

At a special meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York on the 10th day of January, 2017 at 10:00 o'clock a.m.

PRESENT:

Gilbert J. Piaquadio, Supervisor

Elizabeth J. Greene, Councilwoman

Paul I. Ruggiero, Councilman

James E. Presutti, Councilman

Scott M. Manley, Councilman

RESOLUTION OF UNCOORDINATED SEQRA DETERMINATION – INTERMUNICIPAL WATER AGREEMENT BETWEEN THE TOWN OF NEWBURGH AND THE TOWN OF NEW WINDSOR

Councilman/woman Greene presented the following resolution which was seconded by Councilman/woman Manley.

WHEREAS, the Town Board of the Town of Newburgh has negotiated an inter-municipal agreement (the "Agreement") between the Town of Newburgh and the Town of New Windsor, which provides for, among other things, the short and long term sale of water by each municipality to the other, reservations of treatment capacities for certain periods and inter-connections between the water systems owned and operated for their respective water districts; and

WHEREAS, the Town Board is considering the approval of the Agreement (the "Action"); and

WHEREAS, the Town Board of the Town of Newburgh has caused an Environmental Assessment Form (the "EAF") to be prepared for the proposed the Action; and

WHEREAS, the Town Board has determined that the Action is not located in an agricultural district; and

WHEREAS, the Town Board has determined that the Action is subject to Part 617 of the General Regulations adopted pursuant to Article 8 of the Environmental Conservation Law ("SEQRA") and Chapter 100 entitled "Environmental Quality Review" of the Town of Newburgh Municipal Code and, based upon the criteria in Part 617 and Chapter 100, should be classified as an Unlisted. Action; and

WHEREAS, the Town Board has determined that the Action does not require a coordinated review as the Action is Unlisted; and

WHEREAS, the Town Board has determined to conduct an uncoordinated review of the

Unlisted and conducted uncoordinated reviews; and

WHEREAS, the Town Board has heretofore reviewed the EAF, and analyzed and considered any relevant areas of environmental concern and the probable environmental impacts of the Action to determine if the Action may have any significant adverse environmental effects.

NOW THEREFORE, BE IT RESOLVED:

1. The Town Board does determine that the Action is as an Unlisted Action under Part 617 of the General Regulations adopted pursuant to Article 8 of the Environmental Conservation Law ("SEQRA") and Chapter 100 entitled "Environmental Quality Review" of the Town of Newburgh Municipal Code
2. The Town Board does determine that, said Action will not have an adverse environmental impact and, accordingly, does issue a negative declaration.
3. The Town Board hereby authorizes the Supervisor to execute and file the Environmental Assessment Form and a Negative Declaration in accordance with the applicable provisions of law.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

<u>Elizabeth J. Greene, Councilwoman</u>	voting	AYE
<u>Paul I. Ruggiero, Councilman</u>	voting	AYE
<u>James E. Presutti, Councilman</u>	voting	AYE
<u>Scott M. Manley, Councilman</u>	voting	AYE
<u>Gilbert J. Piaquadio, Supervisor</u>	voting	AYE

The resolution was thereupon declared duly adopted.

PRESENT:

Gilbert J. Piaquadio, Supervisor
Elizabeth J. Green, Councilwoman
Paul I. Ruggiero, Councilman
James E. Presutti, Councilman
Scott M. Manley, Councilman

RESOLUTION OF TOWN BOARD
APPROVING AND AUTHORIZING
SUPERVISOR TO EXECUTE
INTER-MUNICIPAL WATER AGREEMENT
BY AND BETWEEN
THE TOWN OF NEWBURGH AND
THE TOWN OF NEW WINDSOR

Councilman/woman Manley presented the following resolution which was seconded by Councilman/woman Greene.

WHEREAS, the Town of Newburgh and the Town of New Windsor (hereinafter singularly a "Party" and together the "Parties") are municipal corporations and each municipal corporation contains water districts duly formed pursuant to Articles 12 and/or 12A of the Town Law of the State of New York; and

WHEREAS, the Parties have negotiated an Inter-Municipal Water Agreement (the "Agreement") regarding the short and long term sale of water by each Party to the other, reservations of treatment capacities for certain periods and inter-connections between the water systems owned and operated for their respective water districts; and

WHEREAS, New York State General Municipal Law Article 5-G authorizes municipal corporations, including towns, and town improvement districts, to enter into agreements for the performance of various functions, and New York State Town Law Section 198(3)(b) additionally authorizes contracts for the supply of water; and

WHEREAS, the Agreement provides that New York City, which provides supplies of water to each Party and is additionally providing funding to the Town of New Windsor for, among other things, the inter-connections, acting by and through its Department of Environmental Protection, is a third-party beneficiary of the Agreement with the power to enforce certain terms against either Party; and

WHEREAS the Town Board of the Town of Newburgh has reviewed the terms and

Town of Newburgh and the Town of Newburgh's water districts; and

WHEREAS, the Town Board desires to authorize the execution of the Agreement

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Newburgh approves the Agreement by and between the Town of Newburgh and the Town of New Windsor as to its form and manner of execution and hereby authorizes the Supervisor to execute and deliver the Agreement.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

<u>Elizabeth J. Greene, Councilwoman</u>	voting	<u>AYE</u>
<u>Paul I. Ruggiero, Councilman</u>	voting	<u>AYE</u>
<u>James E. Presutti, Councilman</u>	voting	<u>AYE</u>
<u>Scott M. Manley, Councilman</u>	voting	<u>AYE</u>
<u>Gilbert J. Piaquadio, Supervisor</u>	voting	<u>AYE</u>

The resolution was thereupon declared duly adopted.

TOWN OF NEWBURGH

AND

TOWN OF NEW WINDSOR

**INTER-MUNICIPAL
WATER AGREEMENT**

ADOPTED BY THE TOWN BOARD OF THE TOWN
OF NEWBURGH ON JAN 10 2017

ADOPTED BY THE TOWN BOARD OF THE TOWN
OF NEW WINDSOR ON _____

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INTER-MUNICIPAL WATER AGREEMENT

This INTER-MUNICIPAL WATER AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2017, by and between the Town of Newburgh ("NEWBURGH") and the Town of New Windsor ("NEW WINDSOR") (collectively referred to herein as the "Parties").

