



CLIFTON PARK WATER AUTHORITY BOARD MEETING

**Tuesday, March 10, 2020
7:00 PM**

AGENDA

Privilege of the Floor

Old Business

- Project to Increase Capacity from SCWA
- Community Solar Proposal
- Knolltop Water Storage Tank Refurbishment

New Business

- Audit Presentation
- Halfmoon Emergency Water Supply Agreement
- SCWA Purchase Agreement Renewal

Other Business

- Approve Minutes of February 11, 2020 Meeting

Clifton Park Water Authority

Resolution # _____, 2020

Approve Emergency Water Supply Agreement with Town of Halfmoon

WHEREAS, the Clifton Park Water Authority (CPWA) and the Town of Halfmoon wish to enter into a mutually beneficial emergency water supply agreement allowing either party to supply and/or receive water from the other in the event of an emergency, and

WHEREAS, the CPWA and the Town of Halfmoon have negotiated an emergency water supply agreement; a draft copy of which accompanies this resolution, now therefore be it

RESOLVED, that the CPWA Board of Directors hereby approves an emergency water supply agreement with the Town of Halfmoon, as attached, and authorizes the CPWA Chairman to execute the agreement and any other documents or instruments necessary to facilitate this agreement.

Motion By: _____ Seconded By: _____

Roll Call Vote:

	<u>Ayes</u>	<u>Noes</u>
Mr. Gerstenberger	_____	_____
Mr. Ryan	_____	_____
Mr. Peterson	_____	_____
Mr. Taubkin	_____	_____
Mr. Butler	_____	_____

ORIGINAL

**EMERGENCY WATER SUPPLY AGREEMENT
CLIFTON PARK WATER AUTHORITY AND TOWN OF HALFMOON
AS OPERATOR OF HALFMOON CONSOLIDATED WATER DISTRICT**

THIS AGREEMENT, made this 26th day of February 2020, between Clifton Park Water Authority organized and existing pursuant to the laws of the State of New York, having its principal place of business at 661 Clifton Park Center Road, Clifton Park, New York 12065 (hereinafter referred to as "CPWA"); and the Town of Halfmoon, and the Halfmoon Consolidated Water District, both organized pursuant to the laws of the State of New York, and both entities having as their principal place of business, Halfmoon Town Hall, 2 Halfmoon Town Plaza, Halfmoon, New York 12065 (hereinafter both referred to as "Town"); and

WHEREAS, the Halfmoon Consolidated Water District is owned, operated and controlled by the Town of Halfmoon; and

WHEREAS, both parties are mutually aware of the possibility that in the event of an emergency which impedes, in whole, or in part, each parties' ability to provide water to its customers, that either party may have to face a necessity of needing an additional source of water supply for their respective service areas and customers; and

WHEREAS, each party mutually acknowledges and agrees that it is in their respective and mutual interests to enter into this Agreement for an additional water supply in the event of an emergency;

NOW THEREFORE, the parties mutually agree as follows:

ARTICLE ONE

NATURE OF AGREEMENT

This Agreement is an emergency supply agreement and each party agrees to supply to the other Surplus Water in the event of an emergency. For purposes of this Agreement, the term "Surplus Water" shall mean excess water available for supply after the needs of all customers of the supplying entity have been met and satisfied. Nothing in this agreement requires either party to supply water other than surplus water to the other. For purposes of this Agreement, the term "Emergency" shall mean any situation arising from fire, flood, storm, breakdown of a water system, unpotable condition, or other force majeure which creates an interruption of service for either party, or which poses a threat to life, health, or property of the customers of either party.

ARTICLE TWO

PURCHASE AND SALE OF WATER

If and when an emergency arises, necessitating that either party receive an emergency supply of water, the needful party shall promptly contact the other to request an emergency supply of surplus water. Contact may be made by phone, email, facsimile, letter, or in person by either party's representative having authority to request an emergency supply. Upon request, each party agrees to supply and sell to the other party such surplus water, as the requesting party requires and needs during the term of this Agreement, subject to a maximum supply of 500,000 gallons of water per day, unless the parties mutually agree that the supply of surplus water shall be greater. The supplying party shall continue to provide Surplus Water until the emergency prompting the need has resolved or been sufficiently abated; in the event, however, the supplying party during the emergency finds that there will be insufficient surplus water, the supplying party shall notify the requesting party of that circumstance as soon as immediately possible.

