

**STAMP Water Works, Inc.**  
Meeting Agenda  
Tuesday, September 20, 2022  
Location: 99 MedTech Drive, Innovation Zone  
8:30 a.m.

	Topic	Page #'s	Discussion Leader	Desired Outcome
1.	Call To Order – Enter Public Session		P. Zeliff	
2.	Additions / Deletions to the Agenda			
3.	<b>Organizational Formation:</b> Resolutions of the Board of Directors	2-3	L. Farrell	Disc / Vote
	3a. Statement of Organization	4		
	3b. Certificate of Incorporation	5-11		
	3c. By-Laws	12-25		
	3d. Officer Appointments			
	3e. Audit and Finance Committee Charter	26-29		
	3f. Governance & Nominating Committee Charter	30-32		
	3g. Code of Ethics	33-35		
	3h. Disposition of Real Property Guidelines	36-40		
	3i. Travel Policy	41		
	3j. Defense and Indemnification Policy	42		
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	3p. Investment Policy	59-64		
	3q. Fiduciary Acknowledgement	65-66		
4.	Mission Statement & Measurement Report	67-68	L. Farrell	Disc / Vote
5.	Internal Controls Narrative	69-74	L. Farrell	Discussion
6.	Authorized Signers of Agreements, Contracts, etc.		L. Farrell	Disc / Vote
7.	Authorized Bank Signers		L. Farrell	Disc / Vote
8.	Authorized to Request Information Regarding Bank Accounts		L. Farrell	Disc / Vote
	<b>Normal Business:</b>			
9.	Water Supply Agreement – Genesee County	75-109	M. Masse	Disc / Vote
10.	Water Supply Agreement - Tenants	110-121	M. Masse	Disc / Vote
11.	Water Facilities Operation & Maintenance Agreement	122-133	M. Masse	Disc / Vote
12.	Water Rate	134-135	M. Masse	Disc / Vote
13.	Adjournment		P. Zeliff	Vote

**RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS**

All of the members of the Board of Directors of STAMP Water Works, Inc. (the "Corporation") do hereby adopt and consent to the adoption of the following resolutions:

**RESOLVED**, that the Statement of Organization of this Corporation be and it hereby is in all respects approved, and that all actions of every nature thereby shown to have been taken or authorized be and the same hereby are in all respects approved, ratified and confirmed.

**RESOLVED**, that the By-Laws adopted by the incorporator of this Corporation be and they hereby are in all respects approved and adopted as and for the By-Laws of this Corporation.

**RESOLVED**, that the following persons be and they hereby are elected to the offices set opposite their respective names to serve until their successors are chosen and shall have qualified:

_____	President
_____	Vice President
_____	Secretary
_____	Treasurer

**RESOLVED**, that the President of this Corporation be and he or she hereby is authorized to cause this Corporation to pay all charges and expenses pertaining to or arising out of the organization of this Corporation and to reimburse any person who has made any disbursements therefor.

**RESOLVED**, that the following subscription and issuance common shares of this Corporation is hereby confirmed, ratified, approved and accepted:

Shareholder  
Genesee Gateway Local Development Corporation

Number of Shares  
100

Consideration per Share  
\$1.00

**RESOLVED**, that the Board of Directors have had the opportunity to review the following governance documents and policies, and all such governance documents and policies are in all respects approved and adopted: Audit and Finance Committee Charter; Governing Committee Charter; Code of Ethics; Disposition of Real Property Guidelines; Travel Policy; Defense and Indemnification Policy; Whistleblower Policy; Board Member Duties and Responsibilities; Policy Prohibiting Extension of Credit; Certificate of Independence; Procurement Policy; Investment Policy; Fiduciary Acknowledgment.

**RESOLVED**, that pursuant to the Investment Policy, all monies collected by any officer or employee of the Corporation shall be deposited in such banks as have been authorized by the Board of Directors. The Board of Directors hereby authorizes the Corporation, or the Treasurer of the Corporation, to open bank accounts with the following banks, for the following purposes, with the following maximum deposit amounts:

Bank: \_\_\_\_\_  
Purpose: \_\_\_\_\_  
Maximum Total Deposits: \_\_\_\_\_

Bank: \_\_\_\_\_  
Purpose: \_\_\_\_\_  
Maximum Total Deposits: \_\_\_\_\_

STATEMENT OF ORGANIZATION  
OF  
STAMP WATER WORKS, INC.