WHEREAS, NEWBURGH, for and on behalf of its Consolidated, Colden Park, Fleetwood-Holiday Park and ANG Water Districts, duly formed and extended pursuant to the provisions of Articles 12 and/or 12A of the Town Law of the State of New York, is the owner and operator of a water supply and distribution system which delivers potable water to properties in NEWBURGH and to the Town of Marlborough; and

WHEREAS, NEW WINDSOR, for and on behalf of water districts duly formed pursuant to the provisions of Articles 12 and/or 12A of the Town Law of the State of New York, is the owner and operator of a water supply and distribution system which delivers potable water to properties in NEW WINDSOR and the Firthcliffe Heights section of the Town of Cornwall; and

WHEREAS, NEW WINDSOR is regularly and usually supplied water through the New York City Catskill Aqueduct at its taps and treatment facilities at Riley Road and Stewart Airport and certain wells, including those commonly known as St. Anne's Well and Kroll Well; and

WHEREAS, NEW WINDSOR is in the process of obtaining necessary approvals and developing a new water source by drilling wells at Butter Hill (the "Butter Hill Wells"); and

WHEREAS, NEWBURGH is regularly and usually supplied water through its Chadwick Lake Reservoir and Chadwick Lake Water Treatment Plant and the New York City Delaware Aqueduct and NEWBURGH's Delaware Aqueduct Tap Water Treatment Plant; and

WHEREAS, NEWBURGH and NEW WINDSOR are each a party to separate agreements with New York City's Water Board for the supply of water from the water supply system of New York City, which includes the Catskill Aqueduct and the Delaware Aqueduct (the "New York City Water System"), and such agreements provide, among other things, for the delivery of water to the Parties through authorized interconnections; and

WHEREAS, NEWBURGH presently has one authorized interconnection with NEW WINDSOR at Union Avenue/NYS Route 300 near the municipal boundary between NEWBURGH and NEW WINDSOR (the "Union Avenue Interconnection") having a point of connection proximate to the municipal boundary (hereinafter a single point where an interconnection between the respective NEWBURGH and NEW WINDSOR water systems is made is referred to as a "Point of Connection" and all points where interconnections are made or to be made are referred to as the "Points of Connection"); and

WHEREAS, an existing water pipe across the municipal boundaries at Stewart International Airport is proposed to be utilized as a second interconnection between NEWBURGH and NEW WINDSOR (the "Express Drive Interconnection") having a Point of Connection at Express Drive on Stewart International Airport; and

WHEREAS, each of the municipalities that take water from the New York City Water System are required to maintain a back-up water supply; and

WHEREAS, NEWBURGH and NEW WINDSOR desire to enter into an agreement pertaining to both existing and new, authorized interconnections between

NEWBURGH's and NEW WINDSOR's water distribution systems, so that NEWBURGH and NEW WINDSOR may each deliver to the other a regular and recurring finished water supply, and therefore each may act as a backup water supply to the other, and governing water treatment service and the delivery of water between NEWBURGH and NEW WINDSOR in both directions, that will be mutually beneficial to both municipalities and is in the general public interest, and

WHEREAS, the New York City Department of Environmental Protection ("DEP") has identified leaks in sections of the Delaware Aqueduct and has committed capital funds to address such leaks to ensure the long-term sustainability of its ability to supply water through the Delaware Aqueduct as part of a project known as "Water for the Future" ("WFF"); and

WHEREAS, in connection with WFF, DEP is constructing a new tunnel segment to bypass a leaking section of the existing Delaware Aqueduct tunnel between NEWBURGH and the Town of Wappinger, which will require shutting down the Delaware Aqueduct for extended periods of time; and

WHEREAS, in connection with WFF, DEP will also conduct repairs to the Catskill Aqueduct and perform certain rehabilitation work which will also require extended shutdowns of the Catskill Aqueduct; and

WHEREAS, in order to facilitate the ability of NEWBURGH and NEW WINDSOR to sustain a planned extended shutdown of the Delaware Aqueduct or Catskill Aqueduct for any reason, including WFF, New York City ("NYC") has agreed to provide funding to NEW WINDSOR to be used, inter alia, towards interconnections that will allow water sharing between NEWBURGH and NEW WINDSOR; and

WHEREAS, as a condition of providing that funding to NEW WINDSOR, NYC, acting through DEP, has required that NEW WINDSOR enter into an agreement with

NEWBURGH providing equitable provisions regarding the short and long term use and sale of water from each Town to the other, enforceable by NYC as a third-party beneficiary; and

WHEREAS, the Parties, after having negotiated in good faith, have agreed to enter into this intermunicipal agreement to memorialize the terms set forth herein regarding the sale of water and the interconnections between their respective water systems; and

WHEREAS, NEWBURGH and NEW WINDSOR, both in the County of Orange and State of New York, have the power and authority to each contract with the other to accomplish the aforesaid purposes,

NOW, THEREFORE, in consideration of the foregoing and pursuant to the authority vested in the Parties by the General Municipal Law and other statutes of the State of New York, and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereto do mutually agree as follows:

Section I. RESPONSIBILITY FOR OWNERSHIP, OPERATION AND MAINTENANCE OF WATER SYSTEMS

A. It is agreed by the Parties that during the term of this Agreement NEWBURGH shall continue to own, operate and maintain the now existing NEWBURGH water system and all future improvements thereto, including but not limited to all related currently utilized sources of water, (other than the Delaware Aqueduct and Shaft 5A) and any future inter-municipal sources, mains, booster stations, NEWBURGH's Water Treatment Plants, water storage and all other related facilities. Nothing herein shall be deemed to constrain the ability of NEWBURGH to convey real and personal property determined to be surplus by the NEWBURGH Town Board pursuant to

appropriate procedures provided it does not impact on NEWBURGH's current sources of water and its ability to deliver water to NEW WINDSOR pursuant to this Agreement.

B. It is agreed by the Parties that during the term of this Agreement NEW WINDSOR shall continue to own, operate and maintain the now existing NEW WINDSOR water system and all future improvements thereto, including but not limited to all related land, sources of water, (other than the Catskill Aqueduct) and existing and future inter-municipal sources including but not limited to NEW WINDSOR's water sources, mains, booster stations, water treatment plants, water storage and all other related facilities. Upon completion, NEW WINDSOR's water system shall include all improvements described herein under NEW WINDSOR's Water Construction.

