

RECEIVED

AGREEMENT FOR THE SALE OF WATER

JUL 26 2011

from the

VILLAGE OF
LYONS

WAYNE COUNTY WATER AND SEWER AUTHORITY

to the

VILLAGE OF LYONS

This Agreement is made and entered into effective the 1st day of July, 2011 by and between the **Wayne County Water and Sewer Authority**, a public benefit corporation with offices located at 3377 Daansen Road, Walworth, New York 14568 (hereinafter referred to as the "Authority.") and the **Village of Lyons**, municipal corporation with offices located at 76 William Street, Lyons, New York 14489 (hereinafter referred to as the "Village").

Recitals

WHEREAS, with present capacity, the Authority has a surplus of water available for sale; and

WHEREAS, the Village is in need of a reliable supply of water; and

WHEREAS, it is deemed mutually advantageous for the Authority to supply and the Village to purchase surplus water under the terms and conditions set forth herein;

NOW THEREFORE, it is hereby mutually agreed as follows:

1. Duration. The initial term of this Agreement shall be twenty-five (25) years. This Agreement shall commence on July 1, 2011 and will continue through December 31, 2036. At the end of the twenty-five (25) year term, this Agreement shall automatically renew for three (3) additional five (5) year terms unless a party has given the other party at least one (1) year advance written notice of intent not to renew. If either party elects not to renew this Agreement at the end of the initial term, then this Agreement shall terminate at the end of such term.

2. Supply of Water from the Authority to the Village.

a. Supply. The Authority agrees to sell and the Village agrees to purchase water through an existing master metered connection on Route 31 near the western municipal boundary of the Village, or at other locations as mutually agreed upon by both parties, in accordance with the terms and conditions set forth herein.

b. Quantity of Purchase.

i. The Village agrees to purchase from the Authority all of its requirements for water in 2011 and for each calendar year thereafter. This supply shall be paid for at the rate set forth in Section 4 of this Agreement.

ii. The anticipated mode of "normal operations" would provide for a flow of approximately 325,000-350,000 gallons per day into the Village. The Village shall have the flexibility of purchasing up to 450,000 gallons per day at the rates as set forth in Section 4 herein. Additional quantities beyond 450,000 gallons per day may be delivered by the Authority in accordance with this Agreement subject to availability of supply, but the Authority reserves the right to charge a premium for additional quantities purchased if premiums are assessed to the Authority by its suppliers.

c. Water Pressure and Continuity of Service. It is understood and agreed that the Authority makes no guarantee as to the pressure, quantity or continuity of service, and shall not be held liable for loss or damage from a pressure deficiency or failure in the supply of water, whether caused by shutting off the water in case of accident or for alterations, extensions, connections or repairs, or for any cause. In the event of an emergency or other necessity, the Authority shall have the right to shut off or reduce the flow of water for such periods as necessary. In all cases other than emergencies, the Authority shall give the Village written notice at least forty-eight (48) hours prior to any shut off or flow reduction. The Authority shall restore service and make water available as soon as it can reasonably do so.

d. Water Quality. All water supplied by the Authority pursuant to this Agreement shall meet all applicable Federal and New York State requirements, including, without limitation, the provisions of the New York Sanitary Code.

3. Improvements and Meters.

a. Pumping Station. In order to facilitate the supply of water into the Village, the Authority shall upgrade as necessary at its sole expense the existing pumping station on Route 31. This station is located in or adjacent to the existing master meter pit near the westerly municipal boundary of the Village of Lyons. The Authority shall be liable for the maintenance and repair of said pumping station during the term of this Agreement.

b. Master Meters. Master meters will be maintained by the Authority within the accuracy limits as specified for the repair of the meters in the then latest revision of the AWWA standards for testing cold water meters, Series C-700. Either party shall have the right to test at its own expense the meter accuracy at any reasonable time. Both parties shall have unlimited access to the master meter during the term of this Agreement. In the event any master meter is found to be in improper working order or inaccurate, the Village shall report immediately to the Authority, and the Authority will promptly repair or replace the master meter at its own expense. When an independent test shows that a meter has stopped registering or is improperly registering, the Authority will estimate consumption based upon actual consumption during the same period of previous years or such other method as may be reasonable and agreed upon by both parties.

