

APPENDIX M

Positive Declaration

Dated February 5, 2007

RESOLUTION

WHEREAS, the Authority is regulated by the Federal Aviation Administration (“FAA”) and obtains significant funding from the FAA. The FAA has expressed concern to the Authority regarding the obstruction to the approach to Runway 28 at the Albany International Airport posed by two water towers owned by the Town of Colonie on Utica Avenue in Latham, New York. The water towers are in the direct line of flight for all aircraft landing on Runway 28 or departing Runway 10. The tanks impinge on the approach surface for the runway by more than 56 vertical feet and predate the introduction of jet aircraft. In regulatory terms, the tops of the Town’s water tanks penetrate the Federal Aviation Regulation (“FAR”) Part 77 approach surface for Runway 28 of the Albany International Airport and are classified as obstructions to the primary runway approach surface (the two tanks constitute hazards to aeronautical navigation required for the protection of persons on the ground); and

WHEREAS, in February 1999, the Authority applied to the FAA for an Airport Improvement Program grant for a Phase One Engineering Study on the subject obstruction removal. That grant application had to compete on its merits at the national level with thousands of other proposed airport improvement projects. The Authority has now received two grants from the FAA committing over \$3 million dollars for Project implementation; and

WHEREAS, the Project involves (1) the removal of two water storage tanks owned by the Town of Colonie from property owned by the Town on Utica Avenue in Latham, New York; (2) the construction of a new water tank on land owned by the Town of Colonie adjacent to the City of Albany’s Loudonville Reservoir; (3) the construction of a new 24-inch water main to connect the new tank to the Town of Colonie’s water distribution system; and (4) the construction of a new 36-inch water main to address the decrease in water pressure to the Town of Colonie’s water distribution system due to moving the water tank outside of the airport runway approach area. The site of the Town’s new water tank will be an 11.8 acre wooded parcel east of Albany-Shaker Road and contiguous to and north of the City of Albany’s Loudonville Reservoir (hereinafter the “Site”). A two acre portion of the property will be set aside for water storage and access. The remainder is

expected to be used by the Town of Colonie for the creation of a new Town park and as a visual green buffer for the tower; and

WHEREAS, in 1999, as the initial step in the Project, the Authority received grant funding from the FAA to conduct a feasibility/engineering study as well as the Federal and State Environmental Review for the Project. The purpose of the study was to determine the hydraulic functions provided by the two water towers, conduct a siting study to determine alternative locations for a new water tower providing the same hydraulic functions, and to select a preferred site for the new tower. The Authority thereafter retained C.T. Male Assocs., P.C. (“C.T. Male”) on January 10, 2000 to conduct the study. Under its contract with the Authority, C.T. Male, Inc. performed the siting evaluation. C.T. Male identified the criteria necessary for an acceptable site and evaluated nine locations within the Town that could possibly serve that function. Each site was then ranked on a variety of factors, including engineering feasibility, constraints to development and other cost/benefit criteria. That study recommended the 11 acre parcel owned by Ms. Sanders immediately to the west of the City of Albany’s Loudonville Reservoir on Albany-Shaker Road (i.e., the Site); and

WHEREAS, the Authority has spent over \$490,000 in conducting the feasibility study and in evaluating the environmental impacts arising from this Project; and

WHEREAS, because the Project involves federal funding, the National Environmental Policy Act (“NEPA”)-- in addition to the State Environmental Quality Review Act (“SEQRA”) -- applies. NEPA is the federal equivalent of SEQRA. For projects that require both State and federal action, SEQRA encourages and requires joint review; and

WHEREAS, the Authority agreed to serve as lead agency under both SEQRA and NEPA. After years of study and analyses, in 2004, the Authority agreed to conduct coordinated review under SEQRA and served notice on seven (7) other potentially involved agencies (including the Town of Colonie, the New York State Department of Environmental Conservation, New York State’s Office of Parks, Recreation and Historic Preservation, the New York State Department of

