



Watervliet-Guilderland Investigation of Consolidation of Water Supply and Filtration Services

Prepared by:
Capital District Regional Planning Commission
McNamee, Lochner, Titus & Williams, P.C.
Hodgson Russ LLP

For the City of Watervliet and the Town of Guilderland

Study Funding Provided by:
New York State Department of State - Shared Municipal Services Incentive Award

December 5, 2011

Front cover photo credit: Paul Gallo

Table of Contents

EXECUTIVE SUMMARY	pg. iii
A. Assessment of Existing Environment	pg. 1
1. Physical Status/Age of Existing Plants	
2. Outstanding Financial Obligations	
a. City of Watervliet	
b. Town of Guilderland	
3. Existing Operational Structure: Employees, Labor Contract	
4. Existing Billing & Collection Process	
a. City of Watervliet	
b. Town of Guilderland	
5. Existing Town and City Governance	
a. City of Watervliet	
b. Town of Guilderland	
6. Existing Water Service Areas for Town and City	
7. Current Water Contracts with Other Municipalities	
8. Expansion Plans	
B. Investigate Alternative Options to Accommodate Joint Ownership/Operation	pg. 5
1. Identify and Evaluate Alternative Legal Structures	
a. What does New York Law allow?	
i. Is charter revision necessary?	
ii. Analysis of each option	
b. What are other municipalities doing?	
2. Identify and Evaluate Financing Options to Construct Treatment Plant	
a. What does New York Law allow?	
i. Is charter revision necessary?	
ii. Analysis of each option	
b. What are other municipalities doing?	
3. Identify and Evaluate Ownership Options for Existing Reservoir	
a. What does New York Law allow?	
i. Is charter revision necessary?	
ii. Analysis of each option	
b. What are the real property tax revenue and expense implications?	
4. Identify and Evaluate Ownership Options for New Facility	
a. What does New York Law allow?	
i. Is charter revision necessary?	
ii. Analysis of each option	
b. What are the real property tax revenue and expense implications?	
5. Identify and Evaluate Ownership Options for New Facility	
6. Recommendation	
APPENDIX A	pg. A-1

Executive Summary

The purpose of this study was to investigate alternative legal and financial structures to accommodate the creation of a joint enterprise responsible for the construction and operation of a singular water treatment plant at the Watervliet Reservoir to be owned or operated cooperatively by the City of Watervliet and the Town of Guilderland. The project team consisted of Rocco A. Ferraro, AICP, Executive Director of the Capital District Regional Planning Commission, Joanna H. King, Assistant Planner, Capital District Regional Planning Commission, A. Joseph Scott, III, Esq., Hodgson Russ LLP, and Michael J. Hall, Esq. of McNamee, Lochner, Titus & Williams, P.C.

The team undertook an assessment of the existing water systems in the two municipalities, investigated alternative options for joint ownership and operation of water facilities and identified three such structures to study in detail: a public authority, a private not-for-profit and an intermunicipal cooperation agreement. The analysis included a review of the governance structure of the City of Watervliet and Town of Guilderland, their outstanding financial obligations, and a review of the existing billing and collection procedures by the two communities. The examination of each option included a detailed review and analysis of the advantages and disadvantages of each of the alternative arrangements. The legal structure and charter revisions necessary to accommodate each of the three alternative arrangements were also investigated.

Based on the detailed review of the alternatives, the project team recommends that the private not-for-profit and intermunicipal cooperation agreement structures warrant further study and evaluation to determine the financial impacts, both positive and negative, of each alternative. The proposed cooperative management structure of joint ownership/operations of the water supply system compliments the recently announced new regional economic development initiative by Governor Andrew Cuomo to create economic development opportunities applying a collaborative model of intermunicipal cooperation. Therefore, it is highly recommended that the City of Watervliet and the Town of Guilderland pursue the logical next step and apply for a local government efficiency grant from the New York State Department of State to undertake the fiscal analysis of the management alternatives outlined in this report.

Watervliet – Guilderland Investigation of Consolidation of Water Supply and Filtration Services

A. Assessment of Existing Environment

1. Physical Status/Age of Existing Plants

The existing Watervliet water treatment plant is approximately 100 years old. It is currently functional, but significant updating or replacement will be required in the near term. The Guilderland water treatment plant is approximately 20 years old and recently updated. Guilderland provides water to its residents from three sources: (a) purchases from the City of Albany, (b) wells owned by the Town, and (c) purchases from the City of Watervliet.

