

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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In the Matter of the Joint Petition by
Hopewell Service Corporation, and
the Town of East Fishkill for Approval of the
Transfer of all of the Water Supply Assets
of Hopewell Service Corporation to the
Town of East Fishkill and to Thereafter
Dissolve Hopewell Service Corporation

Case No. _____

Joint Petition for the
Transfer of
Water Supply Assets

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Joint Petition

for the

Transfer of Water Supply Assets

And

The Dissolution of Hopewell Service Corporation

Albert A. Natoli, Esq.
for Hopewell Service Corporation
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and

Thomas F. Wood, Esq.
for the Town of East Fishkill
Town Attorney
Town of East Fishkill
330 Route 376
Hopewell Junction, NY 12533
(845) 221-9191

August 6, 2019

SUBJECT OF THE JOINT PETITION

1. Hopewell Service Corporation (hereinafter “Hopewell” or the “Company”) and the Town of East Fishkill (“Town”) seek the approval of the New York State Public Service Commission (“PSC” or “Commission”) for the sale of all of the water supply assets owned by the Company to the Town and permission to dissolve the Company.

PARTIES

2. Hopewell is a transportation corporation that has an address at 847 Route 376, Wappingers Falls, New York 12590.

2. The Town of East Fishkill is a municipality functioning under and by virtue of the laws of the State of New York, having its principal office at 330 Route 376, Hopewell Junction, New York 12533 and located in Dutchess County, State of New York.

STATEMENT OF FACTS

3. Hopewell serves approximately 139 customers in a real estate subdivision known as Worley Homes located in Hopewell Junction, Town of East Fishkill, Dutchess County. The Company does not provide fire protection service.

4. Hopewell has been plagued with service issues from before the current owners acquired the stock. The Company needs a well. Customers have complained of low water pressure and poor water quality.

5. The Company does not have the financial resources needed to make the needed repairs.

6. The Town expects that the water district would have to make substantial improvements to bring the system into compliance with the Health Department's regulations.

7. The Town believes that once the water system is owned by the Town, it may qualify for special State funding and/or low cost financing through the State Revolving Fund. It is very unlikely that Hopewell, as a private water supplier, could obtain the financing available to the Town.

8. The water supply assets owned by Hopewell will be sold to the Town of East Fishkill free of any liens or encumbrances.

9. The purchase price for the water system is \$100,000. In addition, the Town will pay the net adjustments as of the closing date, but the sale price will be reduced by the cost incurred by the Town to obtain a water supply easement from Consolidated Edison of New York, Inc.

10. A copy of the executed Option to Purchase is Appendix 1. The executed Contract of Sale is attached as Appendix 2.

11. After the transfer and after improvements are implemented, customers will have better water quality and a more dependable supply that will cost less than if the improvements were made by a privately owned utility.

12. The State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617) and 16 NYCRR Part 7 is to be addressed before the transfer is approved. Since the proposed action does not meet the definition of Type I or Type II actions contained in 6 NYCRR §§ 617.4, 617.5 and 16 NYCRR § 7.2, it is an “unlisted” action for SEQRA review.

13. The proposed action requests approval of the transfer of the water system and other assets of Hopewell to the Town. Based upon a review of the criteria for determining significance as listed in 6 NYCRR § 617.7(c), it appears that the transfer of the water system and other assets will not result in a significant adverse impact to the environment.

14. The Town has completed its SEQRA review and issued a Notice of Determination of Non-Significance. It is being filed with the PSC as Appendix 3 to this Petition.

15. Because the review was treated as an Uncoordinated Review, the Commission may need to issue a SEQRA determination. If the PSC finds no significant adverse environmental impact, a Public Notice Requesting Comments would not be needed, and a Notice of Determination of Non-Significance for this unlisted action would need to be issued by the Commission.

16. The Department of Environmental Conservation must authorize the Town to operate the water system. The requisite water supply application will be filed by the Town with the Department of Environmental Conservation.

THE TRANSFER IS IN THE PUBLIC INTEREST

16. The sale of the assets to the Town is in the public interest. The system is in need of substantial repairs, and the Town can finance improvements at a lower cost and has access to grants that are not available to the water company. Also, the Town does not pay real estate taxes, the PSC assessment, or income taxes, which should result in rates that will be lower than if owned and operated by Hopewell. Thus, the acquisition of the water supply should provide dependable service to the customers and, in the long run, lower rates.


17. The Company requests that the PSC grant it permission to dissolve after the transfer of the system to the Town. At that point Hopewell will have no assets related to the provision of utility service. Therefore, Hopewell requests that as part of the PSC's order granting the transfer, the PSC approve, pursuant to Section 108 of the Public Service Law, the dissolution of the Company and the filing of a Certificate of Dissolution with the New York State Department of State after the transfer has been completed.

18. To assure the continuation of service and to allow for repairs and replacements to begin promptly, the parties would like to transfer the property as soon as possible.

17. For these reasons, the parties request that the Commission act promptly on the application.

Respectfully submitted,

Hopewell Service Corporation

By _____
Albert A. Natoli, Esq.

and

The Town of East Fishkill

By _____/S_____
Thomas F. Wood, Esq.

Dated: August 6, 2019

Appendix 1

OPTION TO PURCHASE

THIS AGREEMENT made the 11 ^{October} day of ~~September~~ 2017, by and between the HOPEWELL SERVICE CORPORATION hereinafter called the “**Seller**”, located at 847 Route 376, Wappingers Falls, New York 12590 and TOWN OF EAST FISHKILL, hereinafter referred to as the “**Town**”, with its principal place of business at 330 Route 376, Hopewell Junction, NY 12533.

WHEREAS, the Seller is the owner of a public water supply system located within the Town of East Fishkill, County of Dutchess, State of New York, and

WHEREAS, the public water supply is in active operation supplying water to approximately 139 customers in a real estate development known as Worley Homes in Hopewell Junction, Town of East Fishkill; and

WHEREAS, the Seller corporation is in good standing; and

WHEREAS, there has been certain negotiations between the Town and the Seller wherein it is the desire of the parties that the Town be given sufficient opportunity to conduct the requisite legal proceedings in order to determine whether or not they will enter into a contract to purchase the water system; and

WHEREAS, it is the desire of the parties to reflect their understandings in this Option Agreement;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The parties agree that during the time period from October 1, 2017, through April 1, 2018, or as shortened as provided herein, the Town shall have the option to purchase the Seller's entire water supply system, including the real property it owns on which its wells and water tank are located, for the Purchase Price, which is \$100,000 plus and minus adjustments as of the date of Closing.
2. The accounts receivable and payable and all other assets and liabilities shall remain with the Seller as its assets or liability. The liability of the customers whose accounts are not paid as of the date of closing will not be affected by the transfer and the amounts owed will remain due to the Seller.

3. The parties agree that this option can be executed by the Town upon the Town properly fulfilling all of its statutory obligations and executing the annexed Contract to Purchase and presenting the same to the Seller within the time period provided that the Closing shall occur within the option period.
4. The parties acknowledge that the Town will have to fulfill statutory steps prior to the Town Board authorizing the execution of the annexed Contract and the parties agree to cooperate during this time period for the Town Board to proceed with the conduct of the proceedings.
5. The Seller agrees to provide access to its facility for inspection by the Town's engineer and to assist the Town's engineer in the preparation of a map, plan and report which is a necessary pre-requisite for the Town commencing the formal proceedings.
6. The Seller acknowledges that upon complying with the statutory process the Town Board must take a vote and said vote would be subject to Permissive Referendum and a time period of at least thirty (30) days must elapse from the date of adoption of the Resolution to determine whether or not a petition will be filed with the Town requiring a public vote. The Town shall schedule such vote no later than December 15, 2017. Should the public vote fail to facilitate the purchase, the option period will end the day after the day of the vote.
7. The parties acknowledge that all steps must be complied with before the Town has any obligation to exercise this option.
8. In no event will the option extend beyond April 1, 2018, without the written consent of the Seller.
9. The Town agrees to act without delay and take all reasonable steps to close as soon as practical.

IN WITNESS HEREOF, the parties have hereunto set their hand and seal on the date
above written.

HOPEWELL SERVICE CORPORATION


By: 

MICHAEL GILLESPIE, PRESIDENT

TOWN OF EAST FISHKILL

By: 

JOHN L. HICKMAN, SUPERVISOR


T. Hickman
10/11/12

**Contract to Sell the Assets of
Hopewell Service Corporation
to the
Town of East Fishkill**

CONTRACT made this day of 2017, HOPEWELL SERVICE CORPORATION hereinafter called the “**Seller**”, a corporation organized and existing under and by virtue of the laws of the State of New York, located 847 Route 376, Wappingers Falls, New York 12590, and the TOWN OF EAST FISHKILL, a municipality functioning under and by the virtue of the laws of the State of New York, having its principal office at 330 Route 376, Hopewell Junction, New York 12533, hereinafter called the “**Buyer**”.

W I T N E S S E T H :

WHEREAS, Seller is the owner of an operating public water supply system located within the Town of East Fishkill, County of Dutchess, State of New York, and

WHEREAS, Seller has agreed to sell and the Buyer has agreed to purchase all of the assets of Seller, which includes the ownership of the complete water supply (“**System**”) for the price and upon the terms and subject to the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, stipulations, and provisions herein contained, it is hereby agreed as follows:

1. Sale:

1.1. Subject to and conditioned upon obtaining the consents, approvals, and authorizations as hereinafter provided, Seller agrees to sell, transfer, and deliver to Buyer and Buyer agrees to purchase from Seller all of the Seller’s right, title, and interest in and to all the its assets free and clear of any debt, mortgages, liens, or encumbrances. The Seller owns the assets set forth in **Exhibit 1** (the “**Assets**”). The Buyer, except as restricted herein, will acquire all of the assets of the Seller.

1.1.1. Excluded from the Assets being sold by Seller are cash, accounts receivable, and accounts payable. The accounts receivable and payable and all other assets and liabilities of the Seller shall remain with the Seller as its asset or liability. The liability of the customers who accounts are not paid as of the date of closing will not be affected by the transfer and the amounts owed will remain due to the Seller.

- 1.1.2. Included among the Assets at Closing shall be any and all engineering plans and drawings for any filtration system or any other future expansion of the System that have been designed and in possession of Seller.
- 1.1.3. Included among the Assets being sold are the real property, together with all buildings and improvements thereon and easements (collectively the “**Premises**”), more fully described on separate pages marked Exhibit 1. Schedules A and B, annexed hereto as part of Exhibit 1 and made a part hereof, together with Seller’s ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Buyer, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Buyer may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.
- 1.1.4. Included in the property being transferred are all fixtures and articles of personal property now attached or appurtenant to the Premises.