Notification may be made by phone, email, facsimile, letter, or in person by either parties' representative having authority to provide such notification.

ARTICLE THREE

EFFECTIVE DATE AND TERM

This Agreement shall take effect immediately on the date written above and shall continue indefinitely. However, the Agreement may be terminated by either party for any reason, upon sixty (60) days advance written notice to the other. Written notice shall be both mailed to the address of the parties as set forth above by registered or certified mail, return receipt requested.

ARTICLE FOUR

POINTS OF DELIVERY

Each party shall supply surplus water to the other at the following point of delivery:

CPWA -Halfmoon interconnection at Crossing Boulevard.

ARTICLE FIVE

USE OF WATER LINES

Neither party shall be obligated to make improvements to their respective water systems for purposes of providing any emergency supply of water under this Agreement.

ARTICLE SIX

QUALITY OF WATER

All surplus water supplied by each party shall be potable, treated water meeting all applicable quality and purity standards of New York State and Federal Regulatory Agencies. The surplus water shall be of the same quality as the water furnished to the other customers of the supplying party.

ARTICLE SEVEN

WATER RATE PRICE

The price of the water supply provided under this Agreement shall be the then current lowest rate per 1,000 gallons charged by either party to its residential customers. However, if a supplying party utilizes an outside water source/supplier to supply emergency Surplus Water to the other, and water rate from the outside water source/supplier is higher than the lowest base rate per 1,000 gallons charged by either party to its residential customers, the receiving party shall pay to the supplying party the then current rate charged by the outside water source/supplier to the supplying party.

The supplying party shall present a bill to the receiving party which shall be paid in full within thirty (30) days upon presentation of said bill. In the event of failure and prompt payment is not made in full to the supplying party, the supplying party shall have all rights available at law for collection of any sums owing.

ARTICLE EIGHT

FLOW MEASUREMENT

CPWA and Town shall jointly own, operate and maintain a master meter at the point of delivery in Article Four above. The parties shall agree to make tests and inspections of the meter as they may agree to be appropriate and necessary. If any tests or inspections show the meter to be inaccurate, and the parties agree that the inaccuracies existed, the billing party shall provide a corrected bill and appropriate adjustments shall be made. If the parties are unable to agree when the meter became inaccurate, it shall be assumed that the error developed progressively from the date of the last meter test and an appropriate adjustment to all subsequent billings from that date shall then be made. The costs of inspecting, testing and maintaining the master meters as described above shall be shared equally by the parties hereto. All major repairs and replacements of all master meter shall be jointly approved by each party and neither party will unreasonably withhold their consent.

ARTICLE NINE

FORCE MAJEURE

Except for payments as required in this Agreement, either party may suspend its performance under this Agreement if such parties' performance is prevented or delayed by a cause or causes beyond the reasonable control of such party, which could not have been avoided by the exercise of reasonable diligence of such party. Such causes may include, but shall not be limited to, acts of God, acts of war, acts of terrorism, riot, fire, explosion, lockouts, or other labor disturbances, breakage or damage to machinery or pipelines, and partial or entire failures of water system. The party asserting the right to suspend performance must, within a reasonable

time of acquiring knowledge of the cause requiring the suspension, notify the other party in writing of the cause for suspension, which may be by mail or email, the performance suspended and the anticipated duration of the suspension. Performance shall be suspended only during the time it is prevented or delayed by the type of cause or causes as described in this Article and the party's whose performance is prevented or delayed shall endeavor to remove or overcome the cause or causes with all reasonable dispatch.

ARTICLE TEN

RESPONSIBILITY AND INDEMNIFICATION

Each party shall be responsible for the construction, operation and maintenance of all water lines and appurtenances of its own water system. Each party agrees to defend, indemnify and hold harmless the other party from all claims, demands, costs and expenses asserted by third parties and proximately caused by its negligence or willful misconduct in connection with the construction, operation or maintenance of its water system.

ARTICLE ELEVEN

APPROVAL OF AGREEMENT

In the event that this Agreement may require approval by any regulatory agency, the Agreement shall take effect on the date first above written but shall be subject to any lawful decision or order of said agency.

ARTICLE TWELVE

NON-ASSIGNMENT


This Agreement shall not be assigned to any party without the written consent of both parties.

