplated hereby.

(d) This Agreement constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

(e) This Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby (i) do not and will not in any material respect conflict with, or constitute on the part of the Authority a breach of or default under (a) any existing law,

administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject or (b) any agreement or other instrument to which the Authority is a party or by which it or any of its revenues, properties or operations are bound or subject, and (ii) except as expressly set forth herein or authorized hereby, will not result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the Authority's revenues, properties or operations.

(f) All consents, approvals, authorizations or orders of, or filings, registrations or declarations with, any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the Authority of its obligations hereunder or the consummation of the transactions contemplated hereby, have been duly obtained and are in full force and effect.

(g) No action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of the Authority, threatened wherein an adverse decision, ruling or finding might adversely affect the transactions contemplated hereby or the validity or enforceability hereof or of any agreement or instrument to which the Authority is a party or any revenues or properties of the Authority and which is used or is contemplated for use in the consummation of the transactions contemplated hereby.

(h) The Authority has acted as "Lead Agency" pursuant to the regulations of the New York State Department of Environmental Conservation promulgated pursuant to the State Environmental Quality Review Act ("SEQRA"), has determined that the Central Dutchess Water Transmission Main is a "Type I" Action pursuant to SEQRA and has, pursuant to SEQRA, prepared all reports and findings and made all determinations required by SEQRA necessary to construct, maintain and operate the Central Dutchess Water Transmission Main.

(i) The Authority has or will obtain the resources and has obtained or will obtain contractual commitments for and has or will obtain the funding, including through the County Acquisition Cost and the IBM Acquisition Cost and the IBM Agreements, sufficient to pay all costs of constructing and maintaining the Central Dutchess Water Transmission Main.

(j) The Authority has on its staff or has employed such engineers and other consultants necessary to construct and maintain the Central Dutchess Water Transmission Main in the manner required by this Agreement.

## ARTICLE 3.

## CONSTRUCTION OF THE CENTRAL DUTCHESS COUNTY WATER TRANSMISSION MAIN

SECTION 3.1. Authority's Obligation to Construct. The Authority agrees to construct the Central Dutchess Water Transmission Main substantially in accordance with the plans and specifications therefor previously provided to the County with only such material changes thereto as shall be approved by the County.

SECTION 3.2. Requisition of Installments. The Authority shall requisition from the County, but not more than once every calendar quarter, such installment portion of the County Acquisition Price as the Authority reasonably determines necessary to timely pay costs of the construction of the County Reservation of Capacity during the following calendar quarter and as otherwise determined necessary by the Authority to comply with its agreement with IBM with respect to the construction and financing of the Central Dutchess Water Transmission Main. Each such requisition shall contain information as the County shall reasonably request.

## ARTICLE 4.

## SALE AND PURCHASE OF COUNTY RESERVATION OF CAPACITY; ACQUISITION OF POTABLE WATER FOR AND OPERATION AND MAINTENANCE OF CENTRAL DUTCHESS WATER TRANSMISSION MAIN

SECTION 4.1. Sale of County Reservation of Capacity. The Authority agrees, in accordance with the terms of this Agreement, to sell to the County, in consideration of the payment by the County to the Authority of the County Acquisition Price, the County Reservation of Capacity. The Authority acknowledges that the County is acquiring the County Reservation of Capacity to assure the availability to the County of future anticipated use of the Central Dutchess Water Transmission Main by Persons along or connecting to the Central Dutchess County Water Transmission Main for the delivery of potable water and agrees with the County to act as the County's agent in locating such Persons and selling potable water delivered through the County Reservation of Capacity to such Persons. The Authority further agrees with the County, and in affirmation and furtherance of Section 17 of the Prior Agreement, that for any such water sale it will charge such Persons a fee for the usage of the County Reservation of Capacity, such fee to be in such amount as shall be determined by the County, and to pay such fee without charge or deduction to the County when collected, provided, however, that the Authority, in recognition of prior payments made by the Town of East Fishkill for the Central Dutchess Water Transmission Main, will charge the Town of East Fishkill such fee only on water sold by the Authority through the County Reservation of Capacity in excess of 0.07 MGD and that the County recapture fee to IBM on water sold by the Authority through the County Reservation of Capacity shall be no higher than that charged to other customers.

SECTION 4.2. Acquisition of County Reservation of Capacity. The County agrees, in accordance with the terms of this Agreement, to acquire from the Authority the County Reservation of Capacity by paying to the Authority the County Acquisition Price, which County Acquisition Price shall be paid by the County to the Authority at such times and in such installment amounts as the Authority shall determine pursuant to Section 3.2 hereof. The County agree to pay any request for an installment payment not later than thirty days after receipt of each acceptable requisition delivered to the County pursuant to Section 3.2 hereof. Payment of installments of the County Acquisition Price to the Authority shall be unconditional and shall be made without set off. The parties agree that upon payment by the County of the final installment of the County Acquisition Price the County shall own, without further payment, action or documentation, the County Reservation of Capacity.

SECTION 4.3. Acquisition of Potable Water. The Authority agrees to use commercially reasonable efforts to obtain potable water, from such source or sources as it

determines, for delivery through the Central Dutchess Water Transmission Main for sale by the Authority to such Persons along or connecting to the Central Dutchess Water Transmission Main as the County may from time to time request in furtherance of Section 4.1 hereof. The County acknowledges that the sole source of potable water available to the Authority on the date of execution of this Agreement is the Poughkeepsies' Joint Water Board; that the Authority and such Board executed an agreement on October ____, 2004 for the sale by such Board of potable water to the Authority for transmission through the Central Dutchess Water Transmission Main for resale by the Authority of such water; that the continuation of such agreement may require the Authority to pay, from time to time and under certain circumstances, to such Board a sum not available to the Authority; that it is in the interest of the County, and in the public interest, for such Authority/Board agreement to continue; that it may be necessary to increase the capacity of the Authority Pump Station (as such is defined in the preambles hereof) to transport potable water through the Central Dutchess Water Transmission Main to effectuate a portion of such sale and that either the County or such Persons purchasing such potable water may be required to pay for any such increase in the capacity of the Authority Pump Station. Accordingly, in consideration of the Authority's agreement to use commercially reasonable efforts to obtain potable water, including through the continuation of such Authority/Board agreement, which agreement the Authority agrees to continue in accordance with the terms thereof, and pursuant to authority contained in Section 1125(5) of the Authority Act, the County agrees to pay to the Authority such sum as the Authority and the County may from time to time agree is required to be paid by the Authority to the Poughkeepsies' Joint Water Board to continue such Authority/Board agreement and which sum is not otherwise available to the Authority for any payment.