The undersigned, incorporator of STAMP Water Works, Inc., a New York corporation formed under Section 3 of the Transportation Corporations Law, executes this statement pursuant to Section 404 of the Business Corporation Law to set forth action taken as follows:

FIRST: The Certificate of Incorporation of STAMP Water Works, Inc., a true copy of which is annexed hereto, was filed with the Department of State of New York on January 12, 2021, and the receipt of the Department of State, which is attached thereto, was issued in relation to such filing.

SECOND: The By-Laws annexed hereto have been adopted as and for the By-Laws of the corporation.

THIRD: The following named persons have been nominated and elected as directors of the corporation until their successors are elected and shall have qualified:

Pete Zeliff  
Paul Battaglia  
Craig Yunker  
Marianne Clattenburg  
Tim Hens  
Steve Mountain  
Rob Crossen

/s/ Deborah Taberski  
Deborah Taberski, Incorporator

Doc #3133625.2

FILING RECEIPT

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ENTITY NAME: STAMP WATER WORKS, INC.

DOCUMENT TYPE: INCORPORATION (DOM. BUSINESS)

COUNTY: GENE

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FILED:01/12/2021 DURATION:PERPETUAL CASH#:210112000177 FILM #:210112000159  
DOS ID:5915240

FILER:

EXIST DATE

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PHILLIPS LYTLE LLP  
ONE CANALSIDE  
125 MAIN STREET  
BUFFALO, NY 14203

-----  
01/12/2021

ADDRESS FOR PROCESS:

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UPSTATE MEDTECH CENTRE  
99 MEDTECH DRIVE SUITE 106  
BATAVIA, NY 14020

REGISTERED AGENT:  
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STOCK: 200 NPV

The corporation is required to file a Biennial Statement with the Department of State every two years pursuant to Business Corporation Law Section 408. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

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SERVICE COMPANY: UNITED CORPORATE SERVICES

SERVICE CODE: 37 \*

FEES 160.00  
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FILING 125.00  
TAX 0.00  
CERT 0.00  
COPIES 10.00  
HANDLING 25.00

PAYMENTS 160.00  
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CASH 0.00  
CHECK 0.00  
CHARGE 0.00  
DRAWDOWN 160.00  
OPAL 0.00  
REFUND 0.00

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DOS-1025 (04/2007) 5

# ***STATE OF NEW YORK***

## ***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on January 13, 2021.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



210 112000 159

**CERTIFICATE OF INCORPORATION**

**OF**

**STAMP WATER WORKS, INC.**

Under Section 3 of the Transportation Corporations Law  
of the State of New York

For the purposes of forming a corporation pursuant to Section 3 of the Transportation Corporations Law of the State of New York, the undersigned hereby certifies:

FIRST: The name of the corporation is STAMP Water Works, Inc. (the "Corporation").

SECOND: The Corporation shall be a water works corporation under Article 4 and Section 43 of the Transportation Corporations Law of the State of New York.

THIRD: The Corporation is formed to engage in any lawful act or activity for which a water works corporation may be organized under the Transportation Corporations Law of the State of New York, provided that it may not engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained, and further provided that it may engage in the acts and activities of a water works corporation only in the Town of Alabama, New York. The Corporation shall have all the powers of a water works corporation enumerated in Section 43 of the Transportation Corporations Law of the State of New York, subject to any limitations provided in this Paragraph THIRD, said Transportation Corporations Law or any other statute of the State of New York including, without limitation, the definition of a water works corporation set forth in Section 40 of the Transportation Corporations Law.

FOURTH: The office of the Corporation is to be located in the County of Genesee, State of New York.

FIFTH: The aggregate number of shares which the Corporation shall have the authority to issue is two hundred (200) shares of common stock without par value.

SIXTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is Upstate MedTech Centre, 99 MedTech Drive, Suite 106, Batavia, New York 14020.

SEVENTH: The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law, as the same may be amended and supplemented; provided, however, that this provision shall not operate so as to eliminate or limit the liability of any director if a judgment or other final adjudication adverse to him/her establishes that his/her

acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he/she personally gained in fact a financial profit or other advantage to which he/she was not legally entitled or that his/her acts violated Section 719 of the Business Corporation Law.

EIGHTH: The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article 7 from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article 7, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any by-law, resolution of shareholders, resolution of directors, agreement or otherwise, as permitted by said Article 7, as to action in any capacity in which he/she served the Corporation; provided, however, that no indemnification shall be made to or on behalf of any individual if a judgment or other final adjudication adverse to the individual establishes that his/her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he/she personally gained in fact a financial profit or other advantage to which he/she was not legally entitled.