ARTICLE THIRTEEN

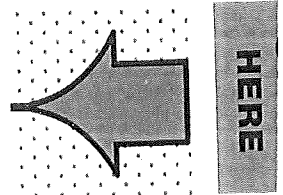
AUTHORITY TO EXECUTE AGREEMENT

The parties each possess authority to enter into this Agreement, as indicated by lawful resolutions attached hereto as Exhibits. This Agreement may be executed in counterparts. CPWA shall attach to this Agreement, as **Exhibit A**, a copy of its resolution authorizing that this Agreement be entered into. The Town shall attach to this Agreement, as **Exhibit B**, a copy of its resolution authorizing that this Agreement be entered into. Each party shall furnish a copy of their respective resolutions to the other.

Clifton Park Water Authority
by Helmut Gerstenberger, Chairman

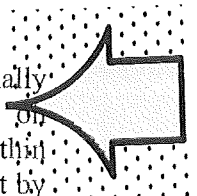


Town of Halfmoon and Town of Halfmoon
Consolidated Water District
By Kevin Tollisen, Supervisor



STATE OF NEW YORK)
COUNTY OF SARATOGA) SS.:

On _____ 2020, before me, the undersigned, personally appeared **HELMUT GERSTENBERGER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the



instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF SARATOGA) ss.:

On February 26 2020 before me, the undersigned, personally appeared **KEVIN TOLLISEN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Laurie S. Sullivan
Notary Public

LAURIE S. SULLIVAN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SARATOGA COUNTY
MY COMMISSION EXPIRES MARCH 12, 2022
NO. 4963580

WATER PURCHASE AND SALE AGREEMENT

BETWEEN

SARATOGA COUNTY WATER AUTHORITY

AND

CLIFTON PARK WATER AUTHORITY

2020

1. WATER PURCHASE AND TERM	2
2. PURCHASE PRICE.....	2
3. DELIVERY LOCATION.....	3
4. METERING EQUIPMENT	3
5. WATER RESALE.....	4
6. BILLING.....	5
7. USE OF FUNDS	6
8. COMMENCEMENT OF PURCHASE OBLIGATION.....	6
9. AUTOMATIC RENEWAL.....	7
10. SERVICE INTERRUPTION.....	7
11. ASSIGNMENT.....	8
12. FORCE MAJEURE	8
13. LIABILITY LIMITATIONS.....	10
14. APPROVAL CONTINGENCY.....	11
15. INSURANCE.....	11
16. PUBLIC AUTHORITIES LAW AND SCWA RULES.....	12
17. NO THIRD PARTY BENEFICIARIES.....	13
18. MUTUAL WORK PRODUCT	13
19. AGREEMENT AUTHORIZATION	13
20. DISPUTE RESOLUTION.....	14
21. GOVERNING LAW AND VENUE.....	14
22. NOTICES	14
23. COMPLETE AGREEMENT.....	16
24. COUNTERPARTS	16

This Agreement, dated as of the _____ day of _____, 20__ (“Effective Date”), between the **Saratoga County Water Authority**, a public benefit corporation having its place of business at 260 Butler Road, Fort Edward, New York 12828 (“SCWA”) and THE Clifton Park Water Authority (“CPWA”), a public benefit corporation having offices at 661 Clifton Park Center Road, Clifton Park, NY 12065 (“CPWA”).

WITNESSETH:

WHEREAS, SCWA operates a County-wide water system which obtains untreated water from the upper Hudson River at a location in the Town of Moreau, Saratoga County, treats the water at a water treatment plant to make it suitable for human consumption and transports it by means of a pipeline south through Saratoga County to deliver water to various locations in the County; and

WHEREAS, the water system (the “System”) is capable of delivering potable water suitable for a public water system for purchase by municipal and other permissible users located within SCWA’s approved service area; and

WHEREAS, the cost of water to municipal users is based on the costs of construction and the maintenance costs of the System, including debt service for funds borrowed for construction of the System; and

MODIFICATION OR EXPANSION

WHEREAS, the CPWA wishes to obtain a supply of potable water from SCWA;

NOW, THEREFORE, IN EXCHANGE FOR VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED TO BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. WATER PURCHASE AND TERM

A. Subject to the terms and conditions set forth herein, SCWA agrees to provide and the CPWA agrees to purchase a minimum of 500,000 gallons per day (gpd) of potable water. This CPWA obligation is regardless of the amount of water actually received by the CPWA.