SECTION 4.4. Provision of Water for Firematic Purposes. Upon completion of the Central Dutchess Water Transmission Main and commencement of water sales therefrom, the Authority agrees to provide water to various municipalities and fire districts along or connecting to the Central Dutchess Water Transmission Main for firematic purposes, such provision being at the request of and at the cost of the County or such municipality or fire district as the County may from time to time contract with for such payment, and at no cost to the Authority. The County agrees to pay to the Authority not later than the date on which water sales through the Central Dutchess Water Transmission Main are first made by the Authority the sum of $5,000 to be retained by the Authority in a special fund or account (the "Firematic Water Fund") for expenditure by the Authority for costs of acquiring such water for firematic use during such first year. The Authority agrees to estimate the cost of acquiring water for firematic purposes for each successive year and to provide to the County not later than September 1 of each prior year an estimate thereof, the basis on which such estimate was made and a bill therefor (a "Firematic Water Bill"). In preparing a Firematic Water Bill the Authority shall credit the County with moneys on hand from the County's payment of prior Firematic Water Bills and any Supplemental Firematic Water Bill (as hereafter defined) which the Authority reasonably determines are in excess of that required for expenditures for acquiring water for firematic purposes during such current year. The County agrees that not later than December 1 after receiving an accurate Firematic Water Bill to pay to the Authority such Firematic Water Bill. The Authority agrees to, and as soon as practical during each year shall, notify the County if the sum on hand in the Firematic Water Fund is, or is anticipated in the reasonable judgment of the Authority will become, insufficient to pay costs of acquiring such water during such current year and to send a bill to the County for the amount of said insufficiency (a "Supplemental Firematic

Water Bill"). The County agrees upon receipt of an accurate Supplemental Firematic Water Bill to pay to the Authority the amount of such Bill not later than sixty (60) days after receipt. The County acknowledges that the sole source of water available to the Authority on the date of execution of this Agreement is the Poughkeepsies' Joint Water Board and that such Board has conditioned the continuing sale of water to the Authority for such firematic purposes on the Authority's agreement to make its best efforts to provide a water storage facility within five (5) years for appropriate storage to service such municipalities and fire districts firematic usage and that the County may be required to pay for construction of any such water storage facility if it wishes the Authority to continue such provision of water for firematic use.

SECTION 4.5. Temporary Use of Unused Reservation of Capacity. If the County is not utilizing all of the County Reservation of Capacity in the Main, and, or, in the Authority Pump Station, the County shall consider in good faith any IBM proposal to temporarily utilize the unused portion of the County Reservation of Capacity in the Main, and, or, in the Authority Pump Station. Any such agreement therefore would entail, among other things, the County's right to recapture the entire applicable County Reservation of Capacity in the Main and, or, in the Authority Pump Station, upon a period of time agreed to by County and IBM, and IBM's assumption of a corresponding portion of the County's obligation that are based upon the applicable County Reservation of Capacity.

SECTION 4.6. Forfeiture. Notwithstanding the provisions of Article 4, in the event that the County shall not timely pay to the Authority installments of the County Acquisition Cost, as provided in Sections 3.2 and 4.2 hereof (a "Default") the Authority shall deliver to the County Commissioner of Finance a notice (a "Default Notice") stating the details of such Default. The County shall have a reasonable time, but not more than sixty (60) days to cure or cause another public entity to cure such Default. In the event such Default is not cured or corrected within the time set forth herein, and in the event that the Default Notice from the Authority accurately identifies the County's failure to make an installment of the County Acquisition Cost and the County's failure to pay is, in fact, a non-compliance with the County's obligations pursuant to Sections 3.2 and 4.2, then, in addition to the Authority's right to seek collection of the amount in arrears and all unpaid installments of the County Acquisition Cost as the same become due, (i) the County shall incur and pay to the Authority a penalty of five per centum (5%) of the amount in arrears and such amount in arrears shall be thereafter payable with interest at the rate of one per centum (1%) per thirty (30) day period, or portion thereof, and (ii) the County shall forfeit a portion of the County Reservation of Capacity if the amount in arrears is in excess of thirty thousand dollars ($30,000) and any portion of such arrears remain unpaid for a period of at least one hundred eighty (180) days, such portion the County Reservation of Capacity subject to forfeiture being five hundred thousand (500,000) gallons and such forfeiture being repeated every one hundred and eighty (180) day period that such arrears in such minimum amount remain unpaid.

SECTION 4.7. New Project. (a) Notwithstanding any provision of this Agreement, in the event construction of the Central Dutchess Water Transmission Main is either proposed to be not completed or is not completed in the manner contemplated by this Agreement utilizing the original construction contracts let for such construction, and in the event the County is not in Default, and in the event the Authority thereafter seeks to use assets purchased for the Central Dutchess Water Transmission Main to complete a project, whether the project be the same as

originally proposed or a smaller or larger project (a "New Project") the Authority shall notify the County of such intent, provide the County with sufficient detail to evaluate the New Project, and provide the County with 90 days to elect to participate in the New Project before its commencement; provided, however, that the Authority shall only be required to provide the County with thirty (30) days notice if the Authority seeks to construct a new Project under the original construction contracts let by the Authority to construct the Central Dutchess Water Transmission Main. Regardless of whether the County participates in the New Project, the County shall retain and be entitled to a County Reservation of Capacity in the New Project, as calculated in accordance with this Section.

In the event the County does not participate in the New Project, and in the event the Authority seeks to utilize a portion of the County Reservation of Capacity in the New Project, then the Authority shall pay the County a buyout fee when the Authority first seeks to use such capacity. The parties shall use all commercially reasonable efforts to promptly negotiate a buyout fee that satisfies the legitimate needs of both parties, it being understood that the buyout fee shall be priced in increments of at least 50,000 gallons per day. Upon payment of the agreed buyout fee, the County shall transfer the applicable portion of the County Reservation of Capacity in the New Project to the Authority.

(b) County Reservation of Capacity in the New Project. The County Reservation of Capacity in the New Project shall, within 120 days after the State's final payment of the State Aid, if applicable, be calculated as follows:

CC/TNPC x PCNP

Where:

CC = The net amounts contributed by the County for the New Project and the Central Dutchess Water Transmission Main.

TNPC = The total Authority expense to construct the New Project, including the total expenses spent on the Central Dutchess Water Transmission Main minus the total amount of State Aid for the Central Dutchess Water Transmission Main and the New Project.

PCNP = The total pipeline capacity in the New Project.

SECTION 4.8. Additional County Reservation of Capacity. In the event of a reduction of IBM Reservation of Capacity pursuant to Section 2(f) of the IBM Construction and Contribution Agreement, being part of the IBM Agreements, the County Reservation of Capacity shall be increased by the amount of such reduction. Any such reduction of IBM Reservation of Capacity in the Upgraded Fairview Pump Station shall be transferred by the Authority to the County.

