

**THIS AGREEMENT**, made the \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between the Village of Fishkill, a municipal corporation with its Village Hall located at 1095 Main Street, in the Village of Fishkill, Town of Fishkill, County of Dutchess and State of New York, hereinafter referred to as the "Village", and the City of Beacon, a municipal corporation having its City Hall and principal place of business situate located at 1 Municipal Plaza, in the City of Beacon, County of Dutchess and State of New York, hereinafter referred to as the "City".

**WITNESSETH:**

**WHEREAS**, the Village owns, maintains and operates a central water supply and distribution system (hereinafter called "the System") which produces and furnishes water to the Village of Fishkill residents for a consideration, and

**WHEREAS**, the Village estimates that the source water supply of the existing System presently exceeds the requirements of the Village users, and

**WHEREAS**, the City desires to purchase part of the existing and future unused capacity of the Village water supply under an agreement that will benefit the parties, and

**WHEREAS**, the City hired Leggette, Brashears & Graham to research other possible water sources, and perform a water evaluation study to assess the system's existing capacity and potential future needs; and

**WHEREAS**, at the end of the term of this Agreement, the City and the Village shall enter into a new agreement incorporating proposed capital improvements for the Village's water system, regarding but not limited to, the interconnection of all of the Village's Well Fields and the exploration of additional Well Fields of future access by the City.

**NOW, THEREFORE**, in consideration of these mutual promises and covenants, and other good and valuable consideration, the parties hereby agree as follows:

**FIRST**: The duration of this Agreement shall be for a period of two (2) years from the date of its execution, unless sooner terminated. The City shall have a right to terminate this Agreement for any reason, provided that the City serves a written notice of such intention to terminate to the Village not less than thirty (30) days prior to the stated date of termination. Notice of such termination must be served on the Village Mayor and Village Clerk, either personally or by certified mail. Such termination shall be without penalty to the City.

**SECOND**: The Village will provide the City with a supplemental water supply of up to one million two hundred thousand (1,200,000) gallons per day upon signing this Agreement.

**THIRD**: The City shall be responsible, at its sole cost and expense, for obtaining all requisite permits or approvals from any county or state agency pertaining to the subject matter of this Agreement. Copies of any applications for permits or approvals from such agencies shall be provided to the Village simultaneous with filing same with the county or state agency. The provisions of this agreement shall be contingent upon the City's obtaining all requisite permits or approvals from the county or state agencies having jurisdiction over the subject matter of this Agreement.

The City shall be responsible for all expenses related to compliance with the State Environmental Quality Review Act concerning the subject of this agreement, and the City shall be designated as the "lead agency" with respect to such review.

**FOURTH**: The term "Village rate" as used below will be defined as the rate the Village of Fishkill charges its own residents for water produced by the Village. This rate is currently

\$2.15/1,000 gallons per day. The Village reserves the right to change the Village rate from time to time, as operational costs, such as electrical, chemical and utilities, change.

**FIFTH:** All costs sustained by the Village under this contract are included in the purchase price stated herein. There shall be no additional costs charged to the City.

**SIXTH:** Between the effective date of this agreement and the end of the calendar year, the City shall guarantee purchase of a minimum of two hundred thousand (200, 000) gallons per day, average daily use over a calendar year period. Both parties shall jointly determine if the terms of the guaranteed minimum purchase has, in fact, been met at the end of each calendar year. If the usage is below said minimum requirement, the City shall pay the equivalent amount for the water not purchased, within thirty (30) days of the determination.

**SEVENTH:** The water meter, (which shall be owned and maintained by the Village), shall be read quarterly, and charges for consumption shall be billed by the Village quarterly. In the event that the meter is read incorrectly or is out of service, the Village shall bill the City for each day the meter is not functioning at the average daily consumption rate as determined by the records for the previous four (4) charges for consumption of water actually consumed by the City.

**EIGHTH:** The City agrees to provide an emergency supply of water to the Village at any time that the Village is unable to supply water from its own water supply system of sufficient quantity and quality to meet the needs of its users. Water provided to the Village pursuant to this paragraph will be charged at the same rates the City charges its own residents for water usage. Such use is further subject to the right of the City to discontinue said use in the event of a water emergency in the City and further subject to the provisions of New York

State law dealing with the sale of excess water by a City to outside users, as set forth in §20 of the General City Law. The Village agrees to provide an emergency supply of water to the City at any time that the City is unable to supply water from its own water supply system of sufficient quantity and quality to meet the needs of its users. Such use is further subject to the right of the Village to discontinue said use in the event of a water emergency in the Village and further subject to the provisions of New York State law dealing with sale of excess water by a Village to outside users, as set forth in §11-1120 of the New York State Village Law. Water provided to the City pursuant to this paragraph will be charged at the same rates set forth in paragraph **"FOURTH"** above.

**NINTH:** The Village shall assume all electrical and other utility costs incurred in conjunction with the operation of the well supplying the water to the City.

**TENTH:** The Village shall endeavor to protect the quality of the water in the aquifer and its system, which at a minimum includes enforcement of the Watershed Rules and Regulations of the State of New York. This contract is contingent upon the Village maintaining its water quality at, or above, New York State Board of Health standards for "ground water", at all times during the pendency of this agreement. It is the understanding of the parties to this Agreement that the Village shall not be obligated to chemically treat the water supplied to the City under this Agreement. In the event the Village does not maintain its water quality at, or above, said Board of Health standards, the City shall be relieved of its obligation to purchase water during the period the Village is not in compliance with this provision.