Section II. EXISTING INTERCONNECTION

The Parties acknowledge that there currently exists an interconnection between NEWBURGH's and NEW WINDSOR's water systems at a location commonly known as the Union Avenue Interconnection from which NEWBURGH supplies water treated at a water treatment plant (hereinafter "finished water") to NEW WINDSOR. Upon construction of the improvements required to permit a bi-directional flow of finished water through the Union Avenue Interconnection, NEW WINDSOR and NEWBURGH will share equally in the cost of the Operation and Maintenance ("O & M") of the meter pit in the event it contains metering equipment measuring both flows, otherwise each party shall be responsible for the metering equipment and appurtenances in the meter pit dedicated to metering water flowing to its respective system while both shall continue to be equally responsible for the meter pit itself. In the event DEP shall require modifications, improvements or additions to the meter pit or metering equipment and appurtenances following construction of the improvements required to permit bi-directional flow, the Parties shall share equally in the costs of the design and construction of such modifications, improvements or additions.

Section III. WATER DEMAND AND DELIVERY CAPACITY

A. NEWBURGH TO NEW WINDSOR

(1) NEWBURGH agrees to deliver treated water to a Point of Connection if and when such supplies of water are requested by NEW WINDSOR within the capacity of NEWBURGH to deliver such water. For purposes of this Agreement, the “capacity” of one of the Parties shall be construed to refer to the quantity of water that would be available if the Town in question properly maintained its water system and did not send or supply water to any third parties other than those referred to above as presently being supplied with water by the Parties. NEW WINDSOR will notify NEWBURGH at least fifteen (15) days in advance of its need to receive water from NEWBURGH during non-emergency conditions. During emergency situations, NEW WINDSOR will utilize its best efforts to provide as much notice as possible to NEWBURGH of its need to receive NEWBURGH water. For purposes of this Agreement, an “emergency situation” means the existence of any condition or circumstance which jeopardizes or endangers the supply of water needed to satisfy the minimum daily requirement of the inhabitants and existing third party customers of the Town requesting water, thereby threatening the health, safety and welfare of such inhabitants or existing third party customers. The Parties agree that planned, extended shutdowns of the Delaware Aqueduct or Catskill Aqueduct by DEP for any reason, including WFF, shall not be considered to be emergency situations under this Agreement.

(2) Through the existing Union Avenue Interconnection, NEWBURGH agrees to deliver up to one (1.0) million gallons per day (“MGD”) of finished water to the Point of Connection for the use of NEW WINDSOR. Any increase above one (1.0) MGD in delivery of finished water by NEWBURGH to NEW WINDSOR at this Point of Connection upon completion of bi-directional capability will be subject to future negotiations between the Towns.

(3) Upon completion of the Express Drive interconnection, NEWBURGH agrees to deliver up to Five Hundred Thousand (500,000) gallons per day (0.5 MGD) of finished water to the Point of Connection. Any increase above one-half (0.5) MGD in delivery of finished water by NEWBURGH to NEW WINDSOR at this Point of connection will be subject to future negotiations between the Towns.

(4) The requirements of paragraphs 2 and 3 above to deliver specified quantities of water up to 1.0 MGD and 0.5 MGD, respectively, shall expire on December 31, 2025, but shall be extended for two additional one-year periods, as necessary, upon receipt of notice by NEWBURGH from DEP, at least six (6) months in advance of December 31, 2025 or of the first one-year extension's expiration date of December 31, 2026, as the case may be, that it has not completed all WFF work and that additional shutdowns are necessary, requiring the continuation of the water supplied by NEWBURGH to NEW WINDSOR as provided in paragraphs 2 and 3, above.

After December 31, 2025, or the end of any extension period(s), whichever is later, all water supplied through this Agreement (both emergency and non-emergency) will be on an available capacity basis only.

(5) Upon receipt of a notice from NEW WINDSOR of a request for water during non-emergency conditions, NEWBURGH will notify NEW WINDSOR within five (5) days of any limitation on its capacity to supply water to NEW WINDSOR. During emergency situations, upon receipt of notice of a request for water, NEWBURGH will provide as much notice as possible to NEW WINDSOR of any limitations on its capacity to provide NEWBURGH water to NEW WINDSOR.

(6) Water flow to NEW WINDSOR shall be measured and recorded by a metering station at each Interconnection. The quantity of water used by NEW WINDSOR will be measured daily and summarized on a monthly basis by NEW WINDSOR.

(7) The Parties agree that the service areas covered for the delivery of finished water by NEWBURGH under this Agreement shall encompass the entire area of NEW WINDSOR and the Firthcliffe Heights section of Cornwall.

B. NEW WINDSOR TO NEWBURGH

(1) NEW WINDSOR agrees to deliver finished water to the Union Avenue Interconnection Point of Connection if and when such supplies of water are requested by NEWBURGH within the capacity of NEW WINDSOR to deliver such water.

(2) After completion by NEW WINDSOR of the improvements required to make the existing Union Avenue Interconnection bi-directional, and no later than one year after the Butter Hill Wells and treatment facilities become permitted and operational, NEW WINDSOR agrees to deliver through said Interconnection up to two (2.0) MGD of finished water to the Point of Connection for the use of NEWBURGH, upon request, subject to the groundwater supply/recharge not being materially and adversely impacted. Any increase above two (2.0) MGD in delivery of finished water by NEW WINDSOR to NEWBURGH will be subject to future negotiations between the Towns.

(3) The requirement of paragraph 2 above to deliver a specified quantity of water up to two (2.0) MGD shall extend until the anniversary of this Agreement following the last debt service payment by NEW WINDSOR on the permanent financing of the Butter Hill Wells project, but in no event less than 20 years.

(4) NEWBURGH will notify NEW WINDSOR at least fifteen (15) days in advance of its need to receive water from NEW WINDSOR during non-emergency conditions. Upon receipt of such a notice from NEWBURGH, NEW WINDSOR will notify NEWBURGH within five (5) days of any limitation on its capacity to supply water to NEWBURGH. During emergency situations, NEWBURGH will utilize its best efforts to provide as much notice as possible to NEW WINDSOR of its need to receive NEW WINDSOR water and NEW WINDSOR will provide as much notice as possible of any limitation on its capacity to provide NEW WINDSOR water to NEWBURGH.