## ARTICLE 5.

## MAINTENANCE AND INSURANCE

SECTION 5.1. Minimum Maintenance Standard. (a) The Authority agrees that during the Term it will maintain the Central Dutchess Water Transmission Main and every part

and parcel thereof in accordance with good commercial practice and in any event will (i) keep the Central Dutchess Water Transmission Main in good and safe condition, repair, working order and condition, ordinary wear and tear excepted; (ii) promptly make all necessary repairs, replacements and renewals to the Central Dutchess Water Transmission Main (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) maintain the Central Dutchess Water Transmission Main in a neat and orderly condition, ordinary wear and tear excepted, and in a condition which permits compliance with, and the Authority will operate the Central Dutchess Water Transmission Main in compliance with, all applicable Governmental Requirements, including without limitation all federal, State and local laws relating to labor, wages, nondiscrimination, water quality, pollution discharge, environmental control, safety and other regulatory requirements; (iv) protect the Central Dutchess Water Transmission Main against deterioration, other than that attributable to ordinary wear and tear; (v) cause the Central Dutchess Water Transmission Main to continue to have the capacity and functional ability to perform, on a continuing basis, in normal commercial operation, at design capacity, the functions for which it was specifically designed, (vi) comply with such standards and periodic maintenance inspections as shall be required to enforce warranty and similar claims against contractors for the Central Dutchess Water Transmission Main and any standards imposed by any insurance policies in effect at any time with respect to the Central Dutchess Water Transmission Main or any part thereof; (vii) provide all necessary labor, materials and equipment for the proper maintenance of the Central Dutchess Water Transmission Main; (viii) maintain the safety of the Central Dutchess Water Transmission Main at a level consistent with applicable law; and (ix) maintain the Central Dutchess Water Transmission Main in working order, ordinary wear and tear excepted, and in as reasonably safe condition as its operations shall permit. Notwithstanding any of the foregoing (A) the Authority may provide that the operation of the Central Dutchess Water Transmission Main may be subject to periodic, scheduled or unscheduled, partial shutdowns of portions of the Central Dutchess Water Transmission Main for maintenance or repair, (B) compliance with applicable Governmental Requirements is subject to the provisions of Section 5.7 hereof and, (C) no repair, replacement or maintenance shall be required hereunder with respect to portions of the Central Dutchess Water Transmission Main which the Authority, with the consent of the County, determines are no longer necessary.

(b) The Authority agrees to prepare and send to the County not later than September 1 of each year an estimate of the following year's annual Alteration Cost (an "Alteration Cost Bill"). In preparing an Alteration Cost Bill the Authority shall credit the County with moneys on hand from the County's payment of prior Alteration Cost Bills and Supplemental Alteration Cost Bills (as hereinafter defined) which the Authority reasonably determines are in excess of that required for expenditure on Alteration Costs in that year. The County agrees that it shall not later than December 1 after receiving from the Authority an accurate Alteration Cost Bill containing such information as the County shall reasonably request, pay to the Authority such Alteration Cost Bill. The County may, however, elect to prepay to the Authority an amount estimated to be, or agreed to be, an agreed upon number of year's Alteration Costs, or any part hereof. If, during any year, the Authority reasonably anticipates that the moneys on hand from the County's payment of Alteration Cost Bills will be insufficient to pay Alteration Costs reasonably anticipated to be required to be made during such year it shall immediately notify the County thereof, provide the County with such information as the County shall reasonably request and send to the County a supplemental Alteration Cost Bill (a "Supplemental Alteration Cost Bill"). The County agrees that it shall not later than thirty (30) days after receiving from the

Authority an accurate Supplemental Alteration Cost Bill and after receiving such requested information pay to the Authority such Supplemental Alteration Cost Bill. Notwithstanding anything herein, the County acknowledges that the Authority intends to reserve moneys for costs of Alterations specified in Sections 5.1(a) and 5.5 hereof anticipated to be made during the first ten (10) years after the date on which water sales through the Central Dutchess Water Transmission Main are first made, and the County agrees to pay to the Authority for each such year the sum of twelve thousand five hundred dollars ($12,500) as part of each such year's annual Alteration Cost. The Authority agrees to include such amount in each applicable Alteration Cost Bill and to deposit each such amount received therefrom in a special fund to be expended only for such purpose. The Authority further agrees that the County may prepay, on a present value basis, any or all of such twelve thousand five hundred dollar ($12,500) payments. The County further acknowledges that Alteration Costs extend beyond such ten (10) year period and that the annual Alteration Cost after such addition periods may each exceed such twelve thousand five hundred dollars ($12,500) annual cost. The County agrees that it will meet with the Authority and with IBM to determine such annual Alteration Costs to be made after such ten (10) year period and will pay the amount of such agreed upon annual Alteration Cost. The County further agrees that if such parties cannot agree upon such new annual Alteration Cost it will continue to pay an annual Alteration Cost of twelve thousand five hundred dollars ($12,500) until such time as the parties agree upon another annual Alteration Cost. Notwithstanding any other provision of this Agreement, the County shall incur and pay to the Authority a penalty of twenty per centum (20%) of the amount of the component of the annual Alteration Cost which constitutes an "Annual Improvement Charge" defined in the IBM Agreements if not timely paid as provided herein, together with interest at the rate of one per centum (1%) per thirty (30) day period thereafter, or portion thereof, until paid in full.

SECTION 5.2. Insurance Required. Without limiting any of the other obligations of the Authority under this Agreement, at all time throughout the Term the Authority shall maintain or cause to be maintained at least the following minimum insurance coverage with respect to the Central Dutchess Water Transmission Main:

(a) property damage insurance with respect to any at or above ground physical structures of the Central Dutchess Water Transmission Main insuring against loss or damage from all risks customarily insured against by Person of established reputation under "all-risk" policies with respect to a water transmission main and pump station system similar to the Central Dutchess Water Transmission Main, including, without limitation, insurance against loss or damage from all risk of physical damage;

(b) comprehensive general public liability insurance applicable to the Central Dutchess Water Transmission Main including, without limitation, blanket contractual, personal injury, property damage (including broad form property damage and explosion, collapse, and underground property damage) and damage to property of others, including resultant loss of use therefrom, with limits of one million dollars ($1,000,000) per occurrence, two million dollars ($2,000,000) for primary coverage and five million dollars ($5,000,000) for excess coverage. All such policies listed in this subparagraph (d) shall list the County as an additional insured;

(c) Workers' Compensation insurance in the statutory amount, covering all employees of the Authority; and

(d) such other insurance with respect to the Central Dutchess Water Transmission Main in such amounts and against such hazards as is customarily carried by Persons of established reputation operating a water supply, purification and distribution system similar to the Central Dutchess Water Transmission Main.

SECTION 5.3. Additional Provisions Respecting Insurance. All insurance required by Section 5.2 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Authority and authorized to write such insurance in the State. Such insurance may provide deductible amounts in such maximum amounts as may be recommended by an independent insurance consultant retained by the Authority. All insurance policies carried in accordance with Section 5.2 hereof and all policies taken out in substitution or replacement for any such policies shall provide that the insurance shall not be invalidated by any action or inaction of any Person and shall insure the Authority regardless of any breach or violation by any Person of any warranties, declarations or conditions contained in such policies, shall provide that as against the Authority the insurers shall waive any rights of subrogation, any right of set-off and counterclaim and any other right of deduction whether by attachment or otherwise (except for claims arising out of the willful misconduct or gross negligence of such insured), and shall provide that if such insurance is canceled for any reason whatever, or is changed in any material respect or if such insurance is allowed to lapse for nonpayment of premium, such cancellation, change or lapse shall not be effective for 30 days after receipt by the Authority of written notice from such insurers of such cancellation, change or lapse; provided, however, that if it is not commercially practicable at the time of contracting for such insurance to obtain the requirements specified above, such policies shall provide for such requirements for as long a period as shall then be commercially practicable to obtain, if any. Each insurance policy required under Section 5.2 hereof shall be primary without right of contribution from any other insurance which is carried by or on behalf of the Authority.