Transportation, the Albany County Department of Health, the Albany County Department of Planning and Economic Development, and the New York State Department of Health) of its intent to serve as lead agency. The thirty day response period expired and no agency objected to the Authority serving as lead agency. The Authority was therefore deemed lead agency; and

WHEREAS, SEQRA requires the preparation of an environmental assessment form (“EAF”). Similarly, NEPA requires the preparation of an environmental assessment (“EA”). The Authority, through its consultant C.T. Male, prepared both an EA and an EAF. In this case, the EA consisted of over 550 pages and included an in depth analyses of visual impacts, air impacts, archeological impacts and alternatives. The EA was prepared by the Authority’s consultant, C.T. Male, in consultation with and subject to the approval of the Town of Colonie. Once the Town of Colonie and the Authority were satisfied with the EA, a copy of the EA was submitted to the FAA for comment. During the next three months, the Authority, the Town of Colonie, C.T. Male and the FAA worked together to issue an EA that addressed, in a complete manner, all of the environmental impacts. A draft of the EA was made available for public review and comment. A supplement to the draft EA was issued by the Authority to the FAA on July 15, 2004 responding to the comments received on the EA. The EA together with the supplemental EA was deemed final in August, 2004. The EA evaluated all of the potential environmental impacts associated with the Project, evaluated their potential significance and contained reasoned elaboration regarding their significance. Based on the EA, the FAA issued its finding of no significant impact (“FONSI”); and

WHEREAS, on September 13, 2004, the Authority accepted the findings set forth in the FONSI. The Authority also determined to issue a Negative Declaration (“the Authority’s Negative Declaration”) under SEQRA incorporating the reasoning set forth in the EA/FONSI. The Authority’s Negative Declaration was immediately distributed to all involved agencies and the SEQRA review for this project was concluded; and

WHEREAS, after issuing its own negative declaration for the property purchase, on December 29, 2004, the Town proceeded with the purchase of the Site. The Town purchased the 11 acres by two separate deeds. The first deed relates to approximately 7.383 acres of the property,

which – by agreement between the private seller and the Town – must remain forever wild and in its natural condition for use as a Town park as set forth in Schedule B to the deed; and

WHEREAS, the second deed of the same date refers to approximately 4.123 acres of land, which is described in Schedule A of the deed as the “water tank parcel,” including a wooded buffer area of 2± acres. This deed also conveyed to the Town a 30-foot wide access and utility easement. Finally, Schedule C of the deed restricts the use of this smaller parcel to municipal purposes, including the construction of a water tower to provide municipal water for those served by the Town of Colonie and the Latham Water District. Because the property was going to serve two functions, the Town completed its own SEQRA analysis on the property purchase and issued a negative declaration; and

WHEREAS, as part the environmental assessment, C.T. Male studied the visual impacts associated with the construction of the new water tank on the Site, the results of which are discussed in its report, dated February 26, 2004, entitled “Visual Simulation Report for Proposed Elevated Water Tank adjacent to the City of Albany Distribution Reservoir.” (“Visual Impacts Report”) A copy of The Visual Impacts Report was attached as an exhibit to the EA. The Visual Impacts Report encompasses a study area of all viewsheds up to two miles from the Site (Visual Impacts Report at p.1.). C.T. Male’s study represents a worst-case scenario of potential visibility and discusses the mitigation measures to be employed to minimize visual impacts (Visual Impacts Report at p. 4); and

WHEREAS, the Authority has had an extensive public information program relating to this Project. On March 23, 2000, the Authority conducted its first public meeting to inform interested property owners of the Project. At that time, the Albany-Shaker Road Site had not yet been selected. The focus of the public information meeting was on the removal of the water tanks from Utica Avenue. In February, 2004 (after the Site had been selected and the water line improvements identified), the Town and Authority conducted a second public informational meeting. The meeting was noticed by a press release followed by a newspaper article and by a direct mailing to over 330 property owners in the area of the Site. Over 70 individuals attended this public meeting; and