NINTH: Whenever under the provisions of the Business Corporation Law shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with the provisions of Section 615 of the Business Corporation Law.

TENTH: The Town of Alabama, New York is to be supplied with water by the Corporation, and that the consent of the authorities of such town has been obtained and is annexed hereto.

**IN WITNESS WHEREOF**, the undersigned has signed this Certificate of Incorporation this 11th day of January, 2021.



Deborah Taberski, Incorporator  
One Canalside  
125 Main Street  
Buffalo, New York 14203

Doc #3133482.3



**Town of Alabama Town Board Meeting  
September 14, 2020**

**Town of Alabama Resolution of the Town Board Granting Municipal Consent  
To Formation of a Water-Works Corporation**

We, the members of the Town Board of the Town of Alabama, Genesee County, New York, do hereby consent to the formation of a water-works corporation under the provisions of Article 4 of the Transportation Corporations Law of the State of New York for the purpose of servicing the Western New York Science and Technology Advanced Manufacturing Park as proposed by the Petition for Municipal Consent to Formation of a Water-Works Corporation dated August 7, 2020.

Councilperson LaGrou offered the Resolution, which was seconded by Councilperson Fisher and approved by roll call vote:

C. Fisher – yes    C. LaGrou – yes    C. Klotzbach – yes    C. Veazey – yes    Supv. Crossen – yes

**CERTIFICATION**

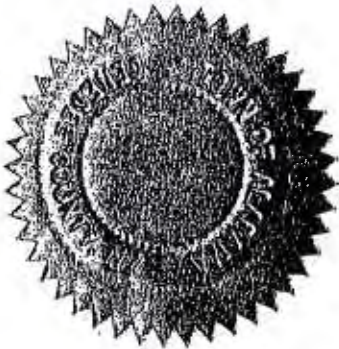
**STATE OF NEW YORK}**  
**COUNTY OF GENESEE}**

I hereby certify that the aforementioned is a true and accurate copy of a resolution adopted by the Town of Alabama Town Board on September 14, 2020.

DATED: September 16, 2020



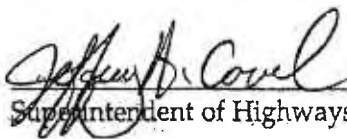
Rebecca L. Borkholder  
Alabama Town Clerk



TOWN OF ALABAMA  
RESOLUTION OF THE SUPERINTENDENT OF HIGHWAYS  
GRANTING MUNICIPAL CONSENT TO FORMATION  
OF A WATER-WORKS CORPORATION

I, the Superintendent of Highways of the Town of Alabama, Genesee County, New York, do hereby consent to the formation of a water-works corporation under the provisions of Article 4 of the Transportation Corporations Law of the State of New York for the purpose of servicing the Western New York Science and Technology Advanced Manufacturing Park as proposed by the Petition for Municipal Consent to Formation of a Water-Works Corporation dated August 8, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand this 20 day of ~~September~~ September 2020.

  
\_\_\_\_\_  
Superintendent of Highways



GGLDC Approved  
a/1/22

**BY-LAWS**  
**OF**  
**STAMP WATER WORKS, INC.**

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**BY-LAWS**

**OF**

**STAMP WATER WORKS, INC.**

**ARTICLE I - THE CORPORATION**

**SECTION 1.1 - NAME**

The Corporation shall be known as "STAMP Water Works, Inc."

**SECTION 1.2 - OFFICES**

The principal office of the Corporation shall be located in the County of Genesee, New York. The Corporation may also have offices at such other places within the State of New York as the Board of Directors may from time to time determine or the activities of the Corporation may require.

**SECTION 1.3 - PURPOSES**

The Corporation shall have such purposes as are now or hereafter set forth in its Certificate of Incorporation.

**ARTICLE II - SHAREHOLDERS**

**SECTION 2.1 - SHAREHOLDERS**

The shareholder of the Corporation is Genesee Gateway Local Development Corporation ("GGLDC").

**SECTION 2.2 - RIGHTS AND POWERS OF THE SHAREHOLDERS**

The shareholders shall have and exercise all the rights and powers of corporate shareholders created by the laws of the State of New York, the Certificate of Incorporation and the By-laws of the Corporation.