SECTION 5.4. Obligation to Rebuild. If the Central Dutchess Water Transmission Main shall be damaged or destroyed at any time or title to, or the use of, any part of the Central Dutchess Water Transmission Main shall be taken by Condemnation the Authority shall, from the proceeds of any Condemnation award or insurance received by the Authority or from moneys received by the Authority from any Person, promptly replace, repair, rebuild or restore the Central Dutchess Water Transmission Main to substantially the same condition and value as an operating entity as existed prior to such damage or destruction or Condemnation, with such changes, alterations and modifications as may be desired by the Authority and approved by the County.

SECTION 5.5. Replacement of Parts. The Authority will promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. The Authority may remove in the ordinary course of maintenance, service, repair, overhaul or testing, any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided that the Authority will replace such Parts as promptly as possible. All replacement Parts shall be free and clear of all Liens and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof.

SECTION 5.6. Alterations Required by Law. The Authority shall during the Term make such Alterations to the Central Dutchess Water Transmission Main as may be required from time to time to meet Governmental Requirements as soon as practicable after any such Governmental Requirements shall arise and, in any event, within the period specified by applicable law or by such Governmental Requirement, except to the extent Section 5.7 hereof shall apply.

SECTION 5.7. Permitted Contests. If, to the extent and for so long as (a) any contest with respect to any applicable Governmental Requirement relating to any Alteration to the Central Dutchess Water Transmission Main shall be prosecuted in good faith by the Authority or (b) compliance with such Governmental Requirement shall have been excused or exempt by a valid nonconforming use permit, waiver, extension or forbearance believed in good faith by the Authority to exempt it from such requirement, the Authority shall not be required to comply with such requirement so long as such contest is being prosecuted or so long as such waiver, extension or forbearance from compliance with such requirement shall be in effect but only if such contest shall not, in the reasonable opinion of the Authority, involve any reasonable likelihood of any foreclosure, sale, forfeiture or loss of, any part of the Central Dutchess Water Transmission Main or of impairment of the operation of the Central Dutchess Water Transmission Main.

SECTION 5.8. Operation and Maintenance Fund. In accordance with the provisions of Section 5.1 hereof, the Authority shall be responsible for the operation and maintenance of the Central Dutchess Water Transmission Main. The County hereby agrees to assist the Authority in such operation and maintenance by paying to the Authority the sum of forty thousand dollars ($40,000) (the "O&M Fund Requirement"), such sum to be paid not later than ninety (90) days after the date of execution of this Agreement. The Authority agrees to create a special fund for such operation and maintenance (the O&M Fund"), to deposit the County moneys herein specified therein, to invest the moneys therein, to expend such moneys for only such purpose and to annually provide to the County an accounting of the moneys expended from such fund. All investment income realized, from time to time, from the investment of moneys in the O&M Fund shall be deposited in the O&M Fund. Whenever the amount on deposit in the O&M Fund shall be less than the O&M Fund Requirement the Authority shall either (i) within sixty (60) days transfer moneys legally available therefore and derived from a source other than IBM to the O&M Fund in an amount equal to such shortfall, (ii) request the County Legislature to appropriate the amount of such shortfall and pay the same to the Authority for deposit in the O&M Fund, or (iii) undertake a combination of (i) and (ii) so that the amount on deposit in the O&M Fund equals the O&M Fund Requirement.

## ARTICLE 6.

## INFORMATION AND INSPECTION

The Authority shall furnish to the County such information concerning the condition, use and operation of the Central Dutchess Water Transmission Main as the County may from time to time reasonably request. Additionally, the Authority shall permit any authorized representative of the County, at such Person's risk and expense, to visit and inspect the Central Dutchess Water Transmission Main, its condition, use and operation and the records maintained in connection

therewith, provided that such visits and inspections do not interfere with the operations of the Central Dutchess Water Transmission Main or the Authority and are scheduled at times mutually convenient to such Person and the Authority, the Authority hereby agreeing to make all reasonable efforts to arrange for such visits and inspections at times convenient for such Person. The County shall not have any duty to make any such inspection and the County shall not incur any liability or obligation by reason of not making any such inspection.

ARTICLE 7.

PRIOR COUNTY/AUTHORITY AGREEMENT

Sections 1, 2, 10 and 16 of the Prior County/Authority Agreement are hereby superceded and repealed. Sections 4 and 8 of the Prior County/Authority Agreement are hereby amended as follows:

4. The County agrees to advance to the Authority up to 50% of the cost for engineering, design work, and related consulting fees preliminary to construction of the County's interest in the Line. Said payments shall not exceed $1,000,000.00, and shall be made on a dollar for dollar basis with IBM, which will advance the other 50%, which will be out of its commitment for the construction of the Line. Initially, the County will advance to the Authority the sum of $200,000.00, in a lump sum, for cash flow purposes until State moneys are received. This sum will be matched by IBM before any other moneys are advanced by the County. The balance of the moneys to be paid by the County to the Authority for the certifications by the Executive Director of the Authority of the need for funds based upon the progress of the work performed. The Authority, in making payment to consultants as the project progresses, shall require statement with appropriate supporting material in manner acceptable to the Dutchess County Comptroller, who will have access to all such records for post audit.

8. The present estimated construction cost of the Corridor is $33,250,000. In the event that the Corridor project costs exceeds said cost estimate, the County Commissioner of Public Works will immediately be notified, be provided an opportunity to review all bids and make suggestions and the County shall be given the opportunity to present the matter to the Dutchess County Legislature to consider authorizing an increase in the County's cost of its interest in the Line. It is understood that all bids shall be open for acceptance for one hundred five (105) days only and any action by the County must be taken within such one hundred five (105) day period.

Sections 3, 5, 6, 7, 9, 11, 12, 13, 14, 15 and 17 of the Prior County/Authority Agreement shall survive and shall remain in full force and effect.

ARTICLE 8.

MISCELLANEOUS

SECTION 8.1. Binding Effect; Successors and Assigns. The terms and provisions of this Agreement, and the respective rights and obligations hereunder of the County and the Authority, shall be binding upon their respective successors and assigns and inure to the benefit of their respective successors and assigns.

SECTION 8.2. Construction and Applicable Law. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable the supplement, amendment or modification thereafter sought. The section headings in this Agreement and the table of contents are for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision hereof. This Agreement has been negotiated and delivered in the State and shall in all respects be governed by and construed in accordance with the laws of the State, including matters of construction, validity and performance.

SECTION 8.3. Third Party Beneficiary Rights of International Business Machines Corporation. The County and the Authority hereby acknowledge and agree that the obligations of the County contained in Sections 2.1, 3.2, 4.1 4.2, 4.5, 4,6, 4.7, 5.1(b) and 5.8 hereof (including the definitional and interpretative provisions herein necessary to interpret such obligations) are also for the benefit of IBM and that IBM is a third party beneficiary thereof entitled to enforce such obligations to the same extent as if it were a party to this Agreement. The County and the Authority each waive any defense of lack of privity or lack of consideration as it affects IBM's rights to enforce such obligations and each agree not to terminate, amend or waive any such obligations or this Section 7.3 without IBM's consent.