2. Outstanding Financial Obligations

a. City of Watervliet

Watervliet issued \$180,000 in bonds in 2008 for preconstruction costs for a planned expansion of the Reservoir. A new financing in January 2011 in the amount of \$250,000 in new money will pay off the previously borrowed \$180,000, leaving approximately \$70,000 for current activities. The expansion project's total construction cost is estimated at approximately \$2 million.

b. Town of Guilderland¹

The Town has issued bonds and notes under the New York Local Finance Law to finance improvements to the Town Water District. Currently, there is approximately \$12,458,115 of debt outstanding relating to such improvements. The debt is a general obligation of the Town and is repaid through special assessments imposed by the Town on the residents in the Water District.

Over the years, the projects financed by the Town with the proceeds of the bond and note financings are generally described as follows:

- i. Extensions to Depot Road
- ii. Increasing capacity of the pumping station, constructing a new clear well and installing control and data acquisition system
- iii. Adding a fluoridation system
- iv. Increasing storage capacity
- v. Installing an electronic remote meter reading system

¹ See Appendix A for additional information.

The Town has significant debt capacity to finance additional capital improvements to the Water District. The total amount of debt the Town has outstanding is approximately \$27,917,000² and, of such amount, approximately \$5,425,000 is subject to the Town's constitutional debt limit of \$242,997,989. Accordingly, the Town has exhausted approximately 2.24% of its debt issuing capacity.

3. Existing Operational Structure: Employees, Labor Contract

Watervliet has a contract with CSEA through 2012 covering 6 employees in the Water Department. Guilderland has approximately 32 full and part-time employees in its Water and Sewer department of which 13 work on the water side.

4. Existing Billing & Collection Process

a. City of Watervliet

Watervliet has 5,050 residential users and 63 commercial users. Watervliet has a flat fee structure for its residential users. Commercial users in Watervliet are metered. The use of meters for residential users in Watervliet has been discussed. Water bills are generated by the City twice a year, in May and November. Residential users are charged \$263.50 in each bill. Commercial users are billed by the City at the same time at the metered rate. Commercial meters are read from a passing vehicle in which a radio receiver picks up a signal from the meter indicating usage. Payment terms are net 30 days.

b. Town of Guilderland

The Town bills for the delivery of water service by the use of an electronic water metering system. The system was installed in April 2005 as part of a capital project undertaken by the Town within the Water District. One of the features of the system is that it permits remote reading of the meters by the use of Water District trucks traveling within the District.

There are approximately 7,700 users (both residential and commercial/industrial) of the Town water system. The Town bills the users semi-annually, and for administrative reasons divides the users into three (3) cycles. The first cycle (Cycle #51) consists of approximately 1,700 users and the first cycle is billed in April and October of each year. The second cycle (Cycle #52) consists of approximately 3,000 users and the second cycle is billed in May and November of each year. The third and last cycle (Cycle #53) also consists of approximately 3,000 users and is billed in June and December of each year.

The data necessary to prepare the water bills is assembled by the Town Water Department through the use of the electronic metering system. Water Department trucks containing the meter reading system travel through the area of the Water District to be

² The debt numbers of the Town are effective as of December 31, 2010.

billed during the month prior to the delivery of the bills. For example, for Cycle #51, the Water Department trucks will travel through the Cycle #51 area during the month of March for the April billing.

The Town has retained a private company located in Buffalo, New York to produce and mail the water bills. Once the billing data is collected, the Town sends the billing data to the private company and the private company prepares and mails the bills to each of the water system users. The private company also prepares reports and charts describing use and consumption of water for review by the Town. The water system users are then responsible for mailing or delivering in person the payment for the water services directly to the Town Receiver of Taxes located in the Town Hall.

5. Existing Town and City Governance

a. City of Watervliet

The City is governed by a city council consisting of three members. One of the members of the council is the mayor, and the mayor is the chief elected official of the City; it is a part-time position. The city council meets two times a month, and its meetings are open to the public.

The term of office of the mayor is four years, and each term commences in an even year. The term of office of the city council members is four years and the terms are staggered.

The City generally operates under the provisions of the General City Law. However, the City of Watervliet also has an adopted City Charter. Most of the powers of the City are described in Section 23 of the City Charter. Examples include general powers such as the following: acquisition of real property (including condemnation); levying and collecting taxes on real and personal property; and regulating the City's finances.