(5) During use of the interconnection, water flow shall be measured and recorded by a metering station to be constructed as part of the NEW WINDSOR WATER CONSTRUCTION. The quantity of water used by NEWBURGH will be measured daily and summarized on a monthly basis by NEWBURGH.

(6) The Parties agree that the service area covered for the delivery of finished water by NEW WINDSOR under this Agreement shall encompass the entire area of NEWBURGH and existing users outside of NEWBURGH'S municipal boundaries to whom NEWBURGH supplies water including, but not limited, to the Town of Marlborough.

C. NEED FOR ADDITIONAL SUPPLIES

In the event that situations arise during the term of the Agreement when the expected average daily water demand is greater than the total available average daily supply for NEWBURGH and NEW WINDSOR, the Parties will work together to identify and implement solutions to the shortfall including, but not limited to, water conservation and development of new or expanded supplies of water and increasing water storage or delivery capabilities. In the event that the Parties agree that NEWBURGH should develop new or expanded supplies or implement other measures to increase

peak delivery capacity that require capital investments and NEW WINDSOR requests NEWBURGH to undertake such development or other measures, NEW WINDSOR's share of the capital costs of NEWBURGH shall be agreed upon at such time and included in a Charge for NEWBURGH's Future Capital Project Costs. In the event that the Parties agree that NEW WINDSOR should develop new or expanded supplies or implement other measures to increase its peak delivery capacity that require capital investments and NEWBURGH requests NEW WINDSOR to undertake such development or other measures so that additional capacity is available to it, NEWBURGH's share of the capital costs of NEW WINDSOR shall be agreed upon at such time and included in a Charge for NEW WINDSOR's Future Capital Project Costs.

D. NO RESTRICTION ON SALE OF WATER OR CAPACITY

Nothing in this Agreement shall be construed to prohibit or restrict the Parties from selling water or water production capacity to third parties provided that NEW WINDSOR and NEWBURGH can continue to meet all obligations under this Agreement.

Section IV. WATER USAGE CHARGES

A. WATER USAGE CHARGE TO NEW WINDSOR

(1) As full compensation for the supply, treatment and delivery of water by NEWBURGH to NEW WINDSOR and the administration of the water service, NEW WINDSOR agrees to pay NEWBURGH a Water Usage Charge.

There will be two components to be used in the calculation of the water usage charge by NEWBURGH TO NEW WINDSOR: Operation & Maintenance (O & M) and Debt Service.

(a) O&M Calculation. The Operation and Maintenance charge will be calculated on the basis of the measured water consumption by NEWBURGH times a rate per 1000 gallons of measured water delivered to NEW WINDSOR multiplied by rate(s) equal to the rate(s)

NEWBURGH charges to its customers within NEWBURGH's Consolidated Water District during the same period plus an administrative charge of 15%. The attached Schedule "A" contains an example of the calculation using NEWBURGH'S current rates.

(b) Debt Service Calculation. In the event NEWBURGH delivers water to NEW WINDSOR for ninety (90) or more days during a calendar year, NEW WINDSOR agrees to pay to NEWBURGH an amount equal to 5% of the aggregate debt service of the NEWBURGH CONSOLIDATED WATER DISTRICT ("NCWD") incurred for the construction of the NCWD's Delaware Aqueduct Tap Water Filtration Plant to be calculated in accordance with the attached Schedule "B" (Example calculations).

(2) At the end of each month, NEWBURGH shall prepare a bill for O&M charges for NEW WINDSOR and submit the same to NEW WINDSOR for payment. The bills will be based on the actual measured water use by NEW WINDSOR at any Point of Connection multiplied by the adopted rate(s) of NEWBURGH. Such bills must be paid within sixty (60) days of the date that the bill is received. If NEW WINDSOR, in good faith, objects to all or any portion of the bill, NEW WINDSOR shall so notify NEWBURGH within ten (10) days from receipt of the bill, and shall pay that portion of the bill not in dispute. If NEW WINDSOR and NEWBURGH cannot informally resolve the dispute, NEW WINDSOR and NEWBURGH shall follow the dispute resolution procedures in Section XVII. Water delivery from NEW WINDSOR to NEWBURGH and from NEWBURGH to NEW WINDSOR shall continue uninterrupted during any billing dispute(s).

(3) During the January following any year in which water is delivered by NEWBURGH to NEW WINDSOR for ninety (90) or more days, NEWBURGH shall prepare a bill for the Debt Service charge and submit it to NEW WINDSOR. Such bills must be paid within

sixty (60) days of the date that the bill is received. The same procedures as set forth in paragraph (2), above, with regard to objections to bills shall apply to the adjustment notice. Water delivery from NEW WINDSOR to NEWBURGH and from NEWBURGH to NEW WINDSOR shall continue uninterrupted during any billing dispute(s).

B. WATER USAGE CHARGE TO NEWBURGH

(1) As full compensation for the supply, treatment and delivery of water by NEW WINDSOR to NEWBURGH and the administration of the water service, NEWBURGH agrees to pay NEW WINDSOR a water usage charge.

There will be two components to be used in the calculation of the water usage charge by NEW WINDSOR to NEWBURGH: Operation & Maintenance (O & M) and Debt Service.

(a) O & M CALCULATION:

Attached to this Agreement as Schedule "C" is a list of the component budgetary line items NEW WINDSOR will incorporate into the calculation of the water rate to be charged to NEWBURGH including a 15% administrative charge. The rate will be calculated on the basis of the measured water consumption by NEWBURGH times a rate per 1000 gallons of water delivered by the use of and in accordance with Schedule "C".

(b) DEBT SERVICE

Subject to the conditions set forth in Subsection III B(2) being satisfied and continuing to be met, NEWBURGH agrees to pay ten percent (10%) of the aggregate permanent debt service of NEW WINDSOR CONSOLIDATED WATER DISTRICT ("NWCWD") for the Butter Hill Wells and treatment facilities, to be calculated in accordance with the attached Schedule "D" (Example calculations).