SECTION 8.4. Severability. In case any one of more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

IN WITNESS WHEREOF, the Authority and the County have each caused this Agreement to be duly executed as of the day and year first above written.

DUTCHESS COUNTY WATER AND
WASTEWATER AUTHORITY

By: _____
Thomas LeGrand
Chairman

COUNTY OF DUTCHESS, NEW YORK

By: _____
William R. Steinhaus
County Executive

2568541_~~13~~14

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

On this ____ day of _____ in the year 2004 before me, the undersigned, a notary public in and for said State, personally appeared Thomas LeGrand 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

2568541_~~13~~14

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

On this ____ day of _____ in the year 2004 before me, the undersigned, a notary public in and for said State, personally appeared William R. Steinhaus 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

Background to Resolution #s 290/291 + 292

# CENTRAL DUTCHESS WATER TRANSMISSION LINE
# EVALUATION OF TRANSMISSION MAIN SIZING ALTERNATIVES

Prepared by Bridget Barclay, Deputy Director
Dutchess County Water and Wastewater Authority
April 9, 2003
Updated December 8, 2003
Updated March 23, 2004

## I. Introduction

The Central Dutchess Utility Corridor Feasibility Study (Savin Engineers, October 1998) recommended that the project proceed with both 24" diameter and 30" diameter water main alternatives. This dual track has been carried through the engineering design phase, which is now complete. A final decision on main size needs to consider the capacity of the main relative to potential demand and available supply. A 24" main has a capacity to convey 10 MGD of water. A 30" main has a capacity of 14 MGD of water.[1]

## II. Evaluation of Potential Demand

### A. 1998 Feasibility Study

The Feasibility Study considered two options for the Central Dutchess Water Transmission Line (CDWTL):

- Option 1 – Considered flow from only IBM and East Fishkill, with a maximum demand of 8.0 MGD.
- Option 2 – Considered flow from IBM, East Fishkill, Lagrange and Wappinger, with a maximum demand of 12.2 MGD.

IBM, East Fishkill and Wappinger provided data on potential demand to the Authority. Data for East Fishkill and Wappinger generally included total projected demand within the town boundaries over a twenty year planning horizon. Data for LaGrange was estimated by Savin based on County Health Department records, and are intended to reflect town-wide demand.

[1] Note – Capacities are based on design standards and are not absolute. Estimates of capacity for a 24" line could range from 10 mgd to 11.5 mgd, and from 14 mgd to 16 mgd for a 30" line.

## B. 2002 Revised Estimates from Municipalities

The three municipalities along the corridor were approached again in late 2002 in an effort to update and refine estimates of potential demand on the CDWTL:

- East Fishkill provided a detailed response based on engineering studies of town-wide water distribution issues, indicating a total demand of 1.0 MGD for the area to be potentially served from the CDWTL.
- Wappinger responded that they did not disagree with the Authority's assumption of 2 MGD potential future demand.
- LaGrange responded that they had "no current intention to connect" to the proposed line, but indicated a demand of 0.8 MGD should be assumed should it become necessary for the Town to connect in the future.

## C. 2003 Authority Water Demand Evaluation

### 1. Potential Maximum Demand

In an effort to further refine potential future demands, the Authority, in conjunction with the County Planning Department, completed in April of 2003 an independent assessment of potential demand for the Towns of Wappinger and LaGrange. The assessment was updated in December 2003. The assessment assumes 100% build-out of vacant and available land within the potential service area, and assumes that 100% of the current and future central water systems are supplied from the CDWTL. No further analysis was done for East Fishkill because of the detailed information that the Town provided. (A detailed description of the methodology by which these estimates were developed is provided in Attachment A.)

- The maximum potential demand for Wappinger is estimated at 2.17 MGD.
- The maximum potential demand for LaGrange is estimated at 1.26 MGD.

- The maximum demand figure of 5.0 MGD is used for IBM in conformance with its reservation of 5 MGD capacity in the water main as provided in the Memorandum of Understanding (MOU) between IBM, the Authority and the Poughkeepsie Joint Water Board (May 6, 2002).

**2. Mid-Range Estimate of Demand**

The above maximum demand estimates reflect total potential water demand within the likely service area of the CDWTL. Several factors will likely act to reduce the actual demand that is realized on the CDWTL:

- The estimates assume 100% build out of all vacant land and of all developed land with additional development capacity. This is unlikely to occur over the next 20-30 years.
- The estimates assume that all existing and future central water facilities within the study area will be served by the CDWTL. It is probable that some will be served by local groundwater sources.
- At this time the projected cost of water from the CDWTL is not competitive with the cost to produce groundwater locally. It is not anticipated that the water will be cost competitive within the next 10-20 years.
- As distance from the CDWTL increases, potential service areas will incur additional capital costs to construct the necessary distribution facilities to convey the water to the service area. Service areas will most likely be required to construct storage and may require pressure boosters or reducers as well.

Under the MOU IBM has the option of obtaining a second 2 MGD from the Joint Water Board. In the context of Water supply Purchase Agreement negotiations, IBM has indicated it will request an option for only 1 MGD additional water purchased. Accordingly, 3 MGD is used as the mid-range demand from IBM.

In the absence of more detailed information being made available by the Town of LaGrange, it was assumed that the above factors could reduce maximum demand estimated by the CDUC by 35% for LaGrange. The resultant estimate is consistent with the figures provided by LaGrange.

The Town of East Fishkill has indicated that, due to the cost disparity between CDUC water versus local groundwater sources, it would remain their intent to maximize the continued use of groundwater sources. Within the potential CDUC service area identified by the Town, there currently exists 0.3 MGD production capacity. Additional groundwater capacity will be included in development projects currently proposed or under construction. Therefore a mid-range estimate for East Fishkill assumes only new demand (0.4 MGD) would be served by the CDUC (i.e., no new groundwater sources would be developed in the East Fishkill service area.)

The Town of Wappinger has provided a mid-range estimate of 1.0 MGD assuming the Route 376 corridor and southern portion of the Town are served by the CDUC. This is consistent with the Authority's independent estimate of demand for this area.

**3. Low Range Estimate of Demand**

A low range estimate of 2.0 MGD is assumed for IBM, based on its current commitment to purchase 2 MGD as provided in the MOU (May 6, 2002). Further, IBM's Environmental Assessment Form for the Proposed B/323 Annex Project (October 6, 2003), indicates IBM requires no water from the CDWTL for its current facilities, and would have a demand of 2 MGD when and if it constructed the Annex expansion project.

The low range estimate assumes no demand from the Town of East Fishkill. East Fishkill has developed a long-range plan to interconnect individual water systems within the CDUC service area, either via interconnections through the CDWTL or through construction of Town owned transmission facilities, to allow water to be shared among various well-systems. Should East Fishkill opt for Town-owned transmission

facilities, it is unlikely there would be any Town demand from the CDWTL. The Town of Wappinger has provided a low-range estimate of 0.5 MGD, which assumes only the Route 376 corridor would be served from the CDUC. Again, this agrees with Authority estimates to serve this area. The low range estimate assumes no demand for LaGrange. The areas of Lagrange that could be served by the CDUC are adjacent to the Town of Poughkeepsie, and could be served via a direct connection to Poughkeepsie. There has been some communication between LaGrange and the Poughkeepsie Joint Water Board regarding the potential for such a direct water purchase.