Other elected officials in the City include a judge of the city court and one supervisor. These officials serve two year terms and are elected pursuant to city-wide elections. The mayor and the city council appoint the general manager, who serves as the administrative head of the city government. Additionally, the power of appointment is delegated to the general manager.

b. Town of Guilderland

The Town is governed by a town board consisting of five members. One of the members of the town board is the town supervisor and the supervisor is the chief elected official of the Town; it is a full-time position. The town board meets 2 times a month and its meetings are open to the public and broadcast live on public access cable television.

The term of office of the town supervisor is two years and each term commences in an even year. The term of office of the town board members is equal to four (4) years and the terms are staggered, with two (2) board members elected every two years and the

terms beginning in even years. The town supervisor and the town board members are elected by town-wide elections. Members of the town board are not elected from separate election districts.

The powers of the town board are generally contained in the Town Law. The town board and operations of the Town are not governed by a separate charter adopted by the town board. Most of the powers of the Town are described in Section 64 of the Town Law. Examples include general powers such as the following: acquisition of real property (including condemnation), awarding and executing contracts, and control of town finances. Interestingly, Section 64 of the Town Law also contains several very specific powers, including the power to make appropriations for deer food.

Other elected officials in the Town include the Town Highway Superintendent, the Receiver of Taxes and the Town Clerk. Those officials serve four year terms and are elected pursuant to town-wide elections. The town supervisor and the town board appoint other town officers and officials such as the town attorney.

6. Existing Service Areas for Town and City

Watervliet serves all areas of the City. Guilderland water service covers approximately 50% of the Town land, which serves approximately 77% of the population.

7. Current Contracts with Other Municipalities

Guilderland has a contract in place to purchase raw water from Watervliet with a minimum draw requirement through 2028 unless approval is obtained to build a plant to produce finished water. Guilderland also has a contract to purchase water from the City of Albany.

8. Expansion Plans

Plans are to expand the capacity of the Existing Reservoir from 10 million gallons a day to 20 million gallons a day. The planning and design phase of the project is expected to be concluded at the end of 2011 or beginning of 2012 with construction to follow. Construction costs are estimated at approximately \$2 million. Watervliet is interested, as evidenced by this study, in building a filtration plant at or near the reservoir so that finished water can be sold.

B. Investigate Alternative Options to accommodate Joint Ownership/Operation

1. Identify and Evaluate Alternative Legal Structures

a. What does New York Law allow?

There are three (3) alternative legal structures that will be discussed and reviewed in this report. The structures are noted as follows:

- a. public authority;
- b. private not-for-profit; and
- c. intermunicipal cooperation agreement.

Each of the structures has strengths and weaknesses, as discussed further below.

The public authority structure involves the creation of a separate public authority under New York law. The created public authority would have the power to own, operate, finance and construct water systems. The public authority would be created by legislation passed by both houses of the New York State Legislature and signed into law by the Governor. Examples of similar public authorities created with respect to local water systems include the Erie County Water Authority, the Town of Clifton Park Water Authority, the Rensselaer County Water and Sewer Authority and the Town of Wilton Water Authority.

The legislation that would create the public authority would address a number of concepts, such as:

- a. the size of the geographic area to be served;
- b. the membership of the governing board of the public authority and how members would be appointed;
- c. general description of the powers of the authority;
- d. procedures regarding the issuance of bonds and notes;
- e. how property is transferred to the authority;
- f. that property owned by the authority is exempt from real property taxes; and
- g. reporting responsibilities.³

The private not-for-profit structure also involves the creation of a new entity to own, operate and finance a water system. However, unlike the public authority structure, the private not-for-profit structure would not require the adoption of new state legislation. The private not-for-profit structure would involve the filing of the necessary corporate formation documents to create a private not-for-profit corporation under New York State law.

³ See Appendix A paragraph 2 for a listing of the statutory provisions relating to the Town of Clifton Park Water Authority.

The certificate of incorporation and by-laws of the private not-for-profit corporation would describe the various provisions dealing with the powers and operations of the private not-for-profit corporation. Examples of private not-for-profit corporations that own and operate governmental facilities and projects include the Capital District Youth Center, Inc.⁴ and the Columbia County Municipal Leasing Corporation.⁵

The third alternative to be reviewed in this report is the intermunicipal cooperation agreement structure. Under Article 5-G of the General Municipal Law, municipalities are authorized to enter into intermunicipal cooperation agreements to provide municipal services on a joint basis.