(2) At the end of each month, NEW WINDSOR shall prepare a bill for O&M charges for NEWBURGH and submit the same to NEWBURGH for payment. The bills will be based on the actual measured water use by NEWBURGH at any Point of Connection multiplied by the adopted rate of NEW WINDSOR as calculated in accordance with Schedule "C". Subject to the conditions of Subsection III B(2) being met, NEW WINDSOR shall prepare a bill for Debt Service charges for NEWBURGH and submit the same to NEWBURGH for payment on the same schedule as its permanent debt service payment schedule. Such bills must be paid within sixty (60) days of the date that the bill is received. If NEWBURGH, in good faith, objects to all or any portion of the bill, NEWBURGH shall so notify NEW WINDSOR within ten (10) days from receipt of the bill, and shall pay that portion of the bill not in dispute. If NEWBURGH and NEW WINDSOR cannot informally resolve the dispute, NEWBURGH and NEW WINDSOR shall follow the dispute resolution procedures set forth in Section XVII. Water delivery from NEWBURGH to NEW WINDSOR and from NEW WINDSOR to NEWBURGH shall continue uninterrupted during any billing dispute(s).

(3) Within one hundred twenty (120) days of the end of each year, NEW WINDSOR will summarize the actual costs above and the actual water production in order to calculate the O & M costs and the amount of NEWBURGH's contribution to the NWCWD Debt Service for the completed year. NEW WINDSOR will then promptly notify NEWBURGH of any needed adjustments (underpayments or overpayments) to the charges for the prior year and the necessary payments or credits shall be made by the appropriate party. Credits by NEW WINDSOR or additional payments by NEWBURGH shall be made within sixty (60) days of NEW WINDSOR's notification to NEWBURGH of the actual results for the prior year. The same

procedures as set forth in paragraph 2, above, with regard to objections to bills shall apply to the adjustment notice. Water delivery from NEWBURGH to NEW WINDSOR and from NEW WINDSOR to NEWBURGH shall continue uninterrupted during any billing dispute(s).

C. ADJUSTMENT FOR NEW YORK CITY WATER BOARD DIRECT BILLING TO OUTSIDE MUNICIPALITY

In the event the NYC Water Board shall exercise any contractual right to directly bill either or both of the Parties as an “Outside Municipality” for “City Water” received pursuant to this Agreement, then the billing for such water shall be adjusted to account for the payment(s) to NYC.

Section V. CAPITAL COSTS

Except as provided in Subsection III(C), above, and as included in Schedules “A”, “B”, “C” and “D” attached, each party shall be responsible for its own capital costs and those costs shall not be included in the rates.

Section VI. NEW WINDSOR’S WATER CONSTRUCTION, INCLUDING FUTURE INTERCONNECTION AND IMPROVEMENTS TO UNION AVENUE

A. Subject to DEP funding, NEWBURGH and NEW WINDSOR agree that there will be a future interconnection between the NEWBURGH and NEW WINDSOR water systems at Express Drive, as well as improvements to the existing interconnection between NEW WINDSOR and NEWBURGH at Union Avenue to include bi-directional capability in a single meter pit to be newly constructed. NEW WINDSOR additionally agrees to undertake such water distribution system measures as will enable it to deliver water to NEWBURGH through the Union Avenue interconnection upon completion and permitting of the Butter Hill Wells. Collectively, the Union Avenue improvements, the new Express Drive interconnection, and the Butter Hill Wells and treatment plant shall be referred to as the “NEW WINDSOR WATER CONSTRUCTION”.

(1) In order to make the Express Drive interconnection between NEWBURGH's and NEW WINDSOR's water systems, a new meter pit, pump station (if necessary) and necessary piping and valving must be constructed.

(2) Subject to DEP funding, NEWBURGH and NEW WINDSOR agree that NEW WINDSOR will undertake the design and construction of the NEW WINDSOR WATER CONSTRUCTION. The design and construction of the new Express Drive interconnection and Union Avenue improvements (the "Interconnection Work") shall be compatible with NEWBURGH's existing water system. To this end NEW WINDSOR agrees to comply with the design and construction requirements of the Agreement between NEW WINDSOR and DEP pursuant to which funding would be provided for such work.

B. There may also be a future interconnection between NEW WINDSOR and NEWBURGH at Enterprise Drive/Cargo Road (hereinafter referred to as "Enterprise Drive"), independent of any funding provided by DEP and not part of the NEW WINDSOR WATER CONSTRUCTION. This construction project would require an interconnection with meter pit and bi-directional valving. Pending other approvals, cost sharing for this water connection project will be determined by future negotiations between the Parties.

C. NEW WINDSOR agrees to submit design specifications and drawings to NEWBURGH for the Interconnection Work contemporaneously with their submission to the DEP and to promptly notify NEWBURGH of any modifications required by the DEP. In conjunction with NEW WINDSOR'S design submission for such work, NEWBURGH agrees to:

(1) Provide any and all comments on the design specifications and drawings for the Interconnection Work within fifteen (15) working days of their submittal by the Project Engineer and to have responsible NEWBURGH officials and NEWBURGH Engineer be reasonably available for any meeting requested by NEW WINDSOR and its Design Engineer in that regard. Any changes or modifications to the plans and specifications shall require review and approval by NEWBURGH's engineer, which said approval shall not be unreasonably delayed or withheld. Any changes are also subject to review by DEP in accordance with the Agreement between the City of New York and the Town of New Windsor, New York, for the Design and Construction of a Bi-Municipal Backup Water Supply System.

(2) If necessary, execute any applications for regulatory review and approval, including but not limited to applications to the New York State and Orange County Departments of Health.

(3). Provide any and all comments on construction issues to NEW WINDSOR's Project Engineer and NEW WINDSOR in writing within 24 hours.

(4) Provide written acceptance of the Interconnection Work upon conducting a final inspection of both Substantial and Final Completion of the work and submission of any required test results and determination that the work was performed satisfactorily and otherwise provide prompt notice of deficiency or defect in the work to NEW WINDSOR. NEWBURGH shall not unreasonably withhold or delay final approval.