2. Purchase Price:

- 2.1. The purchase price shall be \$100,000.
- 2.2. The purchase price shall be paid by cashier’s check payable to the order of the Seller unless the Buyer is given written instructions for the electronic transfer of the Cash Consideration at least three business days prior to the Closing, in which case the Cash Consideration shall be electronically transferred in accordance with such instructions at the time of Closing.
- 2.3. The purchase price shall be paid as follows:
 - 2.3.1. Downpayment:
 - 2.3.1.1. On the signing of this Contract, \$25,000.00 by Buyer’s check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 3 of this Contract (the “**Downpayment**”).
 - 2.3.1.2. The downpayment will be returned, in full, if the transaction does not close. However, if the Seller pays the entire amount

of past due taxes, the downpayment may be taken from escrow and used to pay part of past due real estate taxes owed.

2.3.2. At the Closing described in section 13 below, the Buyer shall pay the Seller the sum of \$75,000 as the balance of the consideration due plus and minus adjustments as of the Closing Date.

3. Downpayment in Escrow:

3.1. Seller's attorney ("**Escrowee**") shall hold the Downpayment for Seller's account in escrow in a segregated bank account until Closing or sooner termination of this Contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in an interest-bearing account for the benefit of the parties. Interest shall be held for the benefit of the parties and, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (see section 23 herein) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 15 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 15 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Contract or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Buyer. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

3.2. The parties acknowledge that, although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee. Seller and Buyer jointly and severally agree to defend, indemnify, and hold Escrowee harmless from and against all costs, claims, and expenses (including reasonable attorney's fees) incurred in connection with the

performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee.

- 3.3. Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel, which may be selected by it (including any member of its firm), and shall be fully protected in so acting or refraining from action upon the advice of such counsel.
- 3.4. Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provision of this paragraph by signing in the place indicated on the signature page of this Contract.
- 3.5. Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.
4. Funds: All money payable under this Contract, unless otherwise specified, shall be paid by:
 - 4.1. Cash, but not over \$1,000.00;
 - 4.2. Good check of Buyer drawn on or official check issued by any bank, savings bank, trust company, or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon, not less than three (3) business days' notice (by telephone or otherwise) to Buyer;
 - 4.3. As to money other than the Purchase Price payable to Seller at Closing, check of Buyer; and
 - 4.4. As otherwise agreed to in writing by Seller or Seller's attorney.
5. Conditions of Sale: This Contract and performance hereunder are subject to and conditioned upon the approvals stated in this section:
 - 5.1. Regulatory Approvals
 - 5.2. The Buyer shall obtain approval of the New York State Department of Environmental Conservation ("DEC") and, if necessary, the New York State and County Health Departments for their authorization to purchase, operate, and extend its operations to include the territory served by Seller.

Buyer shall promptly apply to DEC and, if necessary, the New York State and County Health Departments, and for such approval(s) and authorization(s).

- 5.3. Seller shall promptly apply to the New York State Public Service Commission (“PSC”) for approval for the transfer of the Assets.
 - 5.4. Seller and Buyer shall cooperate and, if necessary or advantageous, join in any application by the Buyer or Seller for the transfer of the Assets and the associated permits.
 - 5.5. Buyer agrees to promptly schedule a public hearing before its Town Board with respect to the subject acquisition where a resolution would be adopted, subject to permissive referendum in accordance with the provisions of Town Law, approving the acquisition. The parties hereto acknowledge that a thirty-five (35) day period must elapse following the date of adoption of the resolution of approval before Buyer can proceed and that if during said thirty-five (35) day period a petition is filed seeking a referendum, then the Town Board will be required to conduct a vote of the residents of the water district to be formed to serve the Seller’s customers.
6. Permitted Exceptions: The Premises are sold and shall be conveyed subject to the following provided same does not render title uninsurable:
- 6.1. Zoning and subdivision laws and regulations and landmark, historic, or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
 - 6.2. Consents of record for the erection of any structures on, under, or above any streets on which the Premises abut;
 - 6.3. Encroachment of stoops, areas, cellar steps, trim, and cornices, if any, upon any street or highway;
 - 6.4. Real estate taxes that are a lien, but are not yet due and payable by Seller; and
 - 6.5. The other matters, if any, including a survey exception.
7. Seller’s Representations: The Seller hereby represents and warrants to the Buyer that all of the following are true as of the date hereof and shall be true on the Closing Date:
- 7.1. At the time of Closing, Seller will be corporation duly organized, validly existing, and in good standing under the laws of the State of New York.

- 7.2. Approval of this Contract has been made by no less than two-thirds (2/3) of the Shareholders of Seller.
- 7.3. The Seller will by proper corporate actions will have the power to execute and deliver this Contract, and to perform its obligations hereunder.
- 7.4. The authorized capital stock of Seller consists of 200 shares of Common Stock, no par value, of which ____ shares are issued and outstanding and ____ shares are treasury shares.
- 7.5. The Seller has no knowledge of any condemnation or eminent domain proceeding now pending or anticipated with respect to all or any part of the System.
- 7.6. There are no inquiries, proceedings, legal actions, suits or environmental, legal or administrative proceedings pending or, to Seller's knowledge, threatened against or which might affect the Seller or the System or interfere with the ability of Buyer to occupy and use the Systems for Buyer's purposes, except an enforcement action by the Dutchess County Department of Behavioral and Community Health (the "**Health Department**" of which the Buyer is fully aware and which will be ended by the Health Department with regard to the Seller without further penalty upon the transfer of the System to the Buyer.
- 7.7. There are no parties in possession of any portion of the Premises to which Seller holds fee title as lessees, tenants at sufferance, trespassers, invitees, or purported Buyers or owners thereof, except as noted herein.
- 7.8. There are no liens or other encumbrances on or affecting all or any portion of the System except those relating to those referred in Paragraph 6 above, and the option(s) held by the Buyer that will be extinguished at Closing.
- 7.9. Seller has not received any written notice from any insurance company or Board of Fire Underwriters (or organization exercising functions similar thereto) requiring the performance of any work or alteration in respect of the Premises and, if Seller receives any such notice prior to the Closing, they shall provide Buyer with a copy thereof.
- 7.10. Undisclosed Liabilities. At the date of the December 31, 2016, Seller's Balance Sheets, to the best of the knowledge of Seller, the Seller did not have any liabilities or obligations of any kind, whether accrued, absolute, contingent, or otherwise, which are not disclosed on said Balance Sheets, except for liabilities or obligations, which, individually or in the aggregate, are not in excess of \$10,000, and except for liabilities and obligations incurred since the date of the Balance

Sheets in the ordinary course of business consistent with past practices. To the best of the knowledge of Seller, there is no basis for the assertion of any material claim or liability against Seller in any amount not fully reflected or reserved against on the Balance Sheets or disclosed in the notes thereto or in this Contract or the Exhibits hereto.

7.11. Absence of Certain Changes or Events. Since the December 31, 2016, Balance Sheets the Seller has not, with regard to System:

- 7.11.1. incurred, assumed, or acquired any obligation or liability (contingent or otherwise) except (i) normal trade or business obligations incurred in the ordinary course of business and consistent with the past practices of such company including real estate tax obligations, and thereafter, (ii) obligations under contracts, agreements, and leases described in Exhibits hereto, and (iii) obligations or liabilities which, individually or in the aggregate, are not in excess of \$10,000;
- 7.11.2. mortgaged, pledged, or subjected to any lien, charge, security interest, or to any other encumbrance any of its assets (whether tangible or intangible) or the Premises, except for security interests granted to lenders in connection with the bonds and loans referred to in the Balance Sheet;
- 7.11.3. sold, assigned, transferred, conveyed, leased, or otherwise disposed of or agreed to sell, assign, transfer, convey, lease, or otherwise dispose of any of its assets or the Premises, or any other material right, except for fair consideration in the ordinary course of business;
- 7.11.4. suffered any casualty losses or damages with respect to property and assets that had or may have a material adverse effect on its financial condition as a whole, whether or not such losses or damages shall have been covered by insurance.

7.12. Taxes. Seller has (i) filed when due with the appropriate federal, state, local, foreign, and other governmental agencies, or obtained all appropriate extensions for filing, all tax returns, estimates, and reports required to be filed by them, and (ii) have paid all requisite federal, state, or local taxes, and charges of any nature whatsoever, including interest and penalties thereon, and unemployment and social security taxes (collectively, “Taxes”). Seller withheld any tax required to be withheld under all applicable federal, state, and local regulations, and such withholdings were either paid to the respective governmental agencies or set aside in accounts for such purpose or accrued, reserved against, and entered upon the books of the Seller as the case may be.

- 7.13. Real Properties and Leases. Seller owns and has marketable title to the real property set forth in Exhibit 1, Schedules A and B (“**Deeds and Easements**”), and this property is free and clear of any and all pledges, liens, encumbrances, security interests, agreements, or claims of any kind.
- 7.14. Tangible Personal Property. Seller has good title to all of the items of tangible personal property as shown on Exhibit 1 owned by them, free and clear of all liens, leases, encumbrances, claims under bailment and storage agreements, equities, conditional sales contracts, security interests, charges, and restrictions, and all of the items of tangible personal property not owned by, but used in the business of Seller and which, individually or in the aggregate, are material to the conduct of its business are in such condition that upon the return of such property to their owners in the current condition of such property, normal wear and tear excepted, at the end of the relevant lease terms or as otherwise contemplated by the applicable agreements with the owners thereof, the obligations of Seller will be discharged. Regardless of the foregoing, such equipment necessary for the daily or ordinary operation between the date hereof and the Closing shall be acquired by Seller and transferred to the Buyer.
- 7.15. Litigation. There is no action or proceeding in any court or before any governmental authority (“**Litigation**”) pending or, to Seller’s knowledge, threatened (a) against Seller, or (b) that seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated hereby.
- 7.16. Assets and Inventory. The physical assets and properties owned, operated, or leased, including inventory by Seller and used by them have been inspected by Buyer and on the Closing Date shall be sold “as is” as of the date hereof, reasonable wear and tear excepted and are sold with no warranties or representations, express or implied, except those expressly set forth in this offer. Exhibit 1 (“**Assets**”) lists the assets and inventory owned or leased by the Seller.
- 7.17. Pension Plans. Seller has no executive compensation, profit-sharing, pension, or retirement plan.
- 7.18. Employees. At the time of the closing Seller will have no employees.
- 7.19. Bank Accounts. The bank accounts of Seller shall be retained by Seller.
- 7.20. Powers of Attorney. Seller has not given any power of attorney that is currently in effect, whether limited or general, to any person, firm, corporation, or otherwise

7.21. No representation or warranty of Seller contained in this Contract, and no statement contained in any certificate or other instrument furnished or to be furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading subject to Seller's good faith belief that the foregoing were true and not misleading at the time made.