The intermunicipal cooperation agreement structure does not require the creation of a new entity by state legislation or the filing of a certificate of incorporation. Article 5-G of the General Municipal Law provides a series of requirements which govern the use of intermunicipal cooperation agreements. Further, the use of intermunicipal cooperation agreements is quite common in New York State and there are numerous examples of municipalities using such agreements in addressing the issues relating to the delivery of municipal water services.

i. Is charter revision necessary?

As described above, the Town of Guilderland is a municipal corporation and operates under the provisions of the New York Town Law. The Town does not have a charter (towns in New York State do not have charters), so, accordingly, no charter revision is necessary in connection with the selection of any of the three described alternatives.

The City of Watervliet is also a municipal corporation and generally operates under the provisions of the General City Law. However, the City of Watervliet also has an adopted City Charter. The City Charter does include provisions addressing water distribution.⁶

Based on our preliminary review, revision to the City Charter would be necessary if the public authority structure or the private not-for-profit structure alternatives were selected by the City of Watervliet. Charter revisions would be necessary in order to reflect that municipal water services would be provided by an entity other than the City of Watervliet (i.e., a public authority or a private not-for-profit corporation). It is our view that no charter revision would be necessary if the City of Watervliet selected the intermunicipal cooperation structure alternative.

⁴ The Capital District Youth Center, Inc. owns and operates a regional service youth detention facility.

⁵ The Columbia County Municipal Leasing Corporation operates a county office building.

⁶ Article XII (Sections 129-140) and Article XIV (Sections 155-164) of the City Charter involve the topics of “water distribution” and the “department of public works”.

ii. Analysis of each option

There are a number of factors relating to each of the alternatives, and each of those factors has advantages and disadvantages. For purposes of simplicity, this report describes each of the factors and provides an analysis of the advantages and disadvantages of such factors for each of the alternatives in the below table.⁷ Included in the table is a scoring determination, which scores each of the alternatives on a scale of “1” to “5”, with “5” being the most positive and “1” being the least positive. The scoring determination is totaled at the end of the table.

	<u>Factors</u>	<u>Public Authority Structure</u>	<u>Private Not-for-Profit Structure</u>	<u>Intermunicipal Cooperation Agreement Structure</u>
1.	Complexity	This alternative is more complex than the other two alternatives. Selection of this alternative results in the creation of a new, separate governmental entity that will own, create, construct and finance the water system. The drafting and finalizing of the statute creating the public authority is difficult and involved.	This alternative is less complex than the public authority structure, but more complex than the intermunicipal cooperation structure.	While the factors to be addressed in the intermunicipal cooperation alternative may be complex (e.g., operation issues, governance issues, control issues, finance issues), this alternative should be less complex than the other two alternatives because the preparation of the intermunicipal cooperation agreement and the implementation of the alternative should be less involved.
	Score	1	3	3

⁷ Note that “publicity” is not included as a factor in the table. However, “publicity” may be involved in any consideration of the three alternatives. The amount of publicity surrounding the consideration of any alternative will most likely depend on the general complexity of the issue, the impact of the alternative and, in the case of the public authority and private not-for-profit structures, the media’s general fascination with the creation of new governmental type entities.

	<u>Factors</u>	<u>Public Authority Structure</u>	<u>Private Not-for-Profit Structure</u>	<u>Intermunicipal Cooperation Agreement Structure</u>
2.	Timetable	The timetable for this alternative is long because there is at least a two phase process in creating the public authority. The first phase is the negotiations and discussion between the City of Watervliet and the Town of Guilderland. The second phase is the drafting of the legislation and the steps required to get approval of the legislation by the New York State Legislature and the Governor.	The timetable for this alternative is shorter than the public authority structure because there is no New York State legislation that is required to be passed.	Should be shorter than the other two alternatives.
	Score	1	3	5
3.	Local Structural Change	The local impacts of this alternative are generally high as this alternative involves a significant change to the existing structure of the local water system. Under this alternative, the water system would be controlled by a separate entity, the board of which is appointed by the two municipalities.	The local impacts of this alternative are generally high as this alternative involves a significant change to the existing structure of the local water system. The water system is now controlled by a separate entity, the board of which is appointed by the two municipalities.	Less impact because the change in the status of the municipal water system is less (e.g., no change in ownership).
	Score	1	2	5
4.	Political Impacts	Political impact will be high because this alternative should attract significant publicity and there will be a need to coordinate with the local Assembly and Senate representatives in order to have the legislation adopted.	Political impact will be generally high because this alternative should attract significant publicity. Because there is no need for New York State legislation, there will not be any political issues relating to the New York State legislature.	There will be political issues, but again the political impact should be less because the local impact is less and the publicity is less than the other two alternatives.
	Score	1	3	3