**SECTION 2.3 - ANNUAL MEETING OF THE CORPORATION**

The shareholders shall hold an annual meeting of the shareholders of the Corporation within six months after the end of each fiscal year at a convenient time and place designated by the shareholders. At the annual meeting, the shareholders shall elect Directors for positions where a new directorship is created or the term of a Director has expired, receive the annual report and transact such other business as may properly come before the meeting.

## SECTION 2.4 - ANNUAL REPORT TO THE SHAREHOLDERS

At the annual meeting of the shareholders of the Corporation, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(a) A complete internally prepared or audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation; and

(b) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting.

## SECTION 2.5 - SPECIAL MEETINGS OF THE CORPORATION

Special meetings of the shareholders of the Corporation, except as otherwise provided by law, may be called at any time by the President or the Board of Directors and shall be called by the Secretary within fourteen (14) days of receipt of a written request from ten percent (10%) or more of the shareholders. Such request shall state the purpose or purposes for the proposed meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of such meeting.

## SECTION 2.6 - PLACE OF MEETINGS; ORGANIZATION

All shareholder meetings shall be held at the principal office of the Corporation or at such other convenient location as may be determined by the shareholders of the Corporation. At each shareholder meeting, the President, or, in his or her absence, a chairperson chosen by a majority of the shareholders present, shall preside. The Secretary, or, in his or her absence, a person chosen by a majority of the shareholders present, shall keep complete and accurate minutes of the meeting.

## SECTION 2.7 - NOTICE OF SHAREHOLDER MEETINGS; WAIVERS

(a) Notice of each shareholder meeting shall state the purpose or purposes for which the meeting is called, the place, date and time of the meeting and, unless it is the annual meeting, shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Such notice shall be given either personally or by mail to each shareholder not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, the notice is given when deposited in the United States mail, with postage thereon prepaid, directed to a shareholder at his or her address as it appears on the record of shareholders or, if he or she shall have filed with the Secretary a written request that notices be mailed to some other address, then directed to such other address.

(b) Formal notice of meeting need not be given to a shareholder if he or she executes a waiver of notice, either before or after the meeting. The attendance of a shareholder at a meeting, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice.

#### SECTION 2.8 - QUORUM OF SHAREHOLDERS

(a) The presence of at least a majority of the shareholders shall constitute a quorum for the transaction of business at any annual or special shareholder meeting.

(b) A majority of the shareholders present at a meeting, whether or not a quorum is present, may adjourn any shareholder meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent shareholders if the time and place is announced at the meeting adjourned.

#### SECTION 2.9 - ACTION BY THE SHAREHOLDERS

Each shareholder shall be entitled to one vote on each matter properly submitted to the shareholders for action at any meeting of the shareholders. Unless otherwise required by law or these By-laws, the vote of a majority of shareholders present at the time of a vote at a duly convened meeting, provided a quorum is then present, shall be the act of the shareholders.

### ARTICLE III - BOARD OF DIRECTORS

#### SECTION 3.1 - POWER OF BOARD OF DIRECTORS

The Corporation shall be managed by its Board of Directors, which shall establish all general policies governing its operations.

#### SECTION 3.2 - NUMBER, ELECTION AND TERM OF DIRECTORS

(a) The number of voting Directors shall be no less than three but no more than ten, with the exact number of voting Directors to be established by a resolution adopted by the shareholders. The voting Directors shall exercise all rights of Directors as described herein and in the Certificate of Incorporation or any applicable resolution. Up to an additional 13 individuals can be elected as non-voting Directors of the Board who shall serve for one year terms and act in an advisory capacity only to the voting Directors. The non-voting Directors shall hold that title merely in an advisory capacity to the voting Directors. The designation of non-voting Directors does not create any rights for any individual so designated to notice or other participation except at the request of the voting Directors; provided however, said non-voting Directors shall enjoy the benefits of any indemnification of directors as determined herein or as determined from time to time. Any subsequent increase or decrease in the size of the Board of Directors will require the approval of the shareholders and the affirmative vote of the majority of the



voting Directors. As used in these By-laws, "the entire Board of voting Directors" means the total number of voting Directors that the Corporation would have if there were no vacancies on the Board.

(b) Each position of voting Director of the Corporation, except as otherwise provided by law or these By-laws, shall be held by persons who are duly elected by a plurality of the votes cast at the annual meeting of the shareholders or at any meeting of the shareholders held in lieu of such annual meeting and shall hold office until the next annual meeting of shareholders and until their successors are elected and have qualified.