8. Buyer's Representations. Buyer represents and warrants to the Seller:

- 8.1. The Buyer is a government authority duly organized and validly existing and in good standing under the laws of the State of New York and is an entity defined in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended to the date of Closing.
- 8.2. Buyer has full authority to execute, deliver, and perform this Contract and all other documents required to be executed by it hereunder; this Contract and related undertakings will constitute valid and binding obligations of Buyer; and this Contract, related undertakings, and all transactions contemplated hereby have been duly authorized.
- 8.3. Other than as stated in this Contract, the Buyer has not provided and will not provide any goods or services to the Seller in consideration, in whole or in part, for the property described in this Contract.
- 8.4. The property being transferred to the Buyer has never been the subject of condemnation proceedings by the Buyer.
- 8.5. Neither the execution or delivery of this Contract or fulfillment of or compliance with the terms and conditions hereof or thereof will constitute a breach by Buyer of its statutory authority or by-laws or result in a breach of the terms, conditions, or provisions of or constitute a default under or result in a violation of any agreement, contract, or instrument to which Buyer is a party or by which it is bound or result in a violation by Buyer of any existing law or statute or any rule or regulation of any jurisdiction or of any order, decree, writ, or injunction of any court or governmental department, bureau, board, agency, or instrumentality.
- 8.6. No consent from or other approval of any governmental entity or other person is necessary in connection with the execution of this Contract or the consummation by Buyer of the transactions contemplated hereby except as noted in paragraph 5.1 above.

- 8.7. No representation or warranty of Buyer contained in this Contract, and no statement contained in any certificate or other instrument furnished or to be furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading subject to Buyer's good faith belief that the foregoing were true and not misleading at the time made.
- 8.8. Buyer is fully aware of the physical condition and state of repair of the Systems and/or the Premises and of all other property included in this sale, based on Buyer's own inspection and investigation thereof, and that Buyer is entering into this Contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the System and/or the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in present condition and state of repair, subject to reasonable use, wear, tear, and natural deterioration between the date hereof and the date of Closing, without any reduction in the Purchase Price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this Contract. Buyer and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises on the earlier of three (3) days' notice, or the day of Closing.
- 8.9. Buyer is fully aware of an enforcement action by the Health Department against the Seller, which will be ended by the Health Department with regard to the Seller without further penalty upon the transfer of the System to the Buyer.
9. Seller's Covenants. The Seller covenants and agrees as follows:
- 9.1. Actions Pending the Closing. Pending the Closing:
- 9.1.1. The business of Seller will be conducted only in the ordinary course and the Seller will attempt to preserve its present relationships with its management, employees, customers, and suppliers.
- 9.1.2. No single contract or commitment will be entered into which would or could bind Buyer or affect Buyer's operation of the assets, other than transactions in the ordinary course of business that do not involve commitments or payments in excess of \$3,000. If such a contract or commitment is necessary for the ordinary course of business, it can be made only with the prior approval of the Buyer.

- 9.1.3. Seller will not enter into, create, or assume any indebtedness for borrowed money (other than credit transactions in the normal course of business and normal seasonal borrowing) or create any lien, encumbrance, mortgage, or security interest in the Systems (except with respect to normal seasonal borrowings), or assume, guarantee, endorse, or otherwise become liable with respect to the obligations of any other person or entity (except for endorsements of instruments in the normal course of business).
- 9.1.4. Seller shall keep its corporate franchise and all other franchises and rights in full force and effect.
- 9.1.5. All of the properties and assets of Seller shall be kept and maintained in the same operating condition, except for normal wear and tear, and repair as exists on the date hereof.
- 9.1.6. Seller shall duly and timely file all reports or returns required to be filed with any federal, state, or local governmental authority, including all taxing authorities, and will promptly pay all of its obligations, including all taxes, when the same shall be normally due, and shall comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations.
- 9.1.7. Seller shall continue to maintain in full force and effect all policies of insurance heretofore carried by it.
- 9.1.8. Seller shall continue to make its required filings with the Department of Environmental Conservation, Health Department, and the Department of Public Service.
- 9.2. Access to Records. From and after the date hereof, the Seller shall cause all of the books and records of Seller to be available for inspection or examination by representatives of Buyer, upon reasonable notice, during normal business hours.
- 9.3. Shareholders and Members Authorizations. To enable the transactions to go forward, Seller will deliver affirmative votes of not less than 2/3 of the stockholders of the Seller.
- 9.4. Compliance with Conditions. The Seller shall use its best efforts to cause the Closing to be consummated and to cause execution and delivery of the documents referred to in Paragraph 13.3 hereof, and to bring about the satisfaction of the conditions as set forth in Paragraph 17 hereof.

10. Buyer's Covenants. The Buyer covenants and agrees as follows:
 - 10.1. As of the date of Closing, Buyer will operate the Systems and agrees to furnish water services to the customers in the Seller's service area.
 - 10.2. Compliance with Conditions. The Buyer shall use its best efforts to cause the Closing to occur as soon as practicable, but at the end of a quarter to avoid apportionment of accounts receivable.
 - 10.3. The above covenants in this section 9 shall survive Closing.
11. Indemnification and Related Matters:
 - 11.1. Indemnification by Seller.
 - 11.1.1. Seller agrees to defend, indemnify, and hold Buyer, its directors, officers, managers, employees, and agents harmless from and against:
 - 11.1.1.1. any and all claims, liabilities, obligations, damages, and expenses resulting from, or arising out of, the failure of any of the representations and warranties of Seller contained in this Contract to have been true in all material respects when made and as of the Closing Date;
 - 11.1.1.2. any and all third-party claims for liabilities, obligations, damages, and expenses that occur prior to or on the day of Closing that relate to the physical operation of the System, but not to this Contract, rate applications, or the transfer, sale, or purchase of the System. If the event(s) giving rise to a claim occurs on or before Closing and continues to occur after Closing, Seller and Buyer will indemnify the other for the periods that the party did not own the Systems; and
 - 11.1.1.3. all actions, suits, proceedings, costs, and expenses including reasonable attorneys' fees, incident to this paragraph.
 - 11.1.2. It is expressly understood and agreed that the Buyer shall assume only obligations or liabilities disclosed in this Contract and in the financial statements of the corporations, and the Seller agrees to indemnify and hold the Buyer free and harmless, for a period of one (1) year from the date of the Closing, from any claim or any obligation of Seller existing at the time

of Closing or prior thereto. The provisions of this paragraph 11.1 shall survive the delivery of the closing instruments and is subject to the limitations set forth in paragraph 11.3, below.

11.2. Indemnification by Buyer. The Buyer agrees to defend, indemnify, and hold Seller, its directors, officers, managers, employees, and agents harmless from and against:

11.2.1. any and all claims, liabilities, obligations, damages, and expenses resulting from the failure of any of the representations and warranties of Buyer contained in this Contract to have been true in all material respects when made and as of the Closing Date;

11.2.2. any and all claims, liabilities, obligations, damages, and expenses resulting from the failure of Buyer to comply in all material respects with any of the covenants contained in this Contract that are required to be performed by Buyer;

11.2.3. any and all third-party claims for liabilities, obligations, damages, and expenses that occur after the day of Closing; if the event(s) giving rise to a claim occurs on or before Closing and continues to occur after Closing, Seller and Buyer will indemnify the other for the periods that the party did not own the Systems; and

11.2.4. all actions, suits, proceedings, costs, and expenses including reasonable attorneys' fees, incident to this paragraph.

11.2.5. The provisions of this paragraph 10.2 shall survive the delivery of the closing instruments and is subject to the limitations set forth in paragraph 10.3, below.

11.3. Limitation on Indemnification and Claims.

11.3.1. The Buyer shall obtain equivalent insurance or cause to remain in effect for one (1) year insurance superior or equal to all insurance previously maintained by the Seller, including product liability insurance. In the event that any losses are or would be covered by such insurance, the Buyer shall look first to the proceeds of insurance before making any claim for indemnity against the Shareholders and the amount claimed shall only be the amount of the losses in excess of such insurance. Any such claim for indemnity shall be limited to acts and omissions that occurred prior to closing, the limitation stated in paragraph 11.1, above, and paragraph 11.3.2, below. The failure of the Buyer to cause the

maintenance of the insurance referred to in the first sentence of this subparagraph shall relieve the Shareholders of any liability for payment for breaches of representations and warranties with respect to any matter that would have been covered by such insurance.

11.3.2. The amount of any losses claimed as a subject of indemnity or breach of representation, warranty, or covenant against the Seller, which are in excess of the insurance coverage, shall be limited to the actual dollar amount of such losses and shall not exceed the full amount of the then payable balance on the Bonds and paid to the Buyer by a reduction of the payment of the Bonds.

12. Survival of Representations, Warranties, and Covenants. The parties hereto agree that the representations and warranties made in this Contract and the covenants contained herein to be performed or complied with at or prior to the Closing Date will not survive the Closing unless such provision is specifically stated to survive Closing. The indemnification provisions of this Contract shall survive the delivery of the Systems and the Closing.

13. Closing, Deed, and Title.

13.1. “**Closing**” means the settlement of the obligations of Seller and Buyer to each other under this Contract.

13.2. The Closing. Subject to the provisions of Paragraph 5 hereof, the Closing of the transaction contemplated hereby will take place at the offices of Buyer or such location designated by Bond Counsel on or about March 1, 2017 (the “**Closing Date**”). Adjournments may be granted by either Party in order to allow the other Party additional time to secure the approvals set forth in this Contract.

13.3. Deliveries by Seller. At the Closing, Seller will deliver to the Buyer the following:

13.3.1. Seller will release to the Town the Seller’s “Bill of Sale” for the System.

13.3.2. Certificate issued by the Secretary of State of New York attesting that Seller is duly organized, validly existing and in good standing under the laws of the State of New York and a tax clearance certificate from the New York State Department of Taxation. Should it be necessary, Seller covenants that it shall use due diligence, good faith, and take all reasonable steps in pursuing its reincorporation by the Secretary of State, State of New York.