**ELEVENTH:** The Parties acknowledge their obligation to promote water conservation measures each in their own respective jurisdictions. This commitment to

conservation coincides with the policy imperatives contained in the Environmental Conservation Law that all agencies must conduct their affairs with an awareness that they are stewards of the air, water and land and that they have an obligation to protect the environment for the use and enjoyment of future generations. The specific scope and methods of water conservation are left to each Party to be satisfied as dictated by local authority. This agreement shall not be interpreted to require any specific conservation measures in order to achieve the goal of water conservation except where the Village has declared a water emergency.

In the event that the lawful authority of the Village declares a water shortage or emergency and imposes water usage restrictions on Village water users, it is expressly prohibited from limiting the supply of public water delivered to the City during such period except in accordance with paragraph “**TWELFTH**” below.

**TWELFTH:** Where the Village has declared a water emergency and has imposed mandatory supply and usage reductions on its residents, the Village shall serve official notice on the City Administrator of the City of Beacon of said emergency declaration, citing specifically the reasons for mandatory conservation measures, the nature of restrictions imposed and the official date of commencement of such restrictions. The City shall then decide whether to impose the same, or similar, water restrictions on City residents served pursuant to this agreement, and in addition, shall set forth specific conservation measures as are practicable, and shall otherwise regulate water use within the City in a manner consistent with applicable conservation regulations.

In the event that water consumption in the City falls below the minimum usage established in paragraph “**SIXTH**” above, due to a formal declaration of water emergency by

the City and the Village, the minimum consumption requirements shall be suspended until such water emergency order is rescinded by the City and the Village.

**THIRTEENTH:** The Village hereby represents and warrants that all Village water facilities, including without limitation, its pipes, well mechanisms and pumping stations, have the mechanical capacity and shall be maintained adequately so that they draw and transmit the water purchased under this Agreement and the design capacity is sufficient to service the reserved capacity to the City as provided herein, the facilities are in compliance with all applicable laws, rules and regulations of any state, federal or municipal agency or body having jurisdiction and all permits, licenses and approvals issued pursuant to same.

The Village shall maintain and operate its supply facility and distribution system in full compliance with all applicable laws, rules and regulations of any state, federal or municipal agency or body having jurisdiction and all permits, licenses and approvals issued pursuant to same. The Village shall provide the City with notice of any unusual occurrences, system malfunctions or improvements, which may affect normal service.

**FOURTEENTH:** The City shall maintain and operate its respective distribution systems in full compliance with all applicable laws, rules and regulations of any state, federal or municipal agency or body having jurisdiction and all permits, licenses and approvals issued pursuant to same. The City shall provide the Village with notice of any unusual occurrences, system malfunctions or improvements, which may affect demand for water supply under this Agreement. The City covenants that all reasonable steps will be taken to keep their distribution systems in good repair, so as to prevent substantial water loss during the term of this Agreement.

**FIFTEENTH:** The City shall indemnify, defend and hold harmless the Village, its agents and employees, from and against all losses, damage, suits, claims, judgements and decrees, including reasonable attorneys' fees and court costs, resulting from breach by, and any material inaccuracy of the representations of the Village set forth herein.

The Village shall indemnify, defend and hold harmless the City, its agents and employees, from and against all losses, costs, damages, suits, claims, judgements, decrees and reasonable attorney's fees and litigation costs, resulting from breach by the Village of any material provision in this Agreement.

**SIXTEENTH:** The Parties shall comply with all applicable laws, rules, and regulations of any county, state or federal agency with respect to the water pipes and facilities within their municipal boundaries.

Each party shall exercise due diligence to prosecute, or seek prosecution for the violation of such laws, rules and regulations against persons or entities who damage the distribution system or facility within such parties' boundaries or who endanger any portion of the water supply as transmitted through the respective distribution system belonging to the Parties.

In the event that the Village becomes aware that a maximum contaminant level is exceeded under the regulations contained in Chapter I of the New York State Sanitary Code Subpart 5-1, Section-1.52 Tables 1 through 7 as amended, the Village shall immediately notify the City Administrator about the source and nature of the contaminant. The Village covenants that it will transmit such notice by telephone in advance of, or concurrently with, the

transmission of such notice to the Department of Health in accord with the notification requirements indicated in that same Subpart Section 5-1.52 Table 13.

**SEVENTEENTH:** This Agreement may not be assigned by a party without the express written consent by the other parties hereto.

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

**NINETEENTH:** The Waiver by either party of the breach of any one or more of the covenants of this Agreement is not a waiver of any other provision hereof or of a subsequent breach of the same covenant or covenants.

**TWENTIETH:** This document contains the entire Agreement among the parties and may not be changed, modified or in any way amended, except by agreement in writing.

**TWENTY-FIRST:** All notices hereunder shall be in writing sent by certified mail, return receipt requested, or by personal delivery to the address of the respective parties set forth above and hereafter designated by such party in the manner required for the giving of notice hereunder.

**TWENTY-SECOND:** This agreement is executed by and on behalf of the Village and by and on behalf of the City by virtue of express authorization given by their respective Boards and Councils at either regular or special meetings, in accordance with the laws of the State of New York.



**IN WITNESS WHEREOF**, the parties hereto have caused their corporate seals to be hereunto affixed, and, these presents to be signed by their duly authorized officers the day and year first written above.

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