### SECTION 3.3 - RESIGNATIONS AND REMOVAL OF DIRECTORS

(a) Any Director of the Corporation may resign at any time by giving written notice to the President or the Secretary. Such resignation shall take effect at the time specified therein or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

(b) Any Director may be removed from the Board of Directors, with or without cause, by the affirmative vote of a majority of the shareholders.

### SECTION 3.4 - NEWLY CREATED DIRECTORSHIPS AND VACANCIES

Newly created directorships resulting from an increase in the number of directors, and vacancies occurring for any reason, shall be filled by the shareholders as soon as practicable but in no event later than sixty (60) days after the increase or vacancy occurs. A Director elected to fill a vacancy caused by resignation, death, disability or removal shall hold office for the unexpired term of his or her predecessor in office and until a successor is elected and takes office.

### SECTION 3.5 - ANNUAL MEETING

The annual meeting of the Board of Directors shall be held after the annual meeting of the shareholders of the Corporation described in Article II, Section 2.3 above at a convenient time and location designated by the Board of Directors. Written notice of the annual meeting shall be mailed or delivered to each voting Director of the Corporation prior to the meeting.

### SECTION 3.6 - ANNUAL REPORT

The President and the Treasurer shall present at the annual meeting of the Board of Directors a copy of the annual report described in Article II, Section 2.4 above.

### SECTION 3.7 - SPECIAL MEETINGS AND NOTICE

Special meetings of the Board of Directors may be called at any time by the President or any other officer of the Corporation. Written notice shall be mailed or delivered to each voting Director of the Corporation prior to the meeting. Said notice shall state the purposes, time and place of the special meeting and that no business other than that specified in the notice may be transacted.

### SECTION 3.8 - WAIVERS OF NOTICE

Notice of a meeting need not be given to any voting Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

### SECTION 3.9 - PLACE OF MEETINGS

The Board of Directors may hold its meetings at such place or places within or outside the State of New York as the voting Directors may from time to time by resolution determine.

### SECTION 3.10 - OPEN MEETINGS

To the extent required by law, the Corporation shall comply with the Open Meetings Law of the State of New York, as set forth within Article 7 of the Public Officers Law.

### SECTION 3.11 - FREEDOM OF INFORMATION

To the extent required by law, the Corporation shall comply with the Freedom of Information Law of the State of New York, as set forth within Article 6 of the Public Officers Law.

### SECTION 3.12 - QUORUM AND ADJOURNED MEETINGS

(a) A majority of the entire Board of voting Directors shall constitute a quorum for the transaction of business at meetings of the Board. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any Director(s).

(b) A majority of the voting Directors present, whether or not a quorum is present, may adjourn any Board meeting to another time and place. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. Notice of the adjourned meeting shall be given to all voting Directors.

### SECTION 3.13 - ACTION BY THE BOARD OF DIRECTORS

Any corporate action to be taken by the Board of Directors means action at a meeting of the Board of Directors. Each voting Director shall have one vote regarding any corporate action to be taken by the Board of Directors. Except as otherwise provided by law or these By-laws, the vote of a majority of the voting Directors present at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board of Directors. All references to actions of the Board of Directors herein and in the Certificate of Incorporation shall mean the affirmative vote of a majority of the voting Directors present at the time of the vote at a duly convened meeting at which a quorum is present.

### SECTION 3.14 - ORGANIZATION

At each meeting of the Board of Directors, the President, or, in his or her absence, a chairman chosen by a majority of the voting Directors present, shall preside. The Secretary, or, in his or her absence, a person chosen by a majority of the voting Directors present, shall keep complete and accurate minutes of the meeting.

### SECTION 3.15 - ATTENDANCE AT MEETINGS

Attendance at each meeting of the Board shall be recorded by the Secretary in the minutes thereof.

### SECTION 3.16 - COMPENSATION

The Directors shall serve without compensation. All Directors may be reimbursed for reasonable expenses incurred in the performance of corporate duties.

### SECTION 3.17 - PROPERTY RIGHTS

No Director of the corporation shall, by reason of that position, have any rights to or interest in the property or assets of the Corporation.