- 13.3.3. Duly executed deeds, with any requested affidavit of title to the system, Premises, easements and other rights, all existing easements, a listing of the customers served through the services acquired herein and shall execute and deliver any and all other bills of sale, assignments or other instruments which counsel to Buyer may reasonably deem requisite or necessary to effectuate the conveyance and transfer of the property referred to herein.
 - 13.3.4. The books and records of Seller to the extent same are in the possession of the Seller and pertain to the operations of the assets.
- 13.4. Deliveries by the Buyer. At the Closing, the Buyer will deliver to Seller:
 - 13.4.1. The Purchase Price as adjusted pursuant to this Contract.
 - 13.4.2. An IRS Form 8283 executed by a person duly authorized by the Buyer to sign appraisal summaries on a form acceptable to the Internal Revenue Service.
 - 13.4.3. An affidavit that it will adopt and comply with all existing covenants between Seller and third parties.
- 13.5. After the delivery of the balance of the Purchase Price and the documents listed in this paragraph 13, the acceptance of documents of sale by Buyer shall be deemed to be a full performance and discharge of every contract and obligation on the part of Seller to be performed pursuant to the provisions of this Contract, except those, if any, which are herein specifically stated to survive the delivery of the Deed.
- 14. Conditions Precedent. This Contract and Buyer's obligation to purchase the assets and the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:
 - 14.1. The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this Contract.
 - 14.2. The delivery by Seller to Buyer of a certification stating that Seller is not a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Buyer is not entitled under FIRPTA to rely on such certification, Buyer shall deduct and withhold from the Purchase Price a sum equal to ten percent (10%) thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

- 14.3. The delivery by the parties of any other affidavits required as a condition of recording the Deed.
- 14.4. The delivery of copies of any and all documentation in possession of the Seller which pertain to the design, operation, and location of the water supply and treatment systems including any maps, plans, reports, or operating manuals.
- 14.5. The delivery of properly completed and signed counterparts of:
 - 14.5.1. the New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (Form TP-584) and
 - 14.5.2. the State of New York State Board of Real Property Services Real Property Transfer Report (Form RP-5217).

Buyer agrees to sign and to direct the Title Company to deliver such forms to the appropriate recording office with the Deed promptly after the Closing.

- 14.6. At Closing, certified or official bank checks payable to the order of the appropriate State, City, or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the Deed or mortgage, if any, shall be delivered by the party required by law or by this Contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

15. Apportionments and Other Adjustments.

- 15.1. To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:
 - 15.1.1. water service revenues or charges billed or accrued during the quarter in which the closing occurs, which shall be remitted to Seller as collected, but not accounts receivable;
 - 15.1.2. special franchise taxes exclusive of corporate taxes;
 - 15.1.3. taxes and assessments on the basis of the fiscal period for which assessed, and

- 15.1.4. fuel, chemicals, and supplies that are not obsolete, at the price then charged to Seller by Seller's supplier, including any taxes; and
- 15.2. If Closing shall occur before a new real estate tax is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to that latest assessed valuation.
- 15.3. Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.
16. Tax Matters.
- 16.1. Buyer shall be liable for all federal, state, and local taxes of any kind for any period commencing after the Closing. Buyer shall be liable for any transfer tax or other charge customarily paid by a seller in Dutchess County, New York. Provision for all such taxes will be included in the computation of the adjustments. Buyer shall provide Seller with proof of Buyer's exemption from sales tax.
- 16.2. Seller has the option to credit Buyer as an adjustment to the Purchase Price with the amount of any unpaid taxes, assessments, water charges, and sewer rents, together with any interest and penalties thereon to a date not less than five (5) business days after Closing, provided that official bills therefor computed to said date are produced at Closing.
17. Liens. If at Closing there are liens or encumbrances that Seller is obligated to pay or discharge in order to close, Seller may use any portion of the proceeds to pay or discharge them, provided Seller shall simultaneously deliver to Buyer at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Buyer acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Buyer's title clear of the matters or insure against their enforcement out of the Premises and will insure Buyer's institutional lender clear of such matters. Upon notice (by telephone or otherwise), given not less than ten (10) business days before Closing, Buyer shall provide separate checks as requested to assist in clearing up these matters. Provision for all such amounts will be included in the computation of the adjustments.

18. Title Examination, Seller's Inability to Convey, and Limitations of Liability.

- 18.1. Buyer shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this Contract. Buyer shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.
- 18.2. If at the date of Closing, Seller is unable to transfer title to Buyer in accordance with this Contract or Buyer has other valid grounds for refusing to close, whether by reason of liens, encumbrances, or other objections to title or otherwise (herein collectively called "**Defects**"), other than those subject to which Buyer is obligated to accept title hereunder or which Buyer may have waived and other than those which Seller has herein expressly agreed to remove, remedy, or discharge and if Buyer shall be unwilling to waive the same and to close title without abatement of the Purchase Price, then except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge, or comply with such Defects or to cancel this Contract.
- 18.3. If Seller elects to take action to remove, remedy, or comply with such Defects, Seller shall be entitled from time to time, upon notice to Buyer, to adjourn the date for Closing hereunder for a period or periods not exceeding sixty (60) days in the aggregate (but not extending beyond the date upon which Buyer's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying, or complying with such Defects at the expiration of such adjournment(s) and if Buyer shall still be unwilling to waive the same and to close title without abatement of the Purchase Price, then either party may cancel this Contract by notice to the other given within ten (10) days after such adjourned date.
- 18.4. Notwithstanding the foregoing, the existing mortgage (if any) and any matter created by Seller after the date hereof shall be released, discharged, or otherwise cured by Seller at or prior to Closing.
- 18.5. If this Contract is canceled pursuant to its terms, other than as a result of Buyer's default, this Contract shall terminate and come to an end, and neither party shall have any further rights, obligations, or liabilities against or to the other hereunder or otherwise.

19. Name Conflicts. If a title examination discloses judgments, bankruptcies, or other returns against entities having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller or if against Seller that they have been satisfied and/or discharged.
20. Defaults and Remedies. If Seller or Buyer willfully defaults hereunder, either shall have such remedies as such party shall be entitled to at law or in equity, including, but not limited to, specific performance.
21. No Broker. The parties represent to each other that no broker brought about this sale.
22. Amendments. This Contract may not be changed orally but only by a Contract in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.
23. Notices.
 - 23.1. Any notice, demand, or other communication (“**Notice**”) which under the provisions of this Contract or otherwise may or must be given or made shall be in writing and may be given or made by mailing the same by registered or certified mail; those addressed to Seller:

Albert A. Natoli, P.C.
Counselor-at-Law
233 Broadway, Suite 810
New York, NY 10279-0815
Tel: 212-619-8087
Fax: 877-770-8087

and those to Buyer:

Thomas F. Wood, Esq.
Wood & Klarl
3153 Albany Post Road
Buchanan, NY 10511
Tel: 914-736-0144
Fax: 914-736-9082

- 23.2. Any Notice shall be in writing and either
 - 23.2.1. sent by either party’s respective attorneys who are hereby authorized to do so on its behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

23.2.2. delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this Contract for the party to whom the Notice is to be given, or to such other address as such party shall hereafter designate by Notice given to the other party or parties pursuant to this paragraph; each Notice mailed shall be deemed given on the third business day following the date of mailing the same; Notice delivered in person or by overnight courier shall be deemed given when delivered.

24. Proceedings. All proceedings that shall be taken and all documents that shall be executed and delivered by the parties hereto on the Closing Date shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken or any documents executed or delivered until all have been taken, executed, and delivered.
25. Further Assurances. If, at any time after the date hereof, any party shall consider or be advised that any further assignments, conveyances, certificates, filings, instruments, or documents or any other things are necessary or desirable to vest, perfect, or confirm in Buyer's title to any of the Shares, the assets conveyed or to consummate any of the transactions contemplated by this Contract, the appropriate other party shall, upon request, promptly execute and deliver all such proper deeds, assignments, certificates, filings, instruments, and documents and do all things reasonably necessary and proper to vest, perfect, or confirm title in Buyer and to otherwise carry out the purposes of this Contract.
26. Binding Effect; Non- Assignable. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Contract may not be assigned without the written approval of the non-assigning party.
27. Compliance with Closing Conditions. The parties hereto shall use their best efforts to comply with the respective Closing conditions to be performed on their part.
28. Termination. This Contract and all the terms and provisions thereof shall be deemed canceled and the respective rights and obligations of the parties hereunder shall cease and neither party shall have any further rights, obligations, or liabilities against or to the other hereunder or otherwise, upon the following:
- 28.1. Mutual Agreement. Buyer and Seller may, at any time prior to the Closing Date, mutually consent to the termination of this Contract, or
- 28.2. Failure to Obtain Necessary Approvals. In the event any of the consents, approvals, and authorizations of any nature required in connection with this transaction are (i) not issued on or before the Closing Date or after a reasonable postponement agreed upon by both parties or (ii) granted on conditions not

expressed or contemplated in this Contract including, but not limited to, payments or refunds to customers (unless such conditions are acceptable to the party charged therewith), or

- 28.3. Uncured action by Seller taken outside the ordinary course of business. Seller shall at least ten (10) days prior to the date of Closing provide to Buyer a list of each and every material action taken outside of the ordinary course of business during the pendency of this Contract, including the date of the action, the parties to the action, a description of the action, the reason for the action, and the cost, if any, incurred by the action. Buyer shall review the list and notify Seller of any action which Buyer determines to be outside the ordinary course of Seller's business and shall afford Seller an opportunity to cure the action. Seller shall have thirty (30) days to cure the action to Buyer's satisfaction and approval which shall not be unreasonably conditioned or delayed during which period the Closing shall be automatically adjourned. In the event Seller does not cure the action within thirty (30) days, Buyer may terminate this Contract.
29. No Third Party Beneficiaries. Nothing contained in this Contract is intended or shall be construed to give any person or corporation, other than the parties hereto and their respective successors, any legal or equitable right, remedy, or claim under or in respect of this Contract or any provision herein contained; this Contract being intended to be and being for the sole and exclusive benefit of the parties hereto and their respective successors and for the benefit of no other person or corporation.
30. New York Law to Govern. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of New York.
31. Counterparts. This Contract may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
32. Paragraph Headings. The paragraph headings in this Contract are for convenience of reference only and shall not be deemed to alter or affect any provision thereof. Reference to numbered "paragraphs", "subparagraphs", and "Schedules" refer to paragraphs and subparagraphs of this Contract and Schedules annexed hereto.

