

**RESOLUTION APPROVING A THIRD AMENDMENT TO THE GROUND LEASE AND WATER USAGE AGREEMENT AT STILLWATER**

**WHEREAS**, the Hudson River – Black River Regulating District Board (“Regulating District”) entered into a Ground Lease and Water Usage Agreement with Stillwater Associates, dated as of October 21, 1985 (the “*Original Ground Lease and Water Usage Agreement*”), later amended by an Amendment to Ground Lease and Water Usage Agreement, dated as of February 17, 2006 (the “*Amendment to Ground Lease and Water Usage Agreement*”); later amended by that certain Second Amendment to Ground Lease and Water Usage Agreement, dated as of October 14, 2021 (the “*Second Amendment to Ground Lease and Water Usage Agreement*”)and

**WHEREAS**, the Original Ground Lease and Water Usage Agreement, dated as of October 21, 1985, was set to end on December 31, 2016 (the “*Original Term*”); and

**WHEREAS**, the parties did not agree as to terms and conditions for an additional fifteen (15) year Term at the end of the Original Term and thus, under the Original Ground Lease and Water Usage Agreement, the Term of the Original Ground Lease and Water Usage Agreement was extended to December 31, 2021 (the “*Extended Term*”), later extended to March 31, 2022; and

**WHEREAS**, as the expiration of the extended term approaches, the parties have not been able to agree upon rent and other terms and conditions extending the Term past the Extended Term, thus requiring, pursuant to provisions in the original agreement, the District to purchase the Plant at its Appraised Value; and

**WHEREAS**, the parties have agreed to further extend the Extended Term through June 30, 2022 (the “*second 2022 Extension*”), to allow the appraisers for the parties sufficient time to determine the Plant’s Appraised Value and to allow the parties sufficient time to prepare for the purchase and sale of the Plant by the District; and

**WHEREAS**, notwithstanding the 2022 Extension, the second 2022 Extension or anything else set forth in the attached Second Amendment or Third Amendment, neither party desires to relinquish or waive any of the terms, conditions or obligations of either party under the Lease; and

**WHEREAS**, the Regulating District continues to await the valuation of its appraiser to determine the fair market value of Stillwater Associates’ use of the lands upon which the Stillwater Associates plant (co-located at the Regulating District’s Stillwater Dam) is based and that Plant’s use of water from the Regulating District’s Stillwater Reservoir; and

**WHEREAS**, the parties intend to rely upon that appraisal in the negotiation of a new long-term replacement to the expiring Ground Lease and Water Usage Agreement or sale of the asset; and

**WHEREAS**, the parties acknowledge that additional time may be required to acquire necessary data, including data from Stillwater Associates, to complete the appraisal and to negotiate a new long-term agreement or consummate the sale,

**WHEREAS**, the parties desire to amend paragraph fifty-fourth of the Original Ground Lease and Water Usage Agreement, dated as of October 21, 1985, defining appraised value, to no longer require that the parties’ respective appraisers select a third appraisal firm; allowing for a negotiated value.

**NOW, THEREFORE BE IT RESOLVED**, the Hudson River – Black River Regulating District Board hereby authorizes the Executive Director to execute a Third Amendment to the Ground Lease and Water Usage Agreement extending the extended term three months to June 30, 2022 and amending language to permit greater flexibility in negotiating fair market value.

Approved as to form:



Robert P. Leslie  
General Counsel

Motion was made by Mr. DeWitt and seconded by Mr. Hayes that the Resolution be approved.

Present and voting:

MEMBER	AYE	NOE	ABSTAIN
Mr. Finkle .....	<u>  X  </u>	_____	_____
Mr. Hayes.....	<u>  X  </u>	_____	_____
Mr. DeWitt.....	<u>  X  </u>	_____	_____
Mr. Bird.....	_____	_____	<u>  EXCUSED  </u>
Mr. Candido .....	<u>  X  </u>	_____	_____
Mr. Reagan.....	<u>  X  </u>	_____	_____
Ms. Allen.....	<u>  X  </u>	_____	_____