B. Water volume purchased shall be measured in accordance with the provisions set forth at Section 6 of this Agreement and shall be calculated by measuring the mean average on a quarterly basis. The minimum purchase obligation is based on each quarterly period.

C. This Agreement shall take effect as of the "Effective Date" set forth herein and shall extend for a period of ten (10) years from that date.

2. PURCHASE PRICE

A. SCWA shall charge a maximum price of \$2.322 per 1,000 gallons through December 31, 2020. Except as otherwise set forth in this Agreement, for the remainder of the term of this Agreement, the Maximum Price chargeable by SCWA each year shall be no greater than the Maximum Price chargeable in the previous year plus one and one half percent (1.5%).

B. The price shall never be more than that charged to any other Municipal user of the system.

LIMITS²

① C. In the event that SCWA expands or modifies the facilities of SCWA or makes any other material change to either the System or its operations, SCWA may increase the applicable water rate sufficient to pay the cost of the required expansion or modification. SCWA will endeavor to share any such increase proportionally with all purchasers of water from the System, such proportional increase to be based upon the volume of water purchased by the CPWA in proportion to the total volume sold by SCWA to all customers during the twelve (12) months immediately preceding such rate increase.

3. DELIVERY LOCATION

SCWA will deliver water to the CPWA via a suitable connection to SCWA's transmission main at a location agreed to by the parties.

4. METERING EQUIPMENT

All water furnished by SCWA to the CPWA pursuant to this Agreement shall be measured by a flow totalizer (meter) installed and furnished by the CPWA and owned and maintained by SCWA at the point of delivery. SCWA will not take ownership of such equipment before first approving the equipment and manner of installation. A bypass and flow port connections shall be provided for the meter to allow for calibration and maintenance. Flow ports shall be located upstream and downstream of the meter and allow for testing. The flow meter shall be located such that confined space access by SCWA personnel is not required, unless otherwise approved. The CPWA is responsible for installation, ownership and maintenance of a chlorine analyzer and pressure monitor to be located upstream of any chlorine or pressure boosting system

and separate continuous flow meter along with a transmitter capable of sending and reporting this information on a continuous basis to the SCWA computer control system located at the water filtration plant. The system shall be capable of reporting water flow in gallons per minute (gpm) and the totalizer reading from the billing meter in addition to pressure and free chlorine residual. The CPWA is responsible for the initial control upgrades located at the SCWA filtration plant required to receive and make the information available to SCWA personnel.

NOT SURE
THAT'S
POSSIBLE

5. WATER RESALE

A. The CPWA is hereby authorized to resell water to end users only, provided that such water is offered for sale on the same terms as to the general public including at generally applicable and uniformly applied different rates offered to volume purchasers, provided the differences are customary and reasonable.

B. The CPWA is prohibited from reselling water to any wholesale purchaser without prior written consent of SCWA which may be withheld for any reason except that, in the event such resale is prompted by an emergency situation, such consent will not be unreasonably withheld, but may be conditioned.

ROUND
LAKE

C. Notwithstanding any other provision of this Agreement, in no event may the CPWA enter into any arrangement with a nongovernmental entity for the resale of water that would potentially impact the tax-exempt status of any obligations issued by SCWA, including, but not limited to, any arrangement that may constitute i) a "take contract", ii) a "take or pay contract" or iii) a "requirements contract" that is similar to a "take contract", "take or pay contract" or "wholesale requirement

contract” as such terms are defined in Sections 1.141-7(b) and 1.141-7(c) of the Federal income tax regulations set forth in Title 26 of the Code of Federal Regulations. SCWA Bond Counsel opinion shall be obtained to confirm that the potential arrangement for the resale of water by the CPWA would not violate this provision and the CPWA agrees to pay all associated Bond Counsel fees and to provide all information and documentation necessary to procure such Bond Counsel opinion.

D. This Agreement shall not limit the rights the CPWA may otherwise have to sell water it obtains from sources other than SCWA.