33. Miscellaneous.

- 33.1. All prior understandings, agreements, representations and warranties, oral or written, between Seller and Buyer are merged in this Contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Contract.
- 33.2. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.
- 33.3. Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this Contract may require it.
- 33.4. This Contract shall not be binding or effective until duly executed and delivered by Seller and Buyer.
- 33.5. Seller and Buyer shall comply with IRC reporting requirements, if applicable. This Subparagraph shall survive Closing.
- 33.6. Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this Contract. This subparagraph shall survive Closing.

IN WITNESS WHEREOF, the parties hereto have executed this Contract and affixed their corporate seals the day and year first above written.

HOPEWELL SERVICE CORPORATION

By: 
MICHEAL GILLESPIE, PRESIDENT

TOWN OF EAST FISHKILL

By: _____
JOHN L. HICKMAN, SUPERVISOR

Exhibit 1

Corporations Assets

1. List of Water Corporation's Assets
2. Schedule A: Water Corporation's Real Property Assets

Appendix 2

**Contract to Sell the Assets of
Hopewell Service Corporation
to the
Town of East Fishkill**

CONTRACT made this 10 day of July, 2019, HOPEWELL SERVICE CORPORATION hereinafter called the "**Seller**", a corporation organized and existing under and by virtue of the laws of the State of New York, located 847 Route 376, Wappingers Falls, New York 12590, and the TOWN OF EAST FISHKILL, a municipality functioning under and by the virtue of the laws of the State of New York, having its principal office at 330 Route 376, Hopewell Junction, New York 12533, hereinafter called the "**Buyer**".

W I T N E S S E T H :

WHEREAS, Seller is the owner of an operating public water supply system located within the Town of East Fishkill, County of Dutchess, State of New York, and

WHEREAS, Seller has agreed to sell and the Buyer has agreed to purchase all of the assets of Seller, which includes the ownership of the complete water supply ("**System**") for the price and upon the terms and subject to the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, stipulations, and provisions herein contained, it is hereby agreed as follows:

1. Sale:

1.1. Subject to and conditioned upon obtaining the consents, approvals, and authorizations as hereinafter provided, Seller agrees to sell, transfer, and deliver to Buyer and Buyer agrees to purchase from Seller all of the Seller's right, title, and interest in and to all the its assets free and clear of any debt, mortgages, liens, or encumbrances. The Seller owns the assets set forth in **Exhibit 1** (the "**Assets**"). The Buyer, except as restricted herein, will acquire all of the assets of the Seller.

1.1.1. Excluded from the Assets being sold by Seller are cash, accounts receivable, and accounts payable. The accounts receivable and payable and all other assets and liabilities of the Seller shall remain with the Seller as its asset or liability. The liability of the customers who accounts are not paid as of the date of closing will not be affected by the transfer and the amounts owed will remain due to the Seller.

1.1.2. Included among the Assets at Closing shall be any and all engineering plans and drawings for any filtration system or any other future expansion of the System that have been designed and in possession of Seller.

1.1.3. Included among the Assets being sold are the real property, together with all buildings and improvements thereon and easements (collectively the “Premises”), more fully described on separate pages marked Exhibit 1. Schedules A and B, annexed hereto as part of Exhibit 1 and made a part hereof, together with Seller’s ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Buyer, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Buyer may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

1.1.4. Included in the property being transferred are all fixtures and articles of personal property now attached or appurtenant to the Premises.

2. Purchase Price:

2.1. The purchase price shall be \$100,000.

2.2. The purchase price shall be paid by cashier’s check payable to the order of the Seller unless the Buyer is given written instructions for the electronic transfer of the Cash Consideration at least three business days prior to the Closing, in which case the Cash Consideration shall be electronically transferred in accordance with such instructions at the time of Closing.

2.3. The purchase price shall be paid as follows:

2.3.1. Downpayment:

2.3.1.1. On the signing of this Contract, \$25,000.00 by Buyer’s check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 3 of this Contract (the “Downpayment”).

2.3.1.2. The downpayment will be returned, in full, if the transaction does not close. However, if the Seller pays the entire amount of past due taxes, the downpayment may be taken from escrow and used to pay part of past due real estate taxes owed.

2.3.2. Balance of the Consideration: At the Closing described in section 13 below, the Buyer shall pay into escrow the sum of \$75,000 as the balance

of the consideration due plus and minus adjustments as of the Closing Date. These funds shall be placed in escrow with the Town's Title Company ("Easement Escrow"). These escrowed funds shall be used to obtain a utility easement necessary for the maintenance and replacement of water mains on property owned by Consolidated Edison of New York, Inc. The funds used for this purpose shall be a reduction in the purchase price paid to the Seller. The balance remaining in the Easement Escrow after the Buyer acts, as detailed in Section 10.3, below, will be paid to the Seller within thirty (30) days after the conditions set forth in Section 10.3 have been met.

3. Downpayment in Escrow:

- 3.1. Seller's attorney ("**Escrowee**") shall hold the Downpayment for Seller's account in escrow in a segregated bank account until Closing or sooner termination of this Contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in an interest-bearing account for the benefit of the parties. Interest shall be held for the benefit of the parties and, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (see section 23 herein) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 15 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 15 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Contract or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Buyer. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.
- 3.2. The parties acknowledge that, although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Contract or involving gross negligence

on the part of Escrowee. Seller and Buyer jointly and severally agree to defend, indemnify, and hold Escrowee harmless from and against all costs, claims, and expenses (including reasonable attorney's fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee.

- 3.3. Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel, which may be selected by it (including any member of its firm), and shall be fully protected in so acting or refraining from action upon the advice of such counsel.
 - 3.4. Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provision of this paragraph by signing in the place indicated on the signature page of this Contract.
 - 3.5. Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.
4. Funds: All money payable under this Contract, unless otherwise specified, shall be paid by:
 - 4.1. Cash, but not over \$1,000.00;
 - 4.2. Good check of Buyer drawn on or official check issued by any bank, savings bank, trust company, or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon, not less than three (3) business days' notice (by telephone or otherwise) to Buyer;
 - 4.3. As to money other than the Purchase Price payable to Seller at Closing, check of Buyer; and
 - 4.4. As otherwise agreed to in writing by Seller or Seller's attorney.
 5. Conditions of Sale: This Contract and performance hereunder are subject to and conditioned upon the approvals stated in this section:
 - 5.1. Regulatory Approvals
 - 5.1.1. The Buyer shall obtain approval of the New York State Department of Environmental Conservation ("DEC") and, if necessary, the New York

State and County Health Departments for their authorization to purchase, operate, and extend its operations to include the territory served by Seller. Buyer shall promptly apply to DEC and, if necessary, the New York State and County Health Departments, and for such approval(s) and authorization(s).

5.1.2. Seller shall promptly apply to the New York State Public Service Commission (“PSC”) for approval for the transfer of the Assets.

5.1.3. Seller and Buyer shall cooperate and, if necessary or advantageous, join in any application by the Buyer or Seller for the transfer of the Assets and the associated permits.

5.2. Buyer agrees to promptly schedule a public hearing before its Town Board with respect to the subject acquisition where a resolution would be adopted, subject to permissive referendum in accordance with the provisions of Town Law, approving the acquisition. The parties hereto acknowledge that a thirty-five (35) day period must elapse following the date of adoption of the resolution of approval before Buyer can proceed and that if during said thirty-five (35) day period a petition is filed seeking a referendum, then the Town Board will be required to conduct a vote of the residents of the water district to be formed to serve the Seller’s customers.

6. Permitted Exceptions: The Premises are sold and shall be conveyed subject to the following provided same does not render title uninsurable:

6.1. Zoning and subdivision laws and regulations and landmark, historic, or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;

6.2. Consents of record for the erection of any structures on, under, or above any streets on which the Premises abut;

6.3. Encroachment of stoops, areas, cellar steps, trim, and cornices, if any, upon any street or highway;

6.4. Real estate taxes that are a lien, but are not yet due and payable by Seller; and

6.5. The other matters, if any, including a survey exception.

7. Seller’s Representations: The Seller hereby represents and warrants to the Buyer that all of the following are true as of the date hereof and shall be true on the Closing Date:

- 7.1. At the time of Closing, Seller will be corporation duly organized, validly existing, and in good standing under the laws of the State of New York.
- 7.2. Approval of this Contract has been made by no less than two-thirds (2/3) of the Shareholders of Seller.
- 7.3. The Seller will by proper corporate actions will have the power to execute and deliver this Contract, and to perform its obligations hereunder.
- 7.4. The authorized capital stock of Seller consists of 200 shares of Common Stock, no par value, of which ____ shares are issued and outstanding and ____ shares are treasury shares.
- 7.5. The Seller has no knowledge of any condemnation or eminent domain proceeding now pending or anticipated with respect to all or any part of the System.
- 7.6. There are no inquiries, proceedings, legal actions, suits or environmental, legal or administrative proceedings pending or, to Seller's knowledge, threatened against or which might affect the Seller or the System or interfere with the ability of Buyer to occupy and use the Systems for Buyer's purposes, except an enforcement action by the Dutchess County Department of Behavioral and Community Health (the "**Health Department**" of which the Buyer is fully aware and which will be ended by the Health Department with regard to the Seller without further penalty upon the transfer of the System to the Buyer.
- 7.7. There are no parties in possession of any portion of the Premises to which Seller holds fee title as lessees, tenants at sufferance, trespassers, invitees, or purported Buyers or owners thereof, except as noted herein.
- 7.8. There are no liens or other encumbrances on or affecting all or any portion of the System except (1) those relating to those referred in Paragraph 6 above, (2) the condition or existence of an easement for the use and maintenance of water mains and appurtenances on property owned by Consolidated Edison, and (3) the option(s) held by the Buyer that will be extinguished at Closing.
- 7.9. Seller has not received any written notice from any insurance company or Board of Fire Underwriters (or organization exercising functions similar thereto) requiring the performance of any work or alteration in respect of the Premises and, if Seller receives any such notice prior to the Closing, they shall provide Buyer with a copy thereof.
- 7.10. Undisclosed Liabilities. At the date of the December 31, 2016, Seller's Balance Sheets, to the best of the knowledge of Seller, the Seller did not have any liabilities or obligations of any kind, whether accrued, absolute, contingent, or

otherwise, which are not disclosed on said Balance Sheets, except for liabilities or obligations, which, individually or in the aggregate, are not in excess of \$10,000, and except for liabilities and obligations incurred since the date of the Balance Sheets in the ordinary course of business consistent with past practices. To the best of the knowledge of Seller, there is no basis for the assertion of any material claim or liability against Seller in any amount not fully reflected or reserved against on the Balance Sheets or disclosed in the notes thereto or in this Contract or the Exhibits hereto.