D. In connection with the Interconnection Work, NEW WINDSOR also agrees to cause the contractor(s) awarded the project(s) to provide and maintain insurance in accordance

with the Agreement between DEP and NEW WINDSOR, and shall cause NEWBURGH to be named as an additional insured on such policies and provide NEWBURGH certificates of insurance and endorsements evidencing such coverage.

E. Upon completion of the Interconnection Work, NEW WINDSOR shall furnish NEWBURGH with three (3) sets of as-built drawings of the completed work, one of which said sets shall be a reproducible copy in such format acceptable to NEWBURGH and as will enable NEWBURGH to administer all such information in NEWBURGH's "GIS" data management system.

F. Upon completion of the Interconnection Work, NEW WINDSOR shall add NEWBURGH as an additional insured to its Comprehensive General Liability Policy with respect to the Interconnection Work and shall add the sites containing the meter pits/pump stations and appurtenances to its property coverage.

Section VII. METERING DEVICE AT THE EXPRESS DRIVE POINT OF CONNECTION

A. NEW WINDSOR agrees to install, operate and maintain a metering device or meter pit, as necessary, at the future Express Drive interconnection to measure and record water flow. NEW WINDSOR will be solely responsible for the cost of repairing or replacing such metering device or meter pit, unless the need for the repair or replacement is caused by NEWBURGH, in which case NEWBURGH will be solely responsible for the cost of repairing or replacing such metering device. At this connection point, the cost to establish bi-directional flow will be borne by the municipality which requires such modifications in order to receive water. Once bi-directional

capability is established, NEW WINDSOR and NEWBURGH will share equally in the cost of operation, maintenance, repair and replacement of the meter pit and responsibility for the metering equipment and appurtenances shall be shared or divided in accordance with Section II's provisions with regard to the existing interconnection depending on whether a single meter or two meters are installed. In the event DEP shall require modifications, improvements or additions to the meter pit or metering equipment and appurtenances following construction of the improvements required to permit bi-directional flow, the Parties shall share equally in the costs of the design and construction of such modifications, improvements or additions.

B. The type of metering device shall be approved by NEWBURGH and, if so required, by DEP. The metering device shall have both a local indicator and a remote-read to monitor and record instantaneous flow rate and totalized flow. NEW WINDSOR shall operate, maintain and test the metering device in accordance with the manufacturer's recommendations. NEWBURGH shall have the right to witness any testing of the metering device. If testing shows that the metering device is not providing an accurate measurement and cannot be satisfactorily repaired, NEW WINDSOR shall be required to replace the meter.

Section VIII. NYC AS THIRD-PARTY BENEFICIARY

A. The Parties hereby covenant and agree that NYC, acting by and through DEP, is a third-party beneficiary of this Agreement with the power to enforce its terms against either party hereto, except as to the provisions of Subsections VI (B), (D), (E) and (F), and that this Agreement shall not be terminated or amended by the Parties (other than as to the excluded provisions mentioned in this sentence) without the prior written consent of such third-party beneficiary.

B. The Parties shall each provide to DEP a certification by a professional engineer licensed to practice in the State of New York, regarding each Town's water supply and anticipated water sharing capacity (the "Source Certifications"). The Source Certifications shall include, without limitation, statements of (i) the safe yield of all surface or groundwater sources available to the respective Town, (ii) its current water demands, (iii) its water treatment plant capacity and transmission capacity, (iv) the historic annual excess water available to it from any source after treatment, (v) the anticipated excess water available to it during the period between 2016 and 2025, and (vi) its estimated projected demand (including both average and maximum days) through 2025 based on best available modeling methods. The Parties shall each bear their own costs to comply with the Source Certification requirement. Receipt of both Source Certifications, together with a statement from each respective Town adopting and confirming the engineer's statements made therein, and an affirmation that adequate non-City water is available to meet the water supply demands of such Town for at least an eight-month period in the event that City water is not available for any reason, shall be a pre-condition to the payment of any funds to New Windsor by DEP under the anticipated funding agreement for the NEW WINDSOR WATER CONSTRUCTION. The Parties shall, throughout the term of this Agreement, promptly advise DEP in writing of any changes to the information in their respective Source Certification and shall have a State-licensed professional engineer revise such Source Certification and provide the revised Source Certification to DEP within three (3) months of such change.

Section IX. COMPLIANCE WITH RULES AND REGULATIONS

The Parties shall each comply with all applicable rules and regulations of any County, State or Federal regulatory agency with respect to water supply, water treatment, the water mains and other facilities within their respective municipal boundaries.

Section X. AUDIT AND INSPECTION

A. NEW WINDSOR, at its own cost and expense, may audit the books, accounts, and records maintained by NEWBURGH pertaining to the facilities and obligations which are the subject of this Agreement. NEW WINDSOR shall notify NEWBURGH in writing of its intention to audit at least fifteen (15) days prior to said audit, and said audit shall be made during regular business hours on regular business days.

B. NEW WINDSOR shall, at reasonable times, have the right to inspect the facilities, properties and records of NEWBURGH's water system as they relate to this Agreement.

C. NEWBURGH shall in like manner have the same rights of audit and inspection of the books, accounts and records pertaining to the facilities of NEW WINDSOR's water system as those facilities, books, accounts and records relate to this Agreement as NEW WINDSOR has under (A) and (B) of this Section.

Section XI. ANNUAL REVIEW

The Parties agree that they will conduct a joint review on an annual basis of the capacity needs of each party and quantity of water provided by NEWBURGH's and NEW WINDSOR's water systems.

Section XII. SEVERABILITY

If any portion or portions of this Agreement is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

Section XIII. TITLES

The titles used in these provisions are for convenience only and shall not be used in interpreting these provisions.

Section XIV. ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and may not be changed, modified, altered or in any way amended, except by agreement in writing, approved by DEP to the extent that any terms except for those provisions specified as excluded in Subsection VIII(A), above, are modified.

Section XV. WAIVER

The waiver by either party or by the third-party beneficiary of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

Section XVI. DURATION OF AGREEMENT

As provided by New York State General Municipal Law, the Term of this Agreement shall be for a period of **thirty (30)** years beginning on the date both Parties and DEP have executed this Agreement, subject to the time limitations for certain obligations set forth in Section III(A)(4) and

Section III(B)(3). Five (5) years prior to the expiration of this Agreement, each party shall notify the other of its desire and intent to negotiate a new agreement for continued delivery by NEWBURGH of NEW WINDSOR's water and continued delivery by NEW WINDSOR of NEWBURGH'S water. If both Parties desire to continue such service, then the Parties will make reasonable efforts to negotiate a new Agreement.