	<u>Factors</u>	<u>Public Authority Structure</u>	<u>Private Not-for-Profit Structure</u>	<u>Intermunicipal Cooperation Agreement Structure</u>
5.	Costs	The legal and other professional fees associated with the creation of a public authority and the transfer of a system from a municipality to such public authority can be expected to be higher than the costs of the other two alternatives.	The legal and other professional fees associated with the creation of a separate not-for-profit corporation and the transfer of a system from a municipality to such corporation can be expected to be lower than the cost of the public authority alternative, but higher than the intermunicipal cooperation alternative.	The costs for this option should be less than the “Public Authority” option, but it may be as costly as the “Not-for-Profit Structure” option, depending on the complexity of the intermunicipal cooperation agreement.
	Score	1	3	3
6.	Independent Operation	One of the reasons to create a public authority and to transfer municipal services to such authority is to attempt to eliminate the local politics that may be present in the operation of the municipal system and to professionalize the staff. Except generally through the appointment of members to the authority board, the public authority is generally very independent of the municipality. Other benefits include the elimination of political control through the local municipal board on the setting of rates with respect to the municipal services.	Except generally through the appointment of members to the not-for-profit corporation board, the not-for-profit corporation is generally very independent of the municipality. The not-for-profit structure alternative has many of the same benefits regarding independent operation as the provided by the public authority alternative, as discussed under “Public Authority” structure.	There is less change in control so if the goal is to increase independent operation of the municipal system, this alternative does not offer as much as the other two alternatives. The municipalities maintain high degree of control (they do not transfer the system to a third party).
	Score	5	4	2
7.	Liability	A significant result in the creation of a separate public authority is the elimination of liability to the municipality for the operation and financing of a municipal services project.	The not-for-profit structure alternative has many of the same benefits regarding liability as provided by the public authority alternative.	This alternative does not provide any protection to the municipality from liability, and, this alternative may actually increase the potential liability of both municipalities because they are now potentially responsible for the actions of the other municipality.
	Score	5	5	1

	<u>Factors</u>	<u>Public Authority Structure</u>	<u>Private Not-for-Profit Structure</u>	<u>Intermunicipal Cooperation Agreement Structure</u>
8.	Comprehensiveness	The process of creating a public authority and drafting legislation that addresses the issues of ownership, expansion, operation and financing typically results in a comprehensive consideration and resolution of the issues surrounding the delivery of that particular municipal service.	The not-for-profit structure alternative has many of the same benefits regarding comprehensiveness as provided by the public authority alternative.	The intermunicipal cooperation alternative is typically selected to address specific issues, so this alternative may offer a less comprehensive approach to the operation of the municipal system.
	Score	5	5	4
9.	Balance of Power	The project could be structured to give the participants whatever level of equality in terms of control as is desired. If equal partnership is desired, it can be achieved in the “Public Authority” structure.	Same as the “Public Authority” structure.	In this structure, if one municipality owns the facility and the two municipalities operate it, there is an inherent imbalance of power that could cause issues.
	Score	5	5	2
10.	Flexibility	Public authorities are generally subject to less restrictive rules than municipalities, and accordingly, they are generally more flexible in their operations than municipalities.	Like public authorities, not-for-profit corporations are generally subject to less restrictive rules than municipalities, accordingly, they are generally more flexible in their operations than municipalities.	The municipal boards still have control over the municipal system. The system is still subject to the rules imposed on municipalities.
	Score	3	5	1
11.	Permanency	In the “Public Authority” structure, the entity is created by state statute, so there is a high level of permanence.	The degree of permanence is lower in this alternative because the certificate of incorporation and the by-laws may be modified by the members.	The level of permanence of this alternative depends on the terms of the intermunicipal cooperation agreement (i.e., is the term of the agreement a short period (e.g., 5 years) or a long period (e.g., 30 years), and is the agreement terminable at the option of one party?).
	Score	5	3	2