- 7.11. Absence of Certain Changes or Events. Since the December 31, 2016, Balance Sheets the Seller has not, with regard to System:
- 7.11.1. incurred, assumed, or acquired any obligation or liability (contingent or otherwise) except (i) normal trade or business obligations incurred in the ordinary course of business and consistent with the past practices of such company including real estate tax obligations, and thereafter, (ii) obligations under contracts, agreements, and leases described in Exhibits hereto, and (iii) obligations or liabilities which, individually or in the aggregate, are not in excess of \$10,000;
 - 7.11.2. mortgaged, pledged, or subjected to any lien, charge, security interest, or to any other encumbrance any of its assets (whether tangible or intangible) or the Premises, except for security interests granted to lenders in connection with the bonds and loans referred to in the Balance Sheet;
 - 7.11.3. sold, assigned, transferred, conveyed, leased, or otherwise disposed of or agreed to sell, assign, transfer, convey, lease, or otherwise dispose of any of its assets or the Premises, or any other material right, except for fair consideration in the ordinary course of business;
 - 7.11.4. suffered any casualty losses or damages with respect to property and assets that had or may have a material adverse effect on its financial condition as a whole, whether or not such losses or damages shall have been covered by insurance.
- 7.12. Taxes. Seller has (i) filed when due with the appropriate federal, state, local, foreign, and other governmental agencies, or obtained all appropriate extensions for filing, all tax returns, estimates, and reports required to be filed by them, and (ii) have paid all requisite federal, state, or local taxes, and charges of any nature whatsoever, including interest and penalties thereon, and unemployment and social security taxes (collectively, “**Taxes**”). Seller withheld any tax required to be withheld under all applicable federal, state, and local regulations, and such withholdings were either paid to the respective governmental agencies or set aside

in accounts for such purpose or accrued, reserved against, and entered upon the books of the Seller as the case may be.

- 7.13. Real Properties and Leases. Seller owns and has marketable title to the real property set forth in Exhibit 1, Schedules A and B ("**Deeds and Easements**"), and this property is free and clear of any and all pledges, liens, encumbrances, security interests, agreements, or claims of any kind.
- 7.14. Tangible Personal Property. Seller has good title to all of the items of tangible personal property as shown on Exhibit 1 owned by them, free and clear of all liens, leases, encumbrances, claims under bailment and storage agreements, equities, conditional sales contracts, security interests, charges, and restrictions, and all of the items of tangible personal property not owned by, but used in the business of Seller and which, individually or in the aggregate, are material to the conduct of its business are in such condition that upon the return of such property to their owners in the current condition of such property, normal wear and tear excepted, at the end of the relevant lease terms or as otherwise contemplated by the applicable agreements with the owners thereof, the obligations of Seller will be discharged. Regardless of the foregoing, such equipment necessary for the daily or ordinary operation between the date hereof and the Closing shall be acquired by Seller and transferred to the Buyer.
- 7.15. Litigation. There is no action or proceeding in any court or before any governmental authority ("**Litigation**") pending or, to Seller's knowledge, threatened (a) against Seller, or (b) that seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated hereby.
- 7.16. Assets and Inventory. The physical assets and properties owned, operated, or leased, including inventory by Seller and used by them have been inspected by Buyer and on the Closing Date shall be sold "as is" as of the date hereof, reasonable wear and tear excepted and are sold with no warranties or representations, express or implied, except those expressly set forth in this offer. Exhibit 1 ("Assets") lists the assets and inventory owned or leased by the Seller.
- 7.17. Pension Plans. Seller has no executive compensation, profit-sharing, pension, or retirement plan.
- 7.18. Employees. At the time of the closing Seller will have no employees.
- 7.19. Bank Accounts. The bank accounts of Seller shall be retained by Seller.
- 7.20. Powers of Attorney. Seller has not given any power of attorney that is currently in effect, whether limited or general, to any person, firm, corporation, or otherwise

- 7.21. No representation or warranty of Seller contained in this Contract, and no statement contained in any certificate or other instrument furnished or to be furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading subject to Seller's good faith belief that the foregoing were true and not misleading at the time made.

8. Buyer's Representations. Buyer represents and warrants to the Seller:

- 8.1. The Buyer is a government authority duly organized and validly existing and in good standing under the laws of the State of New York and is an entity defined in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended to the date of Closing.
- 8.2. Buyer has full authority to execute, deliver, and perform this Contract and all other documents required to be executed by it hereunder; this Contract and related undertakings will constitute valid and binding obligations of Buyer; and this Contract, related undertakings, and all transactions contemplated hereby have been duly authorized.
- 8.3. Other than as stated in this Contract, the Buyer has not provided and will not provide any goods or services to the Seller in consideration, in whole or in part, for the property described in this Contract.
- 8.4. The property being transferred to the Buyer has never been the subject of condemnation proceedings by the Buyer.
- 8.5. Neither the execution or delivery of this Contract or fulfillment of or compliance with the terms and conditions hereof or thereof will constitute a breach by Buyer of its statutory authority or by-laws or result in a breach of the terms, conditions, or provisions of or constitute a default under or result in a violation of any agreement, contract, or instrument to which Buyer is a party or by which it is bound or result in a violation by Buyer of any existing law or statute or any rule or regulation of any jurisdiction or of any order, decree, writ, or injunction of any court or governmental department, bureau, board, agency, or instrumentality.
- 8.6. No consent from or other approval of any governmental entity or other person is necessary in connection with the execution of this Contract or the consummation by Buyer of the transactions contemplated hereby except as noted in paragraph 5.1 above.

- 8.7. No representation or warranty of Buyer contained in this Contract, and no statement contained in any certificate or other instrument furnished or to be furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading subject to Buyer's good faith belief that the foregoing were true and not misleading at the time made.
- 8.8. Buyer is fully aware of the physical condition and state of repair of the Systems and/or the Premises and of all other property included in this sale, based on Buyer's own inspection and investigation thereof, and that Buyer is entering into this Contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the System and/or the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in present condition and state of repair, subject to reasonable use, wear, tear, and natural deterioration between the date hereof and the date of Closing, without any reduction in the Purchase Price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this Contract. Buyer and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises on the earlier of three (3) days' notice, or the day of Closing.
- 8.9. Buyer is fully aware of an enforcement action by the Health Department against the Seller, which will be ended by the Health Department with regard to the Seller without further penalty upon the transfer of the System to the Buyer.
9. Seller's Covenants. The Seller covenants and agrees as follows:
- 9.1. Actions Pending the Closing. Pending the Closing:
- 9.1.1. The business of Seller will be conducted only in the ordinary course and the Seller will attempt to preserve its present relationships with its management, employees, customers, and suppliers.
- 9.1.2. No single contract or commitment will be entered into which would or could bind Buyer or affect Buyer's operation of the assets, other than transactions in the ordinary course of business that do not involve commitments or payments in excess of \$3,000. If such a contract or commitment is necessary for the ordinary course of business, it can be made only with the prior approval of the Buyer.

- 9.1.3. Seller will not enter into, create, or assume any indebtedness for borrowed money (other than credit transactions in the normal course of business and normal seasonal borrowing) or create any lien, encumbrance, mortgage, or security interest in the Systems (except with respect to normal seasonal borrowings), or assume, guarantee, endorse, or otherwise become liable with respect to the obligations of any other person or entity (except for endorsements of instruments in the normal course of business).
- 9.1.4. Seller shall keep its corporate franchise and all other franchises and rights in full force and effect.
- 9.1.5. All of the properties and assets of Seller shall be kept and maintained in the same operating condition, except for normal wear and tear, and repair as exists on the date hereof.
- 9.1.6. Seller shall duly and timely file all reports or returns required to be filed with any federal, state, or local governmental authority, including all taxing authorities, and will promptly pay all of its obligations, including all taxes, when the same shall be normally due, and shall comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations.
- 9.1.7. Seller shall continue to maintain in full force and effect all policies of insurance heretofore carried by it.
- 9.1.8. Seller shall continue to make its required filings with the Department of Environmental Conservation, Health Department, and the Department of Public Service.
- 9.2. Access to Records. From and after the date hereof, the Seller shall cause all of the books and records of Seller to be available for inspection or examination by representatives of Buyer, upon reasonable notice, during normal business hours.
- 9.3. Shareholders and Members Authorizations. To enable the transactions to go forward, Seller will deliver affirmative votes of not less than 2/3 of the stockholders of the Seller.
- 9.4. Compliance with Conditions. The Seller shall use its best efforts to cause the Closing to be consummated and to cause execution and delivery of the documents referred to in Paragraph 13.3 hereof, and to bring about the satisfaction of the conditions as set forth in Paragraph 17 hereof.

10. Buyer's Covenants. The Buyer covenants and agrees as follows:

10.1. As of the date of Closing, Buyer will operate the Systems and agrees to furnish water services to the customers in the Seller's service area.

10.2. Compliance with Conditions. The Buyer shall use its best efforts to cause the Closing to occur as soon as practicable, but at the end of a quarter to avoid apportionment of accounts receivable.

10.3. Consolidated Edison Easement. Buyer will use its best efforts to promptly and efficiently seek to obtain an easement from Consolidated Edison for the use, maintenance, and replacement of the water mains that now exist on property owned by Consolidated Edison. Alternatively, Buyer may choose to continue to use and maintain the water mains without a formal easement. If Buyer does not obtain the easement within one year, the funds in the Easement Escrow will be paid to Seller as provided in paragraph 10.3.2, below.

10.3.1. Buyer may use the funds in the Easement Escrow to pay for the easement. Any funds remaining in the Easement Escrow after the payment for the easement shall be promptly paid to Seller.

10.3.2. If Buyer cannot resolve the issue within one year from the closing date or chooses not to pursue the acquisition of the easement within one year from the closing date, the purchase price will be reduced by \$25,000 and the funds in the Easement Escrow less \$25,000 will be paid to Seller.

10.3.3. Upon the acquisition of the easement or payment to Seller of any amounts due relating to the Easement Escrow, Seller will be released from any liability relating to the easement for the use of the property owned by Consolidated Edison on which it has water mains and appurtenances.

10.3.4. Buyer agrees that Seller's maximum liability relating to use of the property owned by Consolidated Edison on which it has water mains and appurtenances is the amount in the Easement Escrow.