Section XVII. DISPUTE RESOLUTION

The Parties agree to attempt to resolve each and every dispute, controversy, claim or alleged breach arising out of or relating to this Agreement or the obligations of the Parties hereunder first through voluntary mediation in accordance with the commercial mediation rules and procedures of the American Arbitration Association, but only under its auspices if the Parties cannot otherwise agree upon a neutral mediator. If any such mediation of a conflict involves the interpretation of material provisions of this Agreement of which DEP is a third-party beneficiary, the Parties shall obtain DEP's acknowledgment that it does not disagree with the Parties' proposed resolution. If such mediation is not successful in resolving any such dispute, or if DEP does not accept the resulting proposed resolution, then the Parties may avail themselves of any remedy, equitable or legal, that they otherwise have.

Section XVIII. CHOICE OF LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section XIX. RESOLUTIONS

This Agreement has been agreed to and approved by formal resolution of the Town Board of the Town of Newburgh and Town Board of the Town of New Windsor, copies of which resolutions are attached hereto.

Section XX. NOTICES

All notices required or permitted hereunder shall, unless otherwise specified, be in writing and be delivered by hand, or by overnight mail or by certified mail, return receipt requested, to the Parties and to DEP at the following respective addresses or as subsequently changed by a party by notice similarly given:

To Town of New Windsor:

George A. Green, Supervisor
Town of New Windsor
555 Union Avenue
New Windsor, NY 12553

With copy to:

Michael D. Blythe, Town Attorney
Town of New Windsor
555 Union Avenue
New Windsor, NY 12553

To Town of Newburgh:

Town Supervisor
Town of Newburgh
1496 Route 300
Newburgh, NY 12550

With copy to:

Town Attorney
Town of Newburgh
1496 Route 300.
Newburgh, NY 12550

To DEP :

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

With copy to:

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

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IN WITNESS WHEREOF, the Parties have signed this Agreement this ____ day of _____,
2017.

TOWN OF NEWBURGH

By: _____
Gilbert J. Piquadio, Supervisor

TOWN OF NEW WINDSOR

By: _____
George A. Green, Supervisor

Acknowledged by:

New York City Department of Environmental Protection

By: _____
Name:
Title:
Date:

**TOWN OF NEWBURGH - NEW WINDSOR
INTERMUNICIPAL WATER AGREEMENT**

SCHEDULE A

**TOWN OF NEWBURGH TO TOWN OF NEW WINDSOR
WATER USAGE CHARGE
EXAMPLE CALCULATION**

FOR USE OF 1,000,000 GALLONS IN ANY GIVEN QUARTER (2017 RATES)

\$ 16.00	(First 7,500 Gallons)
+ 44.00	(10,000 Gallons x \$ 4.40 / 1000 Gallons)
+ 429.00	(82,500 Gallons x \$ 5.20 / 1000 Gallons)
<u>+ 5,580.00</u>	(900,000 Gallons x \$ 6.20 / 1000 Gallons)
\$ 6,069.00	SUB-TOTAL
+ 910.35	15% Administrative Cost
<u>\$ 6,979.35</u>	TOTAL

EFFECTIVE RATE = \$ 6.979 PER THOUSAND GALLONS

**TOWN OF NEWBURGH - NEW WINDSOR
INTERMUNICIPAL WATER AGREEMENT**

SCHEDULE B

**SCHEDULE OF TOTAL NET DEBT SERVICE PAYMENTS
AND TOWN OF NEW WINDSOR ALLOCATION**

<u>FISCAL YEAR</u>	<u>TOTAL ANNUAL DEBT SERVICE (1)</u>	<u>NEW WINDSOR ALLOCATION (2)</u>
2017	1,300,596.28	65,029.81
2018	1,302,896.61	65,144.83
2019	1,312,810.54	65,640.53
2020	1,315,607.55	65,780.38
2021	1,316,574.26	65,828.71
2022	1,320,009.15	66,000.46
2023	1,320,644.48	66,032.22
2024	1,319,066.87	65,953.34
2025	1,315,434.17	65,771.71
2026	1,314,991.70	65,749.59
2027	1,317,708.03	65,885.40
2028	1,313,597.48	65,679.87
2029	1,312,822.95	65,641.15
2030	1,310,385.62	65,519.28
2031	1,312,771.71	65,638.59

(1) Taken from NYSEFC Exhibit L: Notice of Terms - Net Debt Service Schedule,
Town of Newburgh 17566, Financing No. 3768.

(2) Per terms of Agreement, Five (5) Percent of Delaware Aqueduct Tap WTP Debt Service
(Only applicable when New Windsor exceeds 90 days of usage in any given calendar year)