	<u>Factors</u>	<u>Public Authority Structure</u>	<u>Private Not-for-Profit Structure</u>	<u>Intermunicipal Cooperation Agreement Structure</u>			
12.	Accountability	The members of the public authority are not elected and therefore not as subject to local pressure and control. Members are, however, appointed by government representatives that are elected.	Similar to “Public Authority” structure.	In this structure the municipalities still control the system and decision-making, so this alternative has a high degree of accountability.			
	Score		3		2		5
	Total Score		36		43		36

b. What are other municipalities doing (both in NYS and other parts of the US)

New York State is a “home rule” state and, accordingly, the starting point for any review of the delivery of municipal services generally starts at the lowest level of local government. Further, New York law generally provides that basic municipal services, such as the delivery of drinking water, may be delivered by the lowest level of local governments. Therefore, in many areas of New York State, the delivery of municipal water service is provided by villages, towns and cities.

Over the past 3 or 4 decades, as the size and complexity of the systems have increased, and the demands on such systems have increased, a number of municipalities in New York State have considered the issues described above and determined to change the manner in which the municipal services are delivered.

The result is that in New York State there are a variety of methods used to deliver municipal services, including water services. Some areas continue to use the local village, town and city water systems. Other areas have combined the local systems and transferred them to public authorities. And, other areas have combined the local systems and organized them as a county-wide owned and operated system.

In Genesee County, New York, there is a County Water Resources Agency which is a county-wide water system set up over the existing smaller municipal systems. The county agency essentially absorbed the existing facilities. The transformation was accomplished through the use of intermunicipal cooperation agreements. The Village of Elbridge, New York similarly consolidated several municipal systems, but the new treatment facility was built and is owned by one of the participants. Dutchess County, New York has a county-wide authority created by state law.

Similar structures are in use in other parts of the United States. For example, San Diego County in California has a water authority which serves member agencies. Palm Beach County in Florida employs a county water department which serves county residents. Tampa Bay, Florida has a regional water authority funded by the sale of water. The regional authority was created by legislative act and functions pursuant to a

partnership agreement. As part of the regional program, all individually owned water facilities were transferred to the authority and each member waived its right to individually develop water supply facilities. The Bay Area Water Supply & Conservation Agency was created by state law in California. The agency represents a number of small municipal water districts in a three-county area giving them a collective voice in dealings with the larger San Francisco regional water system. The regional entity repairs and maintains the water system and acts as a bargaining agent for its members in purchasing water for the system.

The Iowa Lakes Regional Water District is an incorporated district which got funding and built a water system from the ground up in an area that previously had been served only by private wells. The Central Iowa Water Association is a private not-for-profit corporation which provides water to rural residents, small communities, developments, recreational facilities and rural businesses. The Xenia Rural Water District in Iowa started out private like Central Iowa then received statutory authority becoming a quasi-governmental entity. The Eastern Wyoming (West Virginia) Public Service District used Environmental Protection Agency funds to replace 11 local water districts that were damaged by flooding with a single system.

2. Identify and Evaluate Financing Options to Construct Treatment Plant (“New Facility”)

The financing options for the construction of the New Facility consist of the issuance of bonds through one of the alternatives described in detail above⁸. The options are spelled out as follows:

1.	Creation of a public authority	Issuance of revenue bonds by the public authority
2.	Creation of a not-for-profit corporation	Issuance of revenue bonds by the not-for-profit corporation
3.	Entering an intermunicipal cooperation agreement	Issuance of general obligation bonds by the City or the Town pursuant to the terms of the intermunicipal cooperation agreement

The advantages and disadvantages of each of the options are analyzed in B.1.a.ii. above. Further, as the City and the Town would be considering the three (3) options noted above in the context of a comprehensive approach to the delivery of water services, the issues of ownership of the existing reservoir (the “Existing Reservoir”) and the New Facility discussed below would also have to be addressed. For example, if the City and the Town selected the public authority option for the construction of the New Facility, necessarily included in that option would be the consideration of having the public authority own the New Facility.

⁸ This discussion assumes that no federal or New York State grant monies are available to the City or the Town for this matter.

a. What does New York Law allow?

As noted above, New York law does permit the consideration and implementation of each of the three (3) options.

b. Charter revision necessary?

As noted above, some charter revision to the City Charter may be necessary in order to implement the public authority and not-for-profit structure options.

3. Identify and Evaluate Ownership Options for Existing Reservoir

There are three (3) ownership options for the Existing Reservoir. They are listed as follows:

1.	Ownership by a public authority
2.	Ownership by a not-for-profit corporation
3.	Continued ownership by the City

a. What does New York Law allow?