WHEREAS, at the second public information meeting, which was chaired by the Authority and Town Officials [i.e., the Honorable Mary Brizzell (Colonie Town Supervisor), and John Frazer (Superintendent of the Latham Water District)], presentations were made by: (i) Richard Weiss (Southwest Airline Pilot who gave the perspective of flying into the approach next to the existing water towers); (ii) Mark McCumber (the FAA Control Tower Manager, who spoke on the particulars of the tower and the glide slope as it pertains to landing aircraft on runway 28); (iii) Gary Male (of C.T. Male, who spoke about the Project design, the siting study and the location of the replacement tower) and (iv) Steve Iachetta, the Authority's Planner. In addition, as part of that public information meeting, the Authority produced a video to more fully explain the Project. Information on the Project can also be found on the Authority's website at www.albanyairport.com; and

WHEREAS, in 2004, the Authority received fully executed grant agreements with the FAA and the State DOT securing \$3,015,826 for Phase One project funding to complete engineering design, property acquisition and phase one of construction. These grant funds will expire in Federal fiscal year 2007 unless expended by that date (it is "use or lose it" discretionary grant money); and

WHEREAS, the next step in the project is for the Town of Colonie and the Authority to enter into a Memorandum of Understanding ("MOU") committing to the implementation and funding of the project. Following FAA guidance, the Town of Colonie will contract for the detailed engineering design, preparation of the bid documents and obtain the necessary easements. The current schedule is for the detailed engineering design documents to be prepared in 2007, together with the requisite construction permits and approvals with Phase One construction to commence by late 2007; and

WHEREAS, once SEQRA is completed, the attorneys for the Latham Water District and the Authority have commenced negotiations on the MOU. The goal is to complete the MOU as soon as possible so that the Town can proceed with the detailed engineering design. If there is a delay in the execution of the MOU and thus a delay in detailed engineering design, the project would miss the next construction season. For the duration of any project delay, the existing water tanks will remain as a significant obstruction to the flight paths of both Runways 28 and 10 as set forth in Federal Aviation Regulations, 14 CFR Part 77; and

WHEREAS, the Environmental Assessment, prepared for this project, at page 12 identifies as a potential future activity the following:

There is an existing water tank, known as the Ross Court tank, located approximately 850 feet from the proposed new tank site. This tank is the second oldest in the Latham Water System, and is reportedly approaching the end of its useful life of sixty years. Latham Water will rehabilitate or replace the existing water tank as necessary. However, if the new tank is constructed at the proposed new tank site, it will provide flexibility to Latham Water for future actions. It is possible that as a result of the proposed action, Latham Water could abandon the existing Ross Court tank at some point in the future. However, this potential future action is unrelated to the proposed action herein under consideration.

WHEREAS, by a letter dated June 10, 2005 to John A. O'Donnell, P.E., Chief Executive Officer of the Authority, Mary Brizzell, Supervisor of the Town of Colonie, requested as follows:

The Town of Colonie has received requests from a number of residents, that it consider removal of the Latham Water District Tank at Ross Court. At the present time, that action is not included in the SEQRA review and if possible, we would wish to see it included in any additional SEQRA study and report. The Town may or may not follow through with the Ross Court removal, depending upon the final design for the new facilities to be constructed, however, the Town wishes to have the option available to it.

WHEREAS, in response to this request to include the Ross Court tank remove as part of the project's SEQRA evaluation, the Authority requested that its consultant supplement the existing environmental assessment report ("EAF") to address the potential environmental impacts from the removal of the Ross Court Water Tower; and

WHEREAS, Section A.2 of the Project's EAF identified the area of disturbance as "approximately 9.8 acres" without including in its analysis any land disturbance associated with the Ross Court Tank removal. Section 617.4 (b) (6) (i) of 6NYCRR classifies as a Type 1 action "a project or action that involves the physical alteration of 10 acres." The inclusion of the potential