SCHEDULE C

1/21/2016 12:07 PM

Town of New Windsor
2017 Water Fund Budget

Column	Account Code	Account Description	2017 Water Fund Budget	2017 Budget for Town of Newburgh Water Rate
				-
Expenditures				
X	FX.1930.4402	..CERTIORARIS WATER	6,500	
X	FX.8310.1	Personal Services	671,000	671,000
X	FX.8310.4111	..EDUCATION & SEMINARS	700	700
X	FX.8310.4121	..TELEPHONES & BROADBAND	4,400	4,400
X	FX.8310.4131	..LEGAL	7,500	7,500
X	FX.8310.4133	..ENGINEERING	35,000	35,000
X	FX.8310.4135	..WATER INSPECTIONS	23,500	-
X	FX.8310.4139	..OTHER PROFESSIONAL SERVICES	651,800	651,800
X	FX.8310.4141	..ELECTRICITY & GAS	202,100	202,100
X	FX.8310.4144	..GASOLINE	1,600	1,600
X	FX.8310.4173	..ADVERTISING	3,400	3,400
X	FX.8310.4191	..INSURANCE & LIABILITIES	116,100	116,100
X	FX.8310.4211	..OFFICE SUPPLIES	500	500
X	FX.8310.4311	..MAINTENANCE & REPAIRS	1,800	1,800
X	FX.8310.4361	..MAINTENANCE CONTRACTS	38,200	18,500
X	FX.8310.4802	..MISCELLANEOUS	3,000	3,000
X	FX.8320.2115	..CONSTRUCTION	208,000	-
X	FX.8320.4143	..RAW WATER	1,920,000	1,920,000
X	FX.8320.4143.2153.0420	..RAW WATER.NON NYC WATER.KROLL WELL	97,000	97,000
X	FX.8320.4144	..GASOLINE	18,200	18,200
X	FX.8320.4311	..MAINTENANCE & REPAIRS	35,000	35,000
X	FX.8320.4311.0415	MAINTENANCE & REPAIRS.ST ANNES WELL	12,000	12,000
X	FX.8320.4311.0420	..MAINTENANCE & REPAIRS.KROLL WELL	24,000	24,000
X	FX.8320.4311.0430	..MAINTENANCE & REPAIRS.Butterhill Wells	-	-
X	FX.8320.4311.2153	..MAINTENANCE & REPAIRS.NON NYC WATER	84,500	84,500
X	FX.8320.4802	..MISCELLANEOUS	1,000	1,000
X	FX.8340.2115	..CONSTRUCTION	200,000	-
X	FX.8340.4139	..OTHER PROFESSIONAL SERVICES	163,000	163,000
X	FX.8340.4233	..METERS & TAPS	110,000	-
X	FX.8340.4311	..MAINTENANCE & REPAIRS	11,000	11,000
X	FX.8340.4356.4201	WATER DISTRIBUTION REPAIRS CONSOLIDATED	334,000	334,000
X	FX.8340.4356.4202	WATER DISTRIBUTION REPAIRS WD 9	46,000	-
X	FX.8340.4357	..LAGOON CLEANING	25,000	25,000
X	FX.9089.8	Employee Benefits	494,609	494,609
X	FX.9730.6710.0000.1202	..BOND ANTICIPATION NOTE PRINCIPAL.2012 EFC HELP LOAN	115,000	-
X	FX.9730/FX.9710	Debt Service (excluding EFC BAN)	155,223	-
X	FX.9901.9999	Transfer out - Unallocated to Gen Fund	207,700	207,700
X	FX.9901.9999	Transfer out - STAS Rent to Gen Fund	380,000	380,000
X	FX.9901.9999	Transfer out - WD 9 Debt Svc	81,230	-
X	FX.9901.9999	Transfer out to CPF Grnd Water Project	300,000	300,000
X	FX.9901.9999	Transfer to CPF (FEMA.PW.5084896)	70,000	-
Total Water Fund Expenditure Budget			16,859,562	15,824,409
Per 2016 Water Rate (2016 Budget/2016 Production)			73.04	67.52
15 % Administrative Charge				0.80
Per 2000 Water Rate with 15% Administrative Charge				6.12

EXAMPLE -Town of Newburgh Share of Debt Service

2017 Consolidated Water Debt Service	Maturity	Principal	Interest	Totals
2016 Butterhill Wells Groundwater BAN	2017	\$ 100,000.00	\$ 22,077.00	\$ 122,077.00
2001 Bond Debt Service	2021	\$ 26,400.00	\$ 6,753.00	\$ 33,153.00
Total Consolidated Water Debt Service		\$ 126,400.00	\$ 28,830.00	\$ 155,230.00

Water Usage (gpd)

Town-Wide Usage (Excluding Town of Newburgh)	1,095,000,000 gal
Town of Newburgh Usage (estimated for 1st year)	730,000,000 gal
Adjusted Town-Wide Usage (including est Town of Newburgh)	1,825,000,000 gal

Est 2.0 mgd for 12 months

Town of Newburgh Share of Consolidated Debt

Town of Newburgh Share of Water Distribution System:
 (Portion of Consolidated Debt Service to Collect from Town of Newburgh) 10.00%

	Consolidated	Town of Newburgh	Town of Newburgh
2017 Consolidated Debt Service	\$ 155,230.00	Water Debt Service	Share of Debt Service
Town of Newburgh Share of Debt - Dollar Amt		\$ 15,523.00	10.0%
		\$ 15,523.00	

Amount of Newburgh Share of Debt Rate per 1,000 gal for Informational Purpose Only

Town of Newburgh Share of Consolidated Debt Service	\$ 15,523
Estimated Town of Newburgh Usage	730,000,000 gal
Est Town of Newburgh Share of Consolidated Debt per 1,000 gal	0.0213 per 1,000 gal

EXAMPLE -Town of Newburgh Share of Debt Service

Consolidated Water Debt Service	Maturity	Principal	Interest	Totals
2018 Butterhill Wells Groundwater Bond Issue (estimated)	2038	\$ 425,000.00	\$ 380,000.00	\$ 805,000.00
2001 Bond Debt Service	2021	\$ 28,200.00	\$ 4,159.51	\$ 32,359.51
Total Consolidated Water Debt Service		\$ 453,200.00	\$ 384,159.51	\$ 837,359.51

Water Usage (gpm)

Town-Wide Usage (Excluding Town of Newburgh)	1,095,000,000 gal	Est 2.0 mgd for 12 months
Town of Newburgh Usage (estimated for 1st year)	730,000,000 gal	
Adjusted Town-Wide Usage (including est Town of Newburgh)	1,825,000,000 gal	

Town of Newburgh Share of Consolidated Debt

Town of Newburgh Share of Water Distribution System: 10.00%
 (Portion of Consolidated Debt Service to Collect from Town of Newburgh)

	Consolidated Water Debt Service	Town of Newburgh % of System	Share of Debt Service	Town of Newburgh
Estimated 2019 Consolidated Debt Service	\$ 837,359.51	10.0%	\$ 83,735.95	
Town of Newburgh Share of Debt - Dollar Amt			\$ 83,735.95	

Town of Newburgh Share of Debt Rate per 1,000 gal (for informational purposes only)

Town of Newburgh Share of Consolidated Debt Service \$ 83,736
 Estimated Town of Newburgh Usage 730,000,000 gal
 Est Town of Newburgh Share of Consolidated Debt per 1,000 gal 0.1147 per 1,000 gal