New York law does permit each of the listed options. There are issues and legal requirements that must be addressed in connection with any conveyance by a municipality of its real property assets. Those issues and legal requirements are described as follows:

1.	Public sale requirements	In general, under New York law any sale of an asset by a municipality can only be accomplished through a public sale of that asset. We would address this issue in connection with the public authority alternative provided in the New York statute creating the public authority the authorization for the conveyance of the Existing Reservoir by the City to the public authority. With respect to the potential conveyance to the not-for-profit corporation, we would provide the authorization of the private sale to the not-for-profit corporation by adoption of a local law by the City.
2.	Valuation issues	A municipality is required to receive fair consideration in connection with any conveyance of a public asset. We would need to obtain an appraisal or some other third party report to support the purchase price of the Existing Reservoir.
3.	Finance issues	The inclusion in the financing of an amount equal to the sale price of the Existing Reservoir

		would have a potential impact on the rates charged by the public authority or the not-for-profit corporation to the users of the system. As noted below, ownership of the Existing Reservoir by a public authority or a not-for-profit corporation will have real property tax consequences.
4.	Federal tax issues	Bond counsel for the issuance of the bonds must review any potential bond tax issues to ensure that tax-exempt bond proceeds may be used to purchase the Existing Reservoir from the City.

i. Is charter revision necessary?

As noted above, some charter revision to the City Charter may be necessary in order to implement the public authority and not-for-profit structure options.

ii. Analysis of each option

The analysis of each option regarding the ownership of the Existing Reservoir is generally the same as the analysis of the three (3) options contained in B.1.a.ii. above. Additional issues to consider, however, are the specific issues noted above regarding public sale, valuation, finance and federal tax. All of these issues should be able to be addressed from a legal perspective, but may create major issues from a finance perspective.

b. What are the real property tax revenue and expense implications?

In general, under New York law, property owned by a municipality that is located within the boundaries of another municipality is subject to real property tax. Accordingly, the City pays real property taxes to Albany County, the Guilderland Central School District and the Town with respect to the Existing Reservoir. The amounts currently paid by the City are equal to the following:

County real property taxes	\$9,681.96
School District real property taxes	\$52,501.17
Town real property taxes	\$684.14

The assessed value of the Existing Facility is equal to \$2,632,229.00.⁹

Typically, statutes that create public authorities in New York State provide that the public authority is exempt from New York taxes, including New York real property taxes. Similarly, property owned by a not-for-profit corporation is generally exempt from

⁹ As appearing in the 2010 Town Tax Roll.

real property taxes. Accordingly, the result of the conveyance of the Existing Reservoir from the City to a public authority or a not-for-profit corporation would result in the loss of significant tax revenue to the Town and the Guilderland School District.

4. Identify and Evaluate Ownership Options for New Facility

There are four (4) ownership options for the New Facility. They are listed as follows:

1.	Ownership by a public authority
2.	Ownership by a not-for-profit corporation
3.	Ownership by the City
4.	Ownership by the Town

a. What does New York Law allow?

New York law does permit each of the listed options. As there is no conveyance of existing property, the issues noted above regarding the conveyance of the Existing Reservoir are not applicable here.

Each of the entities potentially involved, i.e., the public authority, the not-for-profit corporation, the City and the Town, has the authority to own the New Facility. There would be a potential real estate tax issue if the public authority or the not-for-profit corporation owned the New Facility as there would not be any real estate taxes payable with respect to the New Facility. However, as the New Facility is not yet constructed and, accordingly, no taxes are currently being paid, the local impacts would not be as significant as the impact relating to the loss of actual tax revenue relating to the Existing Facility.

i. Is charter revision necessary?

As noted above, some charter revision to the City Charter may be necessary in order to implement the public authority and not-for-profit structure options.

ii. Analysis of each option

The analysis of each option regarding the ownership of the New Facility is generally the same as the analysis of the three (3) options contained in B.1.a.ii. above. An additional issue for consideration is the option of ownership of the New Facility by the Town. All of these issues should be able to be addressed from a legal perspective.

b. What are the real property tax revenue and expense implications?

As described above, there would be a real estate tax impact on the Town if the New Facility was owned by the public authority or the not-for-profit corporation (or the Town). However, given that there are no tax revenues currently being collected with respect to the New Facility, any financial impact on the Town or the Guilderland Central School District would not be as significant as the impact created by any loss of real estate tax revenue caused by the potential conveyance of Existing Reservoir.