Ross Court Tank removal as part of the definition of the Project creates the potential for the land disturbance associated with the Project to equal or exceed 10 acres; and

WHEREAS, the project was previously classified as an “unlisted” action and the previously issued negative declaration was filed and noticed as an unlisted action;

WHEREAS, at its Board meeting on June 13, 2005, the Board passed the following resolution:

1. The Authority directs its staff to reopen the SEQRA process for the project, and to classify the project, for purposes of this SEQRA review as a “Type 1” action; and

2. The Authority directs its staff to amend the EAF ... to address the potential environmental impacts associated with the Ross Court Tank removal and to include any other additional material information that has been obtained relating to environmental impacts from this project since the initial preparation of the EAF; and

3. Upon completion of the updated EAF, the Authority will make a new Determination of Significance for the project which will include any and all impacts from the removal of the Ross Court Tank. Upon the issuance of that new Determination of Significance, the Authority hereby rescinds the negative declaration issued in September 2004 for this project.

WHEREAS, after passing the above resolution, the Authority issued an updated Environmental Assessment/EAF form (hereinafter “Supplemental EAF”) and conducted a public hearing on the Supplemental EAF on or about August 31, 2005. At its September, 2005 meeting, the Board formally rescinded the negative declaration that was issued in September, 2004.

WHEREAS, the Authority solicited written comments on the Supplemental EAF until the end of October, 2005. Thereafter, the Authority requested its engineer to prepare a final Supplemental EAF for review by the Board prior to making a new Determination of Significance under SEQRA. The Board also requested that the engineers prepare a supplemental evaluation of the project alternatives including alternatives that provided for a pump station at Utica Avenue in

lieu of the a water tower at the Sanderson Site and an alternative that included a lower tower at the Sanderson Site supplemented by a pump station;

WHEREAS, the engineers released their supplemental engineering report in the spring of 2006 together with additional analyses of the environmental impacts;

WHEREAS, based in part on the information in that analyses and their own investigation, the Town Board of the Town of Colonie has expressed a preference for a water tower just below the tree top level at the Sanderson Site supplemented by pumping in lieu of a taller tower that would operate solely by gravity.

WHEREAS, the Board must make the new determination of significance on the project as modified to address the preference of the Town Board of the Town of Colonie and the potential removal of the Ross Court Tower and decide to either end the SEQRA process by issuing a negative declaration or to require the preparation of a Draft Environmental Impact Statement by issuing a positive declaration.

WHEREAS, reducing the height of the tower to just below the tree top level will further mitigate the visual impact of the project while increasing the need for electric power to provide the needed water pressure.

NOW THEREFORE BE IT RESOLVED:

1. Based upon the review of the EA, EAF, Supplemental EAF, the Supplemental Engineering Report, the public comment from the prior hearings and the documentation referenced in the reports above, the Board has taken a hard look at all of the potential environmental impacts from this project including noise, air pollution, storm water, surface water, groundwater, wetlands, archeological, visual, community character, costs (both capital and operational), traffic, energy consumption, health and safety, etc.

2. Based upon the above-referenced evaluation, the Board has opined that the project, as modified, will not have a significant adverse impact on noise, air pollution, storm water, surface

water, groundwater, wetlands, archeological, visual, community character, costs (both capital and operational), traffic, energy consumption, and health and safety.

3. The Board has also determined that the project is the subject of significant public interest. In particular, the analyses of the project alternatives has been subject to much controversy including their related visual impacts and costs. In the past, the Authority has conducted three public hearings/meetings on the project and made available its studies and reports.

4. In order to ensure that the public is fully informed about the projects, its potential environmental impacts and its costs and to ensure that the public has an opportunity to comment on the available documentation and the involved parties have an opportunity to consider the public comments in making its decision under SEQRA for this project, the Board hereby determines to issue a positive declaration that the project may have a significant impact on the environment and requests that its engineers proceed with all due diligence and haste to prepare a draft environmental impact statement and solicit comments thereon.