6. BILLING

Once water purchase has begun pursuant to the terms set forth herein, SCWA will bill the CPWA on a quarterly basis, as follows: on the 15th day of April (for January 1 through March 31), on the 15th of July (for April 1 through June 30), on the 15th of October (for July 1 through September 30), and on the 15th of January (for October 1 through December 31). Adjustments will be made to the bill for each quarter to reflect the CPWA’s obligation to pay the greater of the daily minimum purchase obligation then in effect multiplied by the number of days in such quarter or the actual volume of water received. The CPWA shall pay all amounts within forty-five (45) days of the date of the bill. The CPWA shall pay interest at the rate of one percent (1%) per month on amounts paid after said 45-day period. In the event that the CPWA fails to pay any amount within forty-five (45) days after the due date, SCWA reserves the right, upon prior written notice to the CPWA, to terminate water service to the CPWA until such

time as any such past due amounts and related charges, including the service charge set forth in SCWA's Rules and Regulations, are paid in full. Such service charge shall not be imposed until the payment due date has passed. The CPWA waives any requirement of any other notice or any other preconditions or consents prior to termination. Upon the CPWA's full payment of any past due amounts and related charges, SCWA shall promptly reestablish service to the CPWA.

7. USE OF FUNDS

All money paid by the CPWA to SCWA for water hereunder shall be used exclusively for the operation, maintenance, repair, replacement, improvement and/or extension of SCWA's water System, including establishment and maintenance of a reserve fund for capital improvements and payment of indebtedness incurred for the construction and/or expansion of the System.

8. COMMENCEMENT OF PURCHASE OBLIGATION

NOT NEEDED

A. The CPWA's obligation to purchase water shall begin on the date that all necessary governmental permits and approvals have been obtained by the CPWA and all infrastructure necessary to facilitate transmission of water from SCWA to the CPWA is completed and operational.

B. The CPWA shall diligently pursue such approvals, funding and construction and shall assist SCWA in obtaining any and all approvals needed by SCWA to facilitate delivery of water to the CPWA. Notwithstanding the foregoing,

SCWA shall have no obligation to deliver water at any time if, in its sole opinion, there are approvals outstanding that it deems necessary.

9. AUTOMATIC RENEWAL

Upon expiration of the initial term of this Agreement, this Agreement will be deemed automatically renewed for one (1) year periods thereafter unless either party has provided written notice to the other of its intention to terminate. Notice of intention to terminate must be provided to the other party at least one (1) year in advance of the date that the Agreement is scheduled to terminate or, if terminated during a renewal period, at least three (3) months prior to the end of such period.

10. SERVICE INTERRUPTION

SCWA reserves the right to interrupt service if it deems it necessary to do so for purposes of testing, repairs, addressing water quality issues, investigating and/or addressing potential infrastructure problems and in emergency situations. In the case of scheduled repairs necessitating interruption in service, SCWA shall provide prior written notice to the CPWA of any such planned interruption and shall reasonably coordinate the scheduling thereof with the CPWA in order to minimize the impact of any such planned interruption on the CPWA's operations. In all other cases, SCWA shall endeavor to provide written notice to the CPWA of unplanned interruptions, such as in the case of an emergency, as soon after SCWA becomes aware of any need to interrupt service as is reasonable under the circumstances, which notice shall describe the nature and cause of the interruption and expected duration thereof. When an

interruption is not planned and written notice is not feasible under the circumstances, SCWA shall provide notice to the CPWA as soon and in whatever manner most practicable and will endeavor to provide written notice as soon thereafter as may be feasible. In all cases, SCWA shall complete all work required to resume service as soon as possible so as to limit the duration of any such interruption to the maximum extent possible under the circumstances. In the event written notice is provided by e-mail, it shall be effective when sent.

11. ASSIGNMENT

SCWA has the unilateral right to assign this Agreement to the County of Saratoga. However, other than such assignment, neither party may assign this Agreement without the prior written consent of the other. Other than through express assignment to the County of Saratoga, in the event SCWA obligations are assumed by any municipal or governmental entity having legal authority to do so, such assumption shall not be deemed an assignment. This Agreement shall be binding upon the parties, their lawful successors and/or lawful assigns.

12. FORCE MAJEURE

A. No failure or delay in performance of this Agreement by either party shall be deemed to be a breach if such failure or delay is due to Force Majeure.

B. "Force Majeure" shall include any and all circumstances which are not within the control of the affected party and which circumstances such party is unable to prevent or overcome by the exercise of commercially reasonable due diligence which prevents or delays a party from performing its obligation hereunder. "Force

Majeure” shall also include the inability of SCWA to deliver or process sufficient water because of capacity, design, production or related issues. In no event shall economic hardship, the financial condition of either party, SCWA's ability to sell the water at a greater price than that specified in this Agreement and/or the CPWA's ability to purchase water at a lower price than that specified in this Agreement constitute Force Majeure.