5. Identify and Evaluate Operational Issues

There are several operational issues presented by the implementation of a joint project the analysis of which is beyond the scope of this report, but which should be considered by the decision makers in this process. For example, the joint venturers will need to address their presently different billing and collection methodologies – meters verses flat fee. Also to be worked out, depending in part upon which structure is ultimately chosen, will be how to allocate responsibility for maintenance and control of joint facilities. The participants will also have to address maintenance of facilities not jointly owned – such as the distribution systems. The joint venturers, of course, will need to consider the impact of the project on and use of local infrastructure. Decisions will also have to be made regarding the fluoridation of water produced by the joint facility.

6. Recommendation

Of the three alternatives evaluated by the project team, the Private Not for Profit and the Intermunicipal Cooperative agreement structures warrant further study and evaluation to determine the financial impacts, both positive and negative, of each alternative. The proposed cooperative management structure of joint ownership/operations of the water supply system compliments the recently announced new regional economic development initiative by Governor Andrew Cuomo to create economic development opportunities applying a collaborative model of intermunicipal cooperation. Therefore it is highly recommended that the City of Watervliet and the Town of Guilderland pursue the logical next step and apply for a Local Government Efficiency Grant from the NYS Department of State to undertake the fiscal analysis of the management alternatives outlined in this report.

APPENDIX A

1. Additional information regarding Section A.2.b. - Town Debt relating to the Water District:

Additional detail regarding the debt issued by the Town to finance improvements to the Water District is described as follows:

	Original Amount	Amount Outstanding	Date Issued	Maturity Date	Purpose
1.	\$1,879,000	\$468,000	August 15, 1991	August 15, 2015	Project consisted of improvements to the Guilderland Water District.
2.	\$3,580,000	\$1,152,000	February 15, 2001	February 15, 2018	Project consisted of extensions in Depot Road to the Guilderland Water District.
3.	\$5,549,421	\$2,405,000	July 25, 2002	April 15, 2015	Project consisted of Phase I and II water system improvements, including increasing capacity of the raw water pump station, upgrading and expanding the Water Treatment Plan and high lift pump station, constructing a new clear well and installing a new supervisory control and data acquisition system (and included the addition of fluoridation equipment and conversion from gaseous to liquid chlorination at Wells 1 and 2).
4.	\$3,800,000	\$3,516,730	April 28, 2005	April 15, 2030	Project consisted of improvements to the Guilderland Water District for the increase of storage capacity (\$2,144,500) and the implementation of a water meter replacement program (\$1,655,000).
5.	\$5,400,000	\$4,400,000	August 14, 2008	Pending ¹⁰	Project consisted of capital improvements relating to West End Water District extensions, as described in more detail in an engineering report prepared by Delaware Engineering.

¹⁰ Town has issued bond anticipation notes for this capital project, so the actual maturity date is not established. The period of probable usefulness for the project is forty (40) years, so the maturity date can not extend beyond August 14, 2048.

2. Listing of statutory provisions regarding the Town of Clifton Park Water Authority:

TITLE 6-B – TOWN OF CLIFTON PARK WATER AUTHORITY

Section	
1120.	Short title.
1120-a.	Definitions.
1120-b.	Town of Clifton Park water district.
1120-c.	Town of Clifton Park water authority.
1120-d.	Powers of the authority.
1120-e.	Advances on behalf of the authority; transfer of property to authority; acquisition of property by town for authority.
1120-f.	Governmental capacity of the authority and municipalities.
1120-g.	Transfer of officers and employees.
1120-h.	Bonds of the authority.
1120-i.	Remedies of bondholders.
1120-j.	State and town not liable on authority bonds.
1120-k.	Moneys of the authority.
1120-l.	Bonds legal investments for fiduciaries.
1120-m.	Agreement of the state.
1120-n.	Exemption from taxes, assessments and certain fees.
1120-o.	Actions against the authority.
1120-p.	Contracts.
1120-q.	Interest in contracts prohibited.
1120-r.	Audit and annual report.
1120-s.	Limited liability.
1120-t.	Environmental applications, proceedings, approvals and permits.
1120-u.	Town may levy tax within district.
1120-v.	Contracts for design, construction, service and materials.
1120-w.	Separability.
1120-x.	Effect of inconsistent provisions.