**D. Summary of Demand Estimates**

| DATE | 1998 | 2002 | 2003 | | |
|---|---|---|---|---|---|
| | Feasibility Study (MGD) | Revised Town Estimates (MGD) | Authority Maximum Demand (MGD) | Authority Mid -range Demand (MGD) | Authority Low-range Demand (MGD) |
| IBM | 5.0 | 5.0 | 5.0 | 3.0 | 2.0 |
| E. Fishkill | 3.0 | 1.0 | 1.0 | 0.4 | 0 |
| Wappinger | 4.0 | 2.0 | 2.17 | 1.0 | 0.5 |
| LaGrange | 0.2 | 0.8 | 1.26 | 0.8 | 0 |
| **TOTAL** | **12.2** | **8.8** | **9.43** | **5.2** | **2.5** |

**E. Comparison of Size Alternatives**

The following table projects the surplus capacity available based on the Authority's maximum, mid-range and low-range demand estimates.

| Line Size | Recommended Design Capacity | Authority Max Demand | **Max Demand Surplus Available** | Authority Mid-range Demand | **Mid-range Demand Surplus Available** | Authority Low-range Demand | **Low-range Demand Surplus Available** |
|---|---|---|---|---|---|---|---|
| 24" | 10 MGD | 9.43 | **0.57 MGD** | 5.2 | **4.8 MGD** | 3.0 | **7.5 MGD** |
| 30" | 14 MGD | 9.43 | **4.57 MGD** | 5.2 | **8.8 MGD** | 3.0 | **11.5 MGD** |
| Approximate Equivalent Homes Served by Surplus Water | | 24" | **3,400** | | **29,000** | | **45,000** |
| | | 30" | **27,000** | | **53,000** | | **68,000** |

## III. Available Water Source

Currently, the only available source of water for the CDUC is the surplus water available through the Poughkeepsie Joint Water Board (PJWB) Water Treatment Plant. The MOU between the Authority, the PJWB and IBM provides for the sale of "at least 4 MGD" to the CDUC. A 2002 Flow Study for Poughkeepsie Water Treatment Facility indicates the availability of approximately 5 MGD of surplus supply. Access to any additional surface water source for the CDUC would require significant capital expenditure to develop the necessary production, treatment, pumping and/or transmission facilities. IBM is requiring additional standards, beyond potability, be applied to any new source connected to the line in order to meet process water standards. An initial evaluation of the specific standards relative to local groundwater quality indicates any potential new groundwater sources may require costly treatment to meet the additional standards.

## IV. Transmission Line Life

Water distribution facilities have a design life of 30 years. This is the point where significant changes in design assumption for sizing are expected, as well as significant repair costs can be anticipated.

## ATTACHMENT A

**DCWWA CDUC Water Demand Evaluation Methodology**

As requested, a study of potential water usage was completed for the Towns of LaGrange and Wappinger. An initial meeting was held with Planning Department staff to identify parameters to be considered. Follow up discussions were held with individual planners as needed to clarify zoning and/or land use information. County GIS capabilities were used to develop the analysis and produce mapping. Methods utilized to determine water usage were drawn from the Town of East Fishkill's water usage study and the Authority's water district benefit assessment experience. The following methodology is provided to describe the catchment area and allotment of usage values.

For the purposes of this study each residence is referred to as a living unit. Based on observed usage within the DCWWA and Poughkeepsie Water Systems, each living unit was estimated to consume 165 gpd.

Methodology:

1. Catchment area boundary development:
   a. Initial boundary developed based on a 3000-foot distance off pipeline.
   b. An outer boundary was created consisting of areas difficult to serve due to high elevation and being beyond the Taconic State Parkway.
   c. Public Water Systems (PWSs) within the initial boundary were included in the study.
   d. PWS interconnected with selected PWS were included.
   e. Developed parcels with less than 1 acre were included.
   f. Developed parcels with adjacency to PWS were included, without regard to size.
   g. Vacant parcels within catchment area were included.

2. Water unit usage calculation:

   a. Vacant Land
      i. Residential Land (R20 & R40): Calculation based on total acreage reduced by 25% to cover subdivision, internal roads/ROWs and general obstructions to development where parcels are greater than 2.5 acres. The number of living units allowed under zoning was then applied to the reduced acreage.
      ii. Residential Land (Multi-Family): Developable acreage was calculated as per the above. The number of living units allowed under zoning was then applied to the acreage.
      iii. Commercial Land: Calculation based on 50% of total acreage estimated usable with a 0.1 gpd/sq ft applied. (Calculation modeled on East Fishkill Study.)
      iv. Industrial Land: Calculation based on 25% of total acreage estimated usable with a 0.15 gpd/sq ft applied. (Calculation modeled on East Fishkill Study.)

v. Large Vacant Parcels: Large parcels were individually researched for their potential for development. Reductions to the total acreage were made due to influences from steep slopes, wetlands, the need for internal roads and further subdivision into smaller parcels.
vi. Parcels with 90% or greater wetland coverage as shown on the DEC wetland map were removed from the calculation.
vii. The Airport Runway Areas were removed from the calculation.

b. Developed Land
   i. Residential Land (R20 & R40): Calculation based on Land Use code and second on potential for excess developable land and the number of living units allowed under zoning.
   ii. Residential Land (Multi-Family): Calculation based on Land Use. Condo parcels were assessed as a single living unit. All parcels larger than a condo were researched and assessed based on land use. Undevelopable open space was removed from the study.
   iii. Commercial Land: 2000 Aerial photos were utilized to develop building footprints and calculate building square footage. A usage estimate of 0.10 gpd/sq ft applied to the building square footage.
   iv. Industrial Land: 2000 Aerial photos were utilized to develop building footprints and calculate building square footage. A usage estimate of 0.15 gpd/sq ft applied to the building square footage.

PUBLIC WORKS & CAPITAL PROJECTS

RESOLUTION NO. 2015007

BOND RESOLUTION DATED JANUARY 22, 2015.

A RESOLUTION AUTHORIZING THE COST OF THE CONSTRUCTION OF A WATER MAIN LINE FROM THE CENTRAL DUTCHESS WATER TRANSMISSION LINE TO THE COUNTY AIRPORT, IN AND FOR THE COUNTY OF DUTCHESS, NEW YORK, AT A MAXIMUM ESTIMATED COST OF $2,900,000, AND AUTHORIZING THE ISSUANCE OF $2,900,000 BONDS TO PAY THE COST THEREOF.