C. Under no circumstances shall the CPWA be excused from its obligation to make payments for water delivered prior to any interruption of service occasioned by Force Majeure.

D. In the event that a party is prevented or delayed in the performance of its obligations hereunder by reason of Force Majeure, such party shall promptly provide written notice to the other party of such Force Majeure event, shall remedy the Force Majeure as soon as possible if commercially reasonable to do so, and shall resume performance of its obligations hereunder immediately after conclusion of the Force Majeure event.

E. If SCWA fails to provide water as set forth in this Agreement for an extended and unreasonable period of time due to a Force Majeure event, the CPWA may terminate this Agreement provided that the CPWA gives SCWA adequate and reasonable written notice of its intention to do so and provided SCWA has a reasonable opportunity to cure any failure prior to termination.

F. SCWA shall not be required under this Agreement to take any actions to resolve a Force Majeure event if it deems providing remedy to such event to not be in its financial best interests.

13. LIABILITY LIMITATIONS

Under no circumstance shall SCWA be responsible for the CPWA's lost revenues, profits or costs arising from or in any way relating to SCWA's breach of this Agreement, unless such claims arise from transmission by SCWA of non-potable, contaminated water. In no event shall SCWA be liable for direct, consequential, incidental, punitive, exemplary or indirect damages, lost profits, lost revenues or other business interruption damages, by statute, in tort, contract, or otherwise in connection with SCWA's performance of or failure to perform this Agreement, except that this shall not apply to claims arising from transmission by SCWA of non-potable, contaminated water. SCWA shall not be responsible for and does not guarantee the supply of water sufficient or necessary for fire prevention or suppression and shall in no manner be held liable for any resulting damage or claimed damage. SCWA shall not be responsible for maintaining any particular water pressure, water volume or water quality, except as may be required by any applicable Federal or New York State statute or regulation. Notwithstanding the foregoing, in the event of any party's gross negligence or willful misconduct, the other party's damages shall be limited to direct actual damages and shall not include incidental damages, consequential damages, third-party damages, liquidated damages, punitive damages or any other type of indirect damages. The CPWA hereby acknowledges that SCWA's inability to deliver or process sufficient water to the CPWA as a result of capacity, production, design and/or failure to obtain and/or

maintain any approvals as defined in this Agreement necessary to maintain and operate part or all of the System and SCWA's decision not to remedy shall not constitute gross negligence or willful misconduct on the part of SCWA. This provision shall control in the event of any conflict with any other provision of this Agreement.

14. APPROVAL CONTINGENCY

This Agreement and all actions to be undertaken in furtherance thereof are contingent upon SCWA and the CPWA obtaining and maintaining any and all regulatory approvals and real property rights and interests that are necessary to fully and lawfully perform hereunder. Notwithstanding failure to obtain or maintain any approvals, the CPWA shall be obligated to make payment pursuant to Sections 1 and 6 above for any water it receives from SCWA.

15. INSURANCE

The CPWA shall maintain in full force and effect the following insurance for the duration of this Agreement:

CURRENT - \$1M/\$3M \$5M UMBRELLA

A. Comprehensive General Liability in the amounts of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage including products and completed operations and Automobile Liability. Coverage shall also include the perils of explosion, collapse and underground liability (XCU); Independent Contractor's Coverage; Personal Injury with contractual liability exclusion deleted and including for actions brought by employees or agents of the CPWA.

B. The CPWA may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. Coverage must be on a follow-form basis. Coverage under such a policy shall be primary and non-contributory to the CPWA and any others noted above and must be maintained for at least five (5) years after the expiration of this Agreement.

C. All certificates of insurance furnished by the CPWA to SCWA shall include a waiver of subrogation in favor of SCWA and all policies of insurance in which SCWA is a named insured shall be primary and non-contributory to any other insurance providing coverage to SCWA.

CURRENT POLICY HAS BLANKET
WAIVER OF SUBROGATION.
\$100 TO ADD SCWA INDIVIDUALLY
TO POLICY

16. PUBLIC AUTHORITIES LAW AND SCWA RULES

The CPWA represents and warrants that, to the extent applicable, it has complied with New York State Public Authorities Law Section 1199-eee (20) and all other applicable provisions of New York State Public Authorities Law Section 1199-aaa *et seq.* The CPWA further represents and warrants that it will comply with SCWA's Rules and Regulations and Cross-Control Rules and Regulations as well as all other applicable laws, rules and regulations. In the event of any conflict between the provisions of SCWA's Rules and Regulations and Cross-Control Rules and Regulations and the terms and conditions of this Agreement, the terms of this Agreement shall apply.