10.4. The above covenants in this section 9 shall survive Closing.

11. Indemnification and Related Matters:

11.1. Indemnification by Seller.

11.1.1. Seller agrees to defend, indemnify, and hold Buyer, its directors, officers, managers, employees, and agents harmless from and against:

11.1.1.1. any and all claims, liabilities, obligations, damages, and expenses resulting from, or arising out of, the failure of any of the representations and warranties of Seller contained in this Contract to have been true in all material respects when made and as of the Closing Date;

11.1.1.2. any and all third-party claims for liabilities, obligations, damages, and expenses that occur prior to or on the day of Closing that relate to the physical operation of the System, (1) but not for any claim or liability regarding or relating to the existence, use, and maintenance of water mains and appurtenances on property owned by Consolidated Edison, (2) but not to this Contract, rate applications, or the transfer, sale, or purchase of the System; if the event(s) giving rise to a claim occurs on or before Closing and continues to occur after Closing, Seller and Buyer will indemnify the other for the periods that the party did not own the Systems; and

11.1.1.3. all actions, suits, proceedings, costs, and expenses including reasonable attorneys' fees, incident to this paragraph.

11.1.2. It is expressly understood and agreed that the Buyer shall assume only obligations or liabilities disclosed in this Contract and in the financial statements of the corporations, and the Seller agrees to indemnify and hold the Buyer free and harmless, for a period of one (1) year from the date of the Closing, from any claim or any obligation of Seller existing at the time of Closing or prior thereto. The provisions of this paragraph 11.1 shall survive the delivery of the closing instruments and is subject to the limitations set forth in paragraph 11.3, below.

11.2. Indemnification by Buyer. The Buyer agrees to defend, indemnify, and hold Seller, its directors, officers, managers, employees, and agents harmless from and against:

11.2.1. any and all claims, liabilities, obligations, damages, and expenses resulting from the failure of any of the representations and warranties of Buyer contained in this Contract to have been true in all material respects when made and as of the Closing Date;

11.2.2. any and all claims, liabilities, obligations, damages, and expenses resulting from the failure of Buyer to comply in all material respects with any of the

covenants contained in this Contract that are required to be performed by Buyer;

11.2.3. any and all third-party claims for liabilities, obligations, damages, and expenses that occur after the day of Closing; if the event(s) giving rise to a claim occurs on or before Closing and continues to occur after Closing, Seller and Buyer will indemnify the other for the periods that the party did not own the Systems; and

11.2.4. all actions, suits, proceedings, costs, and expenses including reasonable attorneys' fees, incident to this paragraph.

11.2.5. The provisions of this paragraph 10.2 shall survive the delivery of the closing instruments and is subject to the limitations set forth in paragraph 10.3, below.

11.3. Limitation on Indemnification and Claims.

11.3.1. The Buyer shall obtain equivalent insurance or cause to remain in effect for one (1) year insurance superior or equal to all insurance previously maintained by the Seller, including product liability insurance. In the event that any losses are or would be covered by such insurance, the Buyer shall look first to the proceeds of insurance before making any claim for indemnity against the Shareholders and the amount claimed shall only be the amount of the losses in excess of such insurance. Any such claim for indemnity shall be limited to acts and omissions that occurred prior to closing, the limitation stated in paragraph 11.1, above, and paragraph 11.3.2, below. The failure of the Buyer to cause the maintenance of the insurance referred to in the first sentence of this subparagraph shall relieve the Shareholders of any liability for payment for breaches of representations and warranties with respect to any matter that would have been covered by such insurance.

11.3.2. The amount of any losses claimed as a subject of indemnity or breach of representation, warranty, or covenant against the Seller, which are in excess of the insurance coverage, shall be limited to the actual dollar amount of such losses and shall not exceed the full amount of the then payable balance on the Bonds and paid to the Buyer by a reduction of the payment of the Bonds.

12. Survival of Representations, Warranties, and Covenants. The parties hereto agree that the representations and warranties made in this Contract and the covenants contained herein to be performed or complied with at or prior to the Closing Date will not survive the Closing unless such provision is specifically stated to survive Closing. The

indemnification provisions of this Contract shall survive the delivery of the Systems and the Closing.

13. Closing, Deed, and Title.

13.1. “**Closing**” means the settlement of the obligations of Seller and Buyer to each other under this Contract.

13.2. The Closing. Subject to the provisions of Paragraph 5 hereof, the Closing of the transaction contemplated hereby will take place at the offices of Buyer or such location designated by Bond Counsel on or about March 1, 2017 (the “**Closing Date**”). Adjournments may be granted by either Party in order to allow the other Party additional time to secure the approvals set forth in this Contract.

13.3. Deliveries by Seller. At the Closing, Seller will deliver to the Buyer the following:

13.3.1. Seller will release to the Town the Seller’s “Bill of Sale” for the System.

13.3.2. Certificate issued by the Secretary of State of New York attesting that Seller is duly organized, validly existing and in good standing under the laws of the State of New York and a tax clearance certificate from the New York State Department of Taxation. Should it be necessary, Seller covenants that it shall use due diligence, good faith, and take all reasonable steps in pursuing its reincorporation by the Secretary of State, State of New York.

13.3.3. Duly executed deeds, with any requested affidavit of title to the system, Premises, easements and other rights, all existing easements, a listing of the customers served through the services acquired herein and shall execute and deliver any and all other bills of sale, assignments or other instruments which counsel to Buyer may reasonably deem requisite or necessary to effectuate the conveyance and transfer of the property referred to herein.

13.3.4. The books and records of Seller to the extent same are in the possession of the Seller and pertain to the operations of the assets.

13.4. Deliveries by the Buyer. At the Closing, the Buyer will deliver to Seller:

13.4.1. The Purchase Price as adjusted pursuant to this Contract.

- 13.4.2. An IRS Form 8283 executed by a person duly authorized by the Buyer to sign appraisal summaries on a form acceptable to the Internal Revenue Service.
 - 13.4.3. An affidavit that it will adopt and comply with all existing covenants between Seller and third parties.
- 13.5. After the delivery of the balance of the Purchase Price and the documents listed in this paragraph 13, the acceptance of documents of sale by Buyer shall be deemed to be a full performance and discharge of every contract and obligation on the part of Seller to be performed pursuant to the provisions of this Contract, except those, if any, which are herein specifically stated to survive the delivery of the Deed.
- 14. Conditions Precedent. This Contract and Buyer's obligation to purchase the assets and the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:
 - 14.1. The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this Contract.
 - 14.2. The delivery by Seller to Buyer of a certification stating that Seller is not a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Buyer is not entitled under FIRPTA to rely on such certification, Buyer shall deduct and withhold from the Purchase Price a sum equal to ten percent (10%) thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.
 - 14.3. The delivery by the parties of any other affidavits required as a condition of recording the Deed.
 - 14.4. The delivery of copies of any and all documentation in possession of the Seller which pertain to the design, operation, and location of the water supply and treatment systems including any maps, plans, reports, or operating manuals.
 - 14.5. The delivery of properly completed and signed counterparts of:
 - 14.5.1. the New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (Form TP-584) and
 - 14.5.2. the State of New York State Board of Real Property Services Real Property Transfer Report (Form RP-5217).

Buyer agrees to sign and to direct the Title Company to deliver such forms to the appropriate recording office with the Deed promptly after the Closing.

- 14.6. At Closing, certified or official bank checks payable to the order of the appropriate State, City, or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the Deed or mortgage, if any, shall be delivered by the party required by law or by this Contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

15. Apportionments and Other Adjustments.

- 15.1. To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

15.1.1. water service revenues or charges billed or accrued during the quarter in which the closing occurs, which shall be remitted to Seller as collected, but not accounts receivable;

15.1.2. special franchise taxes exclusive of corporate taxes;

15.1.3. taxes and assessments on the basis of the fiscal period for which assessed, and

15.1.4. fuel, chemicals, and supplies that are not obsolete, at the price then charged to Seller by Seller's supplier, including any taxes; and

- 15.2. If Closing shall occur before a new real estate tax is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to that latest assessed valuation.

- 15.3. Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

16. Tax Matters.

- 16.1. Buyer shall be liable for all federal, state, and local taxes of any kind for any period commencing after the Closing. Buyer shall be liable for any transfer tax or other charge customarily paid by a seller in Dutchess County, New York. Provision for all such taxes will be included in the computation of the

adjustments. Buyer shall provide Seller with proof of Buyer's exemption from sales tax.

- 16.2. Seller has the option to credit Buyer as an adjustment to the Purchase Price with the amount of any unpaid taxes, assessments, water charges, and sewer rents, together with any interest and penalties thereon to a date not less than five (5) business days after Closing, provided that official bills therefor computed to said date are produced at Closing.
17. Liens. If at Closing there are liens or encumbrances that Seller is obligated to pay or discharge in order to close, Seller may use any portion of the proceeds to pay or discharge them, provided Seller shall simultaneously deliver to Buyer at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Buyer acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Buyer's title clear of the matters or insure against their enforcement out of the Premises and will insure Buyer's institutional lender clear of such matters. Upon notice (by telephone or otherwise), given not less than ten (10) business days before Closing, Buyer shall provide separate checks as requested to assist in clearing up these matters. Provision for all such amounts will be included in the computation of the adjustments.
18. Title Examination, Seller's Inability to Convey, and Limitations of Liability.
- 18.1. Buyer shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this Contract. Buyer shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.
- 18.2. If at the date of Closing, Seller is unable to transfer title to Buyer in accordance with this Contract or Buyer has other valid grounds for refusing to close, whether by reason of liens, encumbrances, or other objections to title or otherwise (herein collectively called "**Defects**"), other than those subject to which Buyer is obligated to accept title hereunder or which Buyer may have waived and other than those which Seller has herein expressly agreed to remove, remedy, or discharge and if Buyer shall be unwilling to waive the same and to close title without abatement of the Purchase Price, then except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge, or comply with such Defects or to cancel this Contract.