WHEREAS, the capital project hereinafter described, as proposed, has been determined to be a Type I Action pursuant to the regulations of the New York State Department of Environmental Conservation promulgated pursuant to the State Environmental Quality Review Act, which it has been determined will not have a significant effect on the environment; and

WHEREAS, it is now desired to authorize the financing thereof, NOW, THEREFORE,

BE IT RESOLVED, by the County Legislature of the County of Dutchess, New York, as follows:

Section 1. The construction of a water main line, of approximately 5,800 linear feet, from the Central Dutchess Water Transmission Line to the County Airport at the intersection of Route 376 and Griffith Way, in and for the County of Dutchess, New York, including original furnishings, equipment, machinery, apparatus, appurtenances, land or rights-in-land, buildings, and incidental improvements and expenses in connection therewith, is hereby authorized at a maximum estimated cost of $2,900,000.

Section 2. It is hereby determined that the plan for the financing of said specific object or purpose is by the issuance of $2,900,000 serial bonds hereby authorized to be issued therefor pursuant to the provisions of the Local Finance Law; provided, the amount of serial bonds to be

issued shall be reduced dollar-for-dollar by any federal or state grants-in-aid or other contributions received therefor.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid specific object or purpose is 40 years, pursuant to subdivision 1 of paragraph a of Section 11.00 of the Local Finance Law.

Section 4. The faith and credit of said County of Dutchess, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. There shall annually be levied on all the taxable real property of said County a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 5. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the serial bonds herein authorized, including renewals of such notes, is hereby delegated to the Commissioner of Finance, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Commissioner of Finance, consistent with the provisions of the Local Finance Law.

Section 6. Such bonds shall be in fully registered form and shall be signed in the name of the County of Dutchess, New York, by the manual or facsimile signature of the Commissioner of Finance and a facsimile of its corporate seal shall be imprinted or impressed thereon and may be attested by the manual or facsimile signature of the County Clerk.

Section 7. The powers and duties of advertising such bonds for sale, conducting the sale and awarding the bonds, are hereby delegated to the Commissioner of Finance, who shall advertise such bonds for sale, conduct the sale, and award the bonds in such manner as she shall

deem best for the interests of the County; provided, however, that in the exercise of these delegated powers, she shall comply fully with the provisions of the Local Finance Law and any order or rule of the State Comptroller applicable to the sale of municipal bonds. The receipt of the Commissioner of Finance shall be a full acquittance to the purchaser of such bonds, who shall not be obliged to see to the application of the purchase money.

Section 8. All other matters, except as provided herein relating to such bonds including determining whether to issue such bonds having substantially level or declining annual debt service and all matters related thereto, prescribing whether manual or facsimile signatures shall appear on said bonds, prescribing the method for the recording of ownership of said bonds, appointing the fiscal agent or agents for said bonds, providing for the printing and delivery of said bonds (and if said bonds are to be executed in the name of the County by the facsimile signature of the Commissioner of Finance, providing for the manual countersignature of a fiscal agent or of a designated official of the County), the date, denominations, maturities and interest payment dates, place or places of payment, and also including the consolidation with other issues, shall be determined by the Commissioner of Finance. It is hereby determined that it is to the financial advantage of the County not to impose and collect from registered owners of such serial bonds any charges for mailing, shipping and insuring bonds transferred or exchanged by the fiscal agent, and, accordingly, pursuant to paragraph c of Section 70.00 of the Local Finance Law, no such charges shall be so collected by the fiscal agent. Such bonds shall contain substantially the recital of validity clause provided for in section 52.00 of the Local Finance Law and shall otherwise be in such form and contain such recitals in addition to those required by section 52.00 of the Local Finance Law, as the Commissioner of Finance shall determine.

Section 9. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150 - 2. Other than as specified in this resolution, no monies are, or

are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 10. The validity of such bonds and bond anticipation notes may be contested only if:

1) Such obligations are authorized for an object or purpose for which said County is not authorized to expend money, or

2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 11. This resolution, which takes effect immediately, shall be published in full in *The Poughkeepsie Journal* and the *Southern Dutchess News*, the official newspapers of said County, together with a notice of the Clerk of the County Legislature in substantially the form provided in Section 81.00 of the Local Finance Law.

* * * * *

CERTIFICATION FORM

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

I, the undersigned Clerk of the County Legislature of the County of Dutchess, New York (the "Issuer"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County Legislature of said County, including the resolution contained therein, held on January 22, 2015, with the original thereof on file in my office, and that the same is a true and correct transcript therefrom and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that said County Legislature consists of 25 members; that the vote on the foregoing resolution was 23 ayes and 1 noes, with 1 members being absent or abstaining from voting.

I FURTHER CERTIFY that the foregoing resolution as adopted by said County Legislature was duly approved by the County Executive of said County on January 30, 2015 in accordance with the provisions of Section 3.02 of the Dutchess County Charter.

I FURTHER certify that all members of said Legislature had due notice of said meeting, and that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that I duly caused a public notice of the time and place of said meeting to be given to the following newspapers and/or other news media as follows:

| Newspaper and/or other news media | Date given |
|---|---|
| Southern Dutchess News | January 19, 2015 |
| Poughkeepsie Journal | January 19, 2015 |

and that I further duly caused public notice of the time and place of said meeting to be conspicuously posted in the following designated public location(s) on the following dates:

| Designated Location(s) of posted notice | Date of Posting |
|---|---|
| County Office Building, 6th Floor, County Office Building Poughkeepsie, NY 12601 | January 19, 2015 |

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County Legislature this 23 day of January 2015.

Carolyn Morris
Clerk, County Legislature

APPROVED
MARCUS J. MOLINARO
COUNTY EXECUTIVE
Date 1/30/2015

# LEGAL NOTICE OF ESTOPPEL

The following entitled bond resolution, a summary of which is published herewith, has been adopted on January 22, 2015, and the validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the County of Dutchess, New York, is not authorized to expend money, or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the Constitution.

A complete copy of the resolution summarized herewith is each available for public inspection during regular business hours at the Office of the Clerk of the Legislature for a period of twenty days from the date of publication of this Notice.

Dated: Poughkeepsie, New York,

January 23, 2015

_____

Clerk, County Legislature

RESOLUTION NO. 2015007

BOND RESOLUTION DATED JANUARY 22, 2015.

A RESOLUTION AUTHORIZING THE COST OF THE CONSTRUCTION OF A WATER MAIN LINE FROM THE CENTRAL DUTCHESS WATER TRANSMISSION LINE TO THE COUNTY AIRPORT, IN AND FOR THE COUNTY OF DUTCHESS, NEW YORK, AT A MAXIMUM ESTIMATED COST OF $2,900,000, AND AUTHORIZING THE ISSUANCE OF $2,900,000 BONDS TO PAY THE COST THEREOF.

| | |
|---|---|
| **Specific object or purpose:** | Construction of water main line from the Central Dutchess Water Transmission Line to the County Airport |
| **Period of probable usefulness:** | 40 years |
| **Maximum estimated cost:** | $2,900,000 |
| **Amount of bonds to be issued:** | $2,900,000 bonds |
| **SEQRA status:** | _____ Action. SEQRA compliance materials on file in the office of the Clerk of the County Legislature which it may be inspected during regular office hours |