17. NO THIRD PARTY BENEFICIARIES

This Agreement is intended solely for the benefit of the parties hereto and nothing herein shall be construed to create any duty to or standard of care with reference to, or any liability to, any person or entity not a party hereto.

18. MUTUAL WORK PRODUCT

This Agreement is the mutual work product of the parties and shall not be construed against one party or the other as a result of the preparation, submission or other event of negotiation, drafting or execution hereof. Both parties have been represented by the attorneys of their own choosing in the drafting of this Agreement.

19. AGREEMENT AUTHORIZATION

By executing this Agreement, both parties represent that they have obtained all necessary approvals in order to make this Agreement binding and effective. Nothing contained in this Agreement shall be interpreted or be construed as SCWA agreeing to act in a manner that is inconsistent with its obligations under any pre-existing SCWA agreements. Nothing contained herein shall be construed to require SCWA to take any action which violates any applicable law or regulation or any binding order, stipulation, judgment or decree of any Court or governmental authority of competent jurisdiction or other pre-existing and binding contractual or legal obligation and this Agreement shall be null and void to the extent it requires SCWA to violate any of the foregoing. The CPWA and SCWA represent and warrant that neither is a party to any binding order, stipulation, judgment or decree of any Court or governmental authority of competent

jurisdiction or other pre-existing contractual or legal obligation that would prevent it from fulfilling its obligations under this Agreement.

20. DISPUTE RESOLUTION

The parties agree that any claim or controversy arising out of the application or interpretation of or relating to this Agreement shall first be referred in writing to a representative of each party for resolution. If such representatives are unable to resolve the dispute within fifteen (15) days after written notice thereof is provided or such other period as the parties may mutually agree to in writing, the parties may pursue any legal or equitable remedies that may be available.

21. GOVERNING LAW AND VENUE

Construction of this Agreement shall be governed by the laws of the State of New York. One or more waivers by either party of any provision or condition hereof shall not be construed as waiver of any subsequent breach of that same provision or condition or any subsequent breach of any other provision or condition. Any legal action arising from or relating in any way to the subject matter of this Agreement shall be maintained in New York State Supreme Court, Saratoga County, New York or, if the jurisdictional threshold of such Court is not met, then the appropriate Court located in Saratoga County.

22. NOTICES

Unless otherwise specified in this Agreement, notices shall be in writing and may be delivered by hand delivery, United States Mail or overnight courier service. Notices

shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business day. Notwithstanding the foregoing, any notices that are hand-delivered shall be effective upon delivery. A party may change its contact information below by providing notice in this manner.

Notices to SCWA shall be sent to:

Ed Hernandez, Executive Director
Saratoga County Water Authority
260 Butler Road
Gansevoort, NY 12831

Email: executivedirector@saratogacountywaterauthority.com

Notices to CPWA shall be sent to:

Donald J. Austin Jr., Administrator
Clifton Park Water Authority
661 Clifton Park Center Road
Clifton Park, NY 12065

Email: daustin@cpwa.org

With a copy to:

Mark Schachner, Esq.
MILLER, MANNIX, SCHACHNER & HAFNER, LLC
49 Burlington Ave., 2nd Floor - PO Box 578
Round Lake, NY 12151

Email: mschachner@mmshlaw.com

With a copy to:

SCWA Contact in Case of Emergencies:

Ed Hernandez, Executive Director
(518) 761-2058

CPWA Contact in Case of Emergencies:

Donald J. Austin Jr., Administrator
(518) 383-1122

23. COMPLETE AGREEMENT

This Agreement reflects the final intent of the parties. Any purported modifications, rescissions or waivers will be effective only if in writing and signed on behalf of both parties with the same formalities used herein.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all which taken together shall constitute one instrument.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed.

SARATOGA COUNTY WATER AUTHORITY

By: _____
John Lawler, Chairman DATE _____

CPWA OF _____

By: _____
Helmut Gerstenberger, Chairman DATE _____

N:\Clients\SARATOGA COUNTY WATER AUTHORITY\AGREEMENTS\Form Contract MIN PURCH.doc