## ARTICLE IV - COMMITTEES

### SECTION 4.1 - STANDING COMMITTEES

(a) The Standing Committees of the Board of Directors shall be as described in subparagraph (b) below. Except as otherwise provided by these By-laws, each Standing Committee shall consist of at least three voting Directors. Committee members will be appointed by the chairman of the Board of Directors. No Standing Committee shall have authority as to the following matters:

- (i) The submission to the shareholders of any action requiring its approval;



- (ii) The filling of vacancies on the Board of Directors or any committee;
  - (iii) The amendment or repeal of these By-laws or the adoption of new By-laws; or
  - (iv) The amendment or repeal of any resolution of the Board of Directors which by its terms is not so amendable or repealable.
- (b) The Corporation shall have the following Standing Committees:
- (i) Personnel Committee;
  - (ii) Audit/Finance Committee; and
  - (iii) Governance Committee.

#### SECTION 4.2 - SPECIAL COMMITTEES

The Board of Directors, by resolution adopted by a majority of the entire Board of voting Directors, may create Special Committees, which shall have only the powers specifically delegated to them and shall in no case have powers which are not authorized for Standing Committees. The members of Special Committees shall be appointed by the chairman of the Board of Directors from among the Directors.

#### SECTION 4.3 - MEETINGS

Meetings of committees shall be held at such times and places as shall be fixed by the respective committee chairmen, or by vote of a majority of all of the members of the committee. Written notice shall be mailed or delivered to all members of the committee prior to each meeting. Written minutes of the proceedings shall be kept at all committee meetings and shall be submitted at the next meeting of the Board of Directors. The President, or his or her designee, may attend all committee meetings.

#### SECTION 4.4 - QUORUM

Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business.

#### SECTION 4.5 - MANNER OF ACTING

Any corporate action to be taken by a committee shall mean such action to be taken at a meeting of the committee. Action by a committee shall be taken by majority vote at a meeting.

## ARTICLE V - OFFICERS

### SECTION 5.1 - PRESIDENT; VICE PRESIDENT; OTHER OFFICERS

The Corporation shall have a President, a Treasurer, a Secretary, and a Vice President and other officers and assistant officers as the Board of Directors may determine. The offices of President and Secretary shall not be held by the same person. The officers shall have such duties as may be prescribed by these By-laws and the Board of Directors.

### SECTION 5.2 - TERMS OF OFFICERS

The officers shall be elected by the voting Directors at its annual meeting. Unless a shorter term is provided in the resolution of the Board of Directors electing such officer, the term of office of each officer shall extend for one year after his or her election and until a successor is elected or appointed and qualified. Officers shall be eligible to serve an unlimited number of consecutive terms.

### SECTION 5.3 - ADDITIONAL OFFICERS

Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine. Such positions may include a Chief Executive Officer and Acting Secretary, and any other position established by the Board of Directors from time to time.

### SECTION 5.4 - REMOVAL OF OFFICERS

Any officer may be removed by vote of the voting Directors, with or without cause, at any time, provided there is a quorum of not less than a majority of the entire Board of voting Directors present at the meeting at which such action is taken.

### SECTION 5.5 - RESIGNATION

Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

### SECTION 5.6 - VACANCIES

A vacancy in any office of the Corporation shall be filled by the majority vote of the entire Board of voting Directors.

## SECTION 5.7 - PRESIDENT

The President shall be the chief executive officer of the Corporation and shall generally supervise all its affairs. The President shall perform such other duties as may be assigned to him or her from time to time by the Board of Directors. From time to time, the Board of Directors may employ or contract with an appointed Chief Executive Officer to whom the Board of Directors may designate certain duties of the President and other such duties as may be assigned to him or her.

## SECTION 5.8 - VICE PRESIDENT

The Vice President shall perform the duties of the President in the absence of the President and such other duties as may be assigned to him or her from time to time by the Board or the President.

## SECTION 5.9 - SECRETARY

It shall be the duty of the Secretary to supervise the preparation of minutes of all meetings of the shareholders and the Board of Directors and its committees, the giving of all notices required to be given by the Corporation, and the keeping of a current list of the Corporation's shareholders, Directors and officers and their residence addresses. The Secretary shall be responsible for supervising the preparation and maintenance of the books and records of the Corporation. The Secretary shall attend to such correspondence as may be assigned to him or her and perform all the duties customarily incidental to that office and such other duties as may be assigned to him or her by the Board of Directors or the President. From time to time, the Board of Directors may designate duties of the Secretary to an appointed Acting Secretary who will perform such duties as may be assigned to him or her.

## SECTION 5.10 - TREASURER

It shall be the duty of the Treasurer to oversee the financial