**Construction of Water Main Line(To County Airport)**
2,900,000 40 years at 4.20%

| Year | PRIN O/S | PRIN PAYMENT | INTEREST | TOTAL |
|---|---|---|---|---|
| 1 | 2,900,000 | 72,500 | 121,800 | 194,300 |
| 2 | 2,827,500 | 72,500 | 118,755 | 191,255 |
| 3 | 2,755,000 | 72,500 | 115,710 | 188,210 |
| 4 | 2,682,500 | 72,500 | 112,665 | 185,165 |
| 5 | 2,610,000 | 72,500 | 109,620 | 182,120 |
| 6 | 2,537,500 | 72,500 | 106,575 | 179,075 |
| 7 | 2,465,000 | 72,500 | 103,530 | 176,030 |
| 8 | 2,392,500 | 72,500 | 100,485 | 172,985 |
| 9 | 2,320,000 | 72,500 | 97,440 | 169,940 |
| 10 | 2,247,500 | 72,500 | 94,395 | 166,895 |
| 11 | 2,175,000 | 72,500 | 91,350 | 163,850 |
| 12 | 2,102,500 | 72,500 | 88,305 | 160,805 |
| 13 | 2,030,000 | 72,500 | 85,260 | 157,760 |
| 14 | 1,957,500 | 72,500 | 82,215 | 154,715 |
| 15 | 1,885,000 | 72,500 | 79,170 | 151,670 |
| 16 | 1,812,500 | 72,500 | 76,125 | 148,625 |
| 17 | 1,740,000 | 72,500 | 73,080 | 145,580 |
| 18 | 1,667,500 | 72,500 | 70,035 | 142,535 |
| 19 | 1,595,000 | 72,500 | 66,990 | 139,490 |
| 20 | 1,522,500 | 72,500 | 63,945 | 136,445 |
| 21 | 1,450,000 | 72,500 | 60,900 | 133,400 |
| 22 | 1,377,500 | 72,500 | 57,855 | 130,355 |
| 23 | 1,305,000 | 72,500 | 54,810 | 127,310 |
| 24 | 1,232,500 | 72,500 | 51,765 | 124,265 |
| 25 | 1,160,000 | 72,500 | 48,720 | 121,220 |
| 26 | 1,087,500 | 72,500 | 45,675 | 118,175 |
| 27 | 1,015,000 | 72,500 | 42,630 | 115,130 |
| 28 | 942,500 | 72,500 | 39,585 | 112,085 |
| 29 | 870,000 | 72,500 | 36,540 | 109,040 |
| 30 | 797,500 | 72,500 | 33,495 | 105,995 |
| 31 | 725,000 | 72,500 | 30,450 | 102,950 |
| 32 | 652,500 | 72,500 | 27,405 | 99,905 |
| 33 | 580,000 | 72,500 | 24,360 | 96,860 |
| 34 | 507,500 | 72,500 | 21,315 | 93,815 |
| 35 | 435,000 | 72,500 | 18,270 | 90,770 |
| 36 | 362,500 | 72,500 | 15,225 | 87,725 |
| 37 | 290,000 | 72,500 | 12,180 | 84,680 |
| 38 | 217,500 | 72,500 | 9,135 | 81,635 |
| 39 | 145,000 | 72,500 | 6,090 | 78,590 |
| 40 | 72,500 | 72,500 | 3,045 | 75,545 |
| TOTAL | | 2,900,000 | 2,496,900 | 5,396,900 |
| AVG. PER YEAR | | 72,500 | 62,423 | 134,923 |

| FISCAL IMPACT STATEMENT | |
|---|---|
| TOTAL PRINCIPAL | 2,900,000 |
| ANTICIPATED FEES | 29,000 |
| ANTICIPATED INTEREST RATE | 4.20% |
| ANTICIPATED ANNUAL COST (PRIN + INT): | 134,923 |
| TOTAL PAYBACK (ANNUAL COST x TERMS): | 5,396,900 |

PREPARED BY HEIDI SEELBACH

# Budget Amendments

| | Line No. | Description | Amount |
|---|---|---|---|
| APPROPRIATIONS: | | | |
| Increase | | | |
| | EA0477.5610.3800 | Water | 2,871,000 |
| | EA0477.5610.3900 | Bond Issuing costs | 29,000 |
| | | | 2,900,000 |
| REVENUE: | | | |
| Increase | | | |
| | EA0477.5610.57100 | Serial Bonds | 2,900,000 |
| | | | 2,900,000 |

McKinney's Consolidated Laws of New York Annotated
Public Authorities Law (Refs & Annos)
Chapter 43-a. Of the Consolidated Laws
Article 5. Public Utility Authorities
Title 6-C. Dutchess County Water and Wastewater Authority (Refs & Annos)

McKinney's Public Authorities Law § 1125

§ 1125. Appropriations for purposes of the authority; transfer of property to authority; acquisition of property by county or other municipality within the county for authority; contracts with county or other municipality

Currentness

<[As added by L.1991, c. 592. See, also, Public Authorities Law § 1125, in another title 6-C, post.]>

1. In addition to any powers granted to it by law, the county legislature, or the finance board, as such term is defined in the local finance law, of any other municipality in the county, may, from time to time, appropriate by resolution sums of money for purposes of the authority to defray project costs or any other costs and expenses of the authority or to pay amounts payable or anticipated to be payable to the authority pursuant to any contract or lease authorized by this title. Subject to the rights of bondholders, such county legislature or finance board may determine if the moneys so appropriated shall be subject to repayment by the authority to the appropriate municipality and, in such event, the manner and time or times for such repayment. In the event there shall remain at the end of any fiscal year of the county or any such municipality an unexpended balance of any such appropriation, such unexpended balance shall remain on deposit in the fund or account and such appropriation shall not lapse.

2. The county or any other municipality with the county, may give, grant, sell, convey, loan, license the use of or lease to the authority any properties which are useful to the authority in order to carry out its powers under this title. Any such transfer of properties shall be for such term and upon such terms and conditions, subject to the rights of the holders of any bonds, as the authority and the county or such other municipality may agree, including provision for the authority to assume the primary responsibility for the payment of any bonds or notes issued by the county or such other municipality for such properties.

3. The county or any other municipality within the county may acquire by purchase or by exercise of the power of eminent domain real property in the name of the county or such other municipality for any corporate purpose of the authority.

4. Notwithstanding the provisions of any other law, general, special or local to the contrary, real property acquired by the authority, the county or any other municipality within the county from the state may be used for any corporate purpose of the authority.

5. The county, one or more of the municipalities within the county, and the authority shall have the power to contract, from time to time, between or among themselves, in relation to the purchase, sale, production, accumulation, supply, transmission or treatment of water, the collection, transmission or treatment or disposal of sewage or both of the aforesaid, or the construction, use, sale and/or leasing, of any water, sewerage or water and sewerage facility of the authority, which contracts may include any or all of the following provisions: (i) requiring the purchase by the county or any such municipality of specified amounts of water; (ii) requiring the transmission by the county or any such municipality of specified amounts of sewage to the authority and the payment for the treatment or disposal of such sewage; (iii) requiring the use by the county or any such municipality

WestlawNext © 2015 Thomson Reuters. No claim to original U.S. Government Works.