4. Pricing and Billing.

a. Wholesale Rate. In consideration for the water it purchases from the Authority, the Village agrees to pay to the Authority based on the water metered and as otherwise provided herein. The Authority shall from time to time at its sole discretion set a wholesale rate for the water to be supplied to the Village, and shall give the Village at least ninety (90) days advance written notice of any change in the rate. At the request of the Village at any time during the ninety-day notice period, the Authority shall allow the Village to review the facts and circumstances surrounding the proposed rate change. The wholesale rate shall be set to cover the Village's share of the following Authority costs:

i. The cost of water to the Authority, including direct and indirect costs associated with such supply,

ii. One hundred (100%) per cent of the cost of the pump station upgrade and fifty (50%) per cent of the cost of purchasing an emergency generator with the understanding that in the event of an emergency, the generator shall be dedicated by the Authority to the pumping needs of the Village as a first priority,

iii. The cost of operation and maintenance of the Authority's transmission, pumping and storage system, including but not limited to the maintenance of adequate reserves, as well as the cost of future improvements to the water system, provided that the Village's wholesale water rate shall not include the costs incurred by the Authority in extending its system to new service areas, and

iv. The administrative costs of the Authority

v. Regulatory compliance costs to the extent that rules and regulations promulgated by the DOH, EPA or other regulatory bodies necessitate system-wide changes that substantially increase capital and/or operating costs in order to comply with such requirements.

b. Initial Rate. The initial rate to be charged by the Authority to the Village for water starting July 1, 2011 shall be \$2.14 per thousand gallons and this rate shall apply for the initial year and additional succeeding four (4) years of this Agreement until changed by the Authority, but in no event more frequently than annually, nor before June 30, 2016 in accordance with the terms of this Agreement, provided, however, that such initial rate may be increased prior to 2016 in the event that that rules and regulations promulgated by the DOH, EPA or other regulatory bodies necessitate system-wide changes that substantially increase capital and/or operating costs in order to comply with such requirements.

c. **Meter Reading.** On or about the first day of each month, the Authority shall cause the master meter to be read to determine the quantity of water delivered to the Village during the previous month. The Village shall have the right to read the meter on its own behalf to confirm the readings made by the Authority.

d. **Billing.** On or about the first day of each month, the Authority shall send the Village a bill for the aggregate quantity of water supplied to the Village based upon the meter readings made.

e. **Payment.** Payment shall be due within thirty (30) days of receipt of each bill.

5. Priority of Sale.

a. **Surplus Water.** The parties acknowledge that the Authority has supply agreements in place that enable the Authority to purchase up to a stated quantity of surplus water per year, for the purpose of reselling the water to the Authority's customers. In the event the Authority's suppliers curtail the amount of water available to the Authority and its customers, it is agreed and understood that the Authority will treat the Village in the same manner as the Authority's retail customers, in terms of making water available. If water becomes unavailable to the Authority, the Authority shall have the right to shut off and discontinue the flow of water for such period as necessary, restoring the service and making water available as soon as it can reasonably do so.

b. **Service Area.** The parties contemplate that the Village is purchasing water primarily to serve its customers within the Village of Lyons. The Village may continue to serve approved out of Village service areas which exist as of the date of this Agreement. Upon completion of the required upgrade to the pump station near the Route 31 meter vault, the parties acknowledge that under normal operating conditions the Village will not sell water along Route 31 West of the meter vault. The Village agrees not to expand the sale of water to out of Village service areas without the prior written consent of the Authority

c. Other Contracts. The Authority reserves the right to enter into other supply agreements with municipalities and water districts other than the Village provided that the Village shall either be treated equally or have a right of priority over such other supply agreements entered into after the date of this Agreement.

6. Purchase of Water by the Authority from the Village.

a. Supply. The Authority reserves the right to continue to purchase water from the Village and the Village agrees to sell water to the Authority at the existing point of purchase on Old Lyons Road or at such other points of connection as may be agreed upon by the parties during the Term of this Agreement (i) until such time that the Authority has developed an alternate source of supply or (ii) in the case of an emergency interruption in its normal supply.

b. Quantity of Purchase. The Authority reserves the right to purchase from the Village the amount of water required to meet the needs of the Authority's existing service area along Old Lyons Road, subject to the availability of water from the Village in accordance with then existing contracts of the Village.

c. Water Pressure and Continuity of Service. It is understood and agreed that the Village makes no guarantee as to the pressure, quantity or continuity of service, and shall not be held liable for loss or damage from a pressure deficiency or failure in the supply of water, whether caused by shutting off the water in case of accident or for alterations, extensions, connections or repairs, or for any cause. In the event of an emergency or other necessity, the Village shall have the right to shut off or reduce the flow of water for such periods as necessary. In all cases other than emergencies, the Village shall give the Authority written notice at least forty-eight (48) hours prior to any shut off or flow reduction. The Village shall restore service and make water available as soon as it can reasonably do so.

d. Water Quality. All water supplied by the Village pursuant to this Agreement shall meet all applicable Federal and New York State requirements, including, without limitation, the provisions of the New York Sanitary Code.