- 18.3. If Seller elects to take action to remove, remedy, or comply with such Defects, Seller shall be entitled from time to time, upon notice to Buyer, to adjourn the date for Closing hereunder for a period or periods not exceeding sixty (60) days in the aggregate (but not extending beyond the date upon which Buyer's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying, or complying with such Defects at the expiration of such adjournment(s) and if Buyer shall still be unwilling to waive the same and to close title without abatement of the Purchase Price, then either party may cancel this Contract by notice to the other given within ten (10) days after such adjourned date.
- 18.4. Notwithstanding the foregoing, the existing mortgage (if any) and any matter created by Seller after the date hereof shall be released, discharged, or otherwise cured by Seller at or prior to Closing.
- 18.5. If this Contract is canceled pursuant to its terms, other than as a result of Buyer's default, this Contract shall terminate and come to an end, and neither party shall have any further rights, obligations, or liabilities against or to the other hereunder or otherwise.
19. Name Conflicts. If a title examination discloses judgments, bankruptcies, or other returns against entities having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller or if against Seller that they have been satisfied and/or discharged.
20. Defaults and Remedies. If Seller or Buyer willfully defaults hereunder, either shall have such remedies as such party shall be entitled to at law or in equity, including, but not limited to, specific performance.
21. No Broker. The parties represent to each other that no broker brought about this sale.
22. Amendments. This Contract may not be changed orally but only by a Contract in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.
23. Notices.
- 23.1. Any notice, demand, or other communication ("**Notice**") which under the provisions of this Contract or otherwise may or must be given or made shall be in writing and may be given or made by mailing the same by registered or certified mail; those addressed to Seller:

Albert A. Natoli, P.C.
Counselor-at-Law
233 Broadway, Suite 810
New York, NY 10279-0815
Tel: 212-619-8087
Fax: 877-770-8087

and those to Buyer:

Thomas F. Wood, Esq.
Town of East Fishkill
330 Route 376
Hopewell Junction, NY 12533
Tel: 845-223-7341

23.2. Any Notice shall be in writing and either

23.2.1. sent by either party's respective attorneys who are hereby authorized to do so on its behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

23.2.2. delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this Contract for the party to whom the Notice is to be given, or to such other address as such party shall hereafter designate by Notice given to the other party or parties pursuant to this paragraph; each Notice mailed shall be deemed given on the third business day following the date of mailing the same; Notice delivered in person or by overnight courier shall be deemed given when delivered.

24. Proceedings. All proceedings that shall be taken and all documents that shall be executed and delivered by the parties hereto on the Closing Date shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken or any documents executed or delivered until all have been taken, executed, and delivered.
25. Further Assurances. If, at any time after the date hereof, any party shall consider or be advised that any further assignments, conveyances, certificates, filings, instruments, or documents or any other things are necessary or desirable to vest, perfect, or confirm in Buyer's title to any of the Shares, the assets conveyed or to consummate any of the transactions contemplated by this Contract, the appropriate other party shall, upon request, promptly execute and deliver all such proper deeds, assignments, certificates, filings, instruments, and documents and do all things reasonably necessary and proper to vest, perfect, or confirm title in Buyer and to otherwise carry out the purposes of this Contract.

26. Binding Effect; Non- Assignable. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Contract may not be assigned without the written approval of the non-assigning party.
27. Compliance with Closing Conditions. The parties hereto shall use their best efforts to comply with the respective Closing conditions to be performed on their part.
28. Termination. This Contract and all the terms and provisions thereof shall be deemed canceled and the respective rights and obligations of the parties hereunder shall cease and neither party shall have any further rights, obligations, or liabilities against or to the other hereunder or otherwise, upon the following:
- 28.1. Mutual Agreement. Buyer and Seller may, at any time prior to the Closing Date, mutually consent to the termination of this Contract, or
- 28.2. Failure to Obtain Necessary Approvals. In the event any of the consents, approvals, and authorizations of any nature required in connection with this transaction are (i) not issued on or before the Closing Date or after a reasonable postponement agreed upon by both parties or (ii) granted on conditions not expressed or contemplated in this Contract including, but not limited to, payments or refunds to customers (unless such conditions are acceptable to the party charged therewith), or
- 28.3. Uncured action by Seller taken outside the ordinary course of business. Seller shall at least ten (10) days prior to the date of Closing provide to Buyer a list of each and every material action taken outside of the ordinary course of business during the pendency of this Contract, including the date of the action, the parties to the action, a description of the action, the reason for the action, and the cost, if any, incurred by the action. Buyer shall review the list and notify Seller of any action which Buyer determines to be outside the ordinary course of Seller's business and shall afford Seller an opportunity to cure the action. Seller shall have thirty (30) days to cure the action to Buyer's satisfaction and approval which shall not be unreasonably conditioned or delayed during which period the Closing shall be automatically adjourned. In the event Seller does not cure the action within thirty (30) days, Buyer may terminate this Contract.
29. No Third Party Beneficiaries. Nothing contained in this Contract is intended or shall be construed to give any person or corporation, other than the parties hereto and their respective successors, any legal or equitable right, remedy, or claim under or in respect of this Contract or any provision herein contained; this Contract being intended to be and being for the sole and exclusive benefit of the parties hereto and their respective successors and for the benefit of no other person or corporation.

30. New York Law to Govern. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of New York.
31. Counterparts. This Contract may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
32. Paragraph Headings. The paragraph headings in this Contract are for convenience of reference only and shall not be deemed to alter or affect any provision thereof. Reference to numbered “paragraphs”, “subparagraphs”, and “Schedules” refer to paragraphs and subparagraphs of this Contract and Schedules annexed hereto.
33. Miscellaneous.
- 33.1. All prior understandings, agreements, representations and warranties, oral or written, between Seller and Buyer are merged in this Contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Contract.
- 33.2. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.
- 33.3. Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this Contract may require it.
- 33.4. This Contract shall not be binding or effective until duly executed and delivered by Seller and Buyer.
- 33.5. Seller and Buyer shall comply with IRC reporting requirements, if applicable. This Subparagraph shall survive Closing.
- 33.6. Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this Contract. This subparagraph shall survive Closing.

IN WITNESS WHEREOF, the parties hereto have executed this Contract and affixed their corporate seals the day and year first above written.

HOPEWELL SERVICE CORPORATION

By: 

MICHAEL GILLESPIE, PRESIDENT

TOWN OF EAST FISHKILL

By: 

NICHOLAS D'ALESSANDRO, SUPERVISOR

*Approved
TAMM
7/10/19*

Exhibit 1

Corporations Assets

1. List of Water Corporation's Assets
2. Schedule A: Water Corporation's Real Property Assets

Appendix 3

NEGATIVE DECLARATION

Notice of Determination of Non-Significance

Date: February 28, 2019

This notice is issued pursuant to Part 617 of the implementing regulation pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of East Fishkill Town Board has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action: Formation of Hopewell West Water District

Description of Action: The proposed action is the formation of the Hopewell West Water District to include 136 residential parcels, 2 vacant lots, and 2 existing water supply lots located along Crest Court or within the Worley Homes development and 1 commercial parcel at 567 Old Hopewell Road (tax parcel 132800-6357-04-552312).

The existing Worley Homes – Hopewell Services water system has been in operation since the 1950's and has supplied water to the Worley Homes development and parcels along Crest Court in the Town of East Fishkill.

The existing system has a reported water source consisting of two (2) wells, although only a single well is authorized for use at this time. A newly drilled well reportedly has excessive levels of iron and manganese present, which has prevented it from being placed into operation. The existing distribution system consists of 6" diameter and smaller asbestos cement (A.C.) water main. The water system is not fire rated and there are no individual water meters present.

There are a number of reported issues with the existing water system. According to the Department of Health, the most significant issues are: having only a single well source available; excessive chloride levels as noted in a recent inspection; age, condition and actual capacity of existing storage tanks (tank was reported to be leaking), rusting of the chlorine contact tank, the presence of A.C. pipe with some smaller sized piping present, exposed electrical wire within the treatment facility building, lack of an emergency generator and pressure issues near the storage tanks.

The Town of East Fishkill has negotiated with the current owners of the system an option to purchase the existing water system. The existing water system would become a Town Water district, with system improvements being performed to provide a more reliable water supply as part of the formation of the Water District.

SEQR Status: Type I _____ Conditioned Negative Declaration? ____ Yes
Unlisted x _____ X No

Location of Action: Town of East Fishkill, County of Dutchess

The following documentation was analyzed in making this negative declaration:

X Short Form EAF

 Supplemental Part III Information

 Storm Water Pollution Prevention Plan (SWPPP)

 Other (Describe)

Name of Action: **Formation of Hopewell West Water District**

For Further Information:

Contact Person: Gina Grippo, Secretary to the Town Supervisor
Town Hall, 330 Route 376
Hopewell Junction, New York 12533
(845) 221-4303

REASONS SUPPORTING THIS DETERMINATION:

(See 617.7(c) for requirements of this determination; see 617.7(d) for conditioned Negative Declaration)

The proposed action would result in the formation of the Hopewell West Water District to include 136 residential parcels, 2 vacant lots, and 2 existing water supply lots located along Crest Court or within the Worley Homes development and 1 commercial parcel at 567 Old Hopewell Road (tax parcel 132800-6357-04-552312). The proposed water district would allow the Town to purchase the existing water system and make necessary improvements providing an upgraded and more reliable water supply as part of the formation of the Water District. Therefore, the proposed action would not be expected to result in any significant adverse impacts on the environment for the following reasons:

1. It will not generate a significant amount of additional vehicles, noise or emission levels.
2. It will not affect rare or endangered species of animal or plant, or habitat of such species.
3. It will not result in any impacts to historic or archeological resources.
4. It will not result in any impacts related to hazardous materials.
5. It will not result in a significant effect on air, water quality or ambient noise levels for adjoining areas.
6. It will not be subjected to unacceptable risk of flooding or major geological hazards.
7. It will not have a substantial aesthetic affect.
8. It will not involve adversely affect any surface water or groundwater.
9. It will not allow for improper uses within specified zoning districts.

10. It will not result in adverse cumulative impacts.
11. It will not result in adverse growth-inducing impacts.
12. It will not conflict with the Town's Comprehensive Plan.

In conclusion, no significant potential impacts were identified as a result of the Proposed Action.

Based on a review of 6NYCRR 617.7, there appear to be no significant adverse environmental impacts.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed.

THIS NEGATIVE DECLARATION WAS AUTHORIZED AT A MEETING OF THE TOWN BOARD OF THE TOWN OF EAST FISHKILL HELD ON FEBRUARY 28, 2019.

Chairperson/Designee

Date

For Type I Actions and Conditioned Negative Declarations, a Copy of this Notice Sent to:

- Commissioner, Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-0001
- Appropriate Regional Office of the Department of Environmental Conservation.
- Office of the Chief Executive Officer of the political subdivision in which the action will be principally located.
- Applicant (if any)
- Other involved agencies (if any)