e. Meters. All master meters used to supply water from the Village to the Authority shall be maintained by the Authority as long as such meters are necessary to supply water in the sole discretion of the Authority.

f. Pricing and Billing.

i. Wholesale Rate. In consideration for the water it purchases from the Village, the Authority agrees to pay to the Village based on the water metered and as otherwise provided herein. The Village shall from time to time at its sole discretion set a wholesale rate for the water to be supplied to the Authority, and shall give the Authority at least ninety (90) days advance written notice of any change in the rate. At the request of the Authority at any time during the ninety-day notice period, the Village shall allow the Authority to review the facts and circumstances surrounding the proposed rate change. The wholesale rate shall be set to cover the Authority's share of the following Village costs:

(a) The cost of water to the Village, including direct and indirect costs associated with such supply,

(b) The cost of operation and maintenance of the Village's transmission, pumping and storage system, including but not limited to the maintenance of adequate reserves, as well as the cost of future improvements to the water system, provided that the Authority's wholesale water rate shall not include the costs incurred by Village in extending its system to new service areas, and

(c) The administrative costs of the Village.

(d) Regulatory compliance costs to the extent that rules and regulations promulgated by the DOH, EPA or other regulatory bodies necessitate system-wide changes that substantially increase capital and/or operating costs in order to comply with such requirements.

ii. Initial Rate. The initial rate to be charged by the Village to the Authority for water starting July 1, 2011 shall be \$3.50 per thousand gallons and this rate shall apply for the initial year and additional succeeding four (4) years of this Agreement until changed by the Village, but in no event shall such rate be increased to an amount that is more than one and sixty-five hundredths (1.65) times the rate charged by the Authority to the Village in any year, nor shall such rate be changed more frequently than annually, nor before June 30, 2016, each in accordance with the terms of this Agreement, provided, however, that such initial rate may be increased prior to 2016 in the event that that rules and regulations promulgated by the DOH, EPA or other regulatory bodies necessitate system-wide changes that substantially increase capital and/or operating costs in order to comply with such requirements.

g. Meter Reading. On or about the first day of each month, the Village shall cause the master meter to be read to determine the quantity of water delivered to the Authority during the previous month. The Authority shall have the right to read the meter on its own behalf to confirm the readings made by the Village.

h. Billing. On or about the first day of each month, the Village shall send the Authority a bill for the aggregate quantity of water supplied to the Authority based upon the meter readings made.

i. Payment. Payment shall be due within thirty (30) days of receipt of each bill.

7. Miscellaneous.

a. Assignment. No party may assign its rights or obligations under this agreement, unless the written consent of all other parties hereto is obtained.

b. Amendments. This Agreement may be amended or modified only by a subsequent written document executed by all parties hereto.

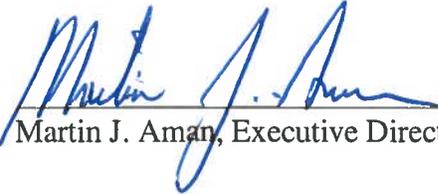
c. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

d. Prior Agreement. The parties agree that the prior Water Supply Agreement between them dated January 1, 2001, shall terminate effective as of July 1, 2011.

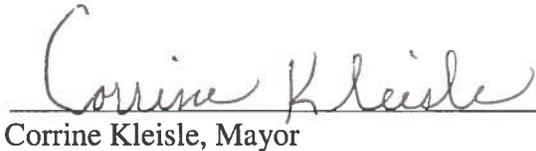
e. Conditioned on Agreement with the Village of Newark. The provisions of this Agreement are conditioned upon the Authority entering into a long term supply agreement with the Village of Newark effective as of July 1, 2011 on terms satisfactory to the Authority.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

WAYNE COUNTY WATER AND SEWER AUTHORITY

By: 
Martin J. Aman, Executive Director

VILLAGE OF LYONS

By: 
Corrine Kleisle, Mayor

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

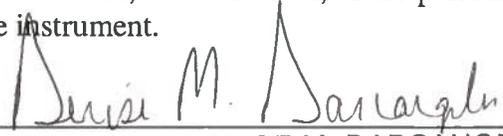
On the 25th day of July, in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Martin J. Aman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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.

PAULA M. STEWART
Notary Public, State of New York
No. 01ST6052284
Qualified in Wayne County
Commission Expires December 11, 20 14


Notary Public

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

On the 21st day of July, in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Corrine Kleisle, , 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 **DENISE M. DARCANGELIS**
Notary Public, State of New York
No. 01DA6158391
Qualified in Wayne County
Commission Expires Jan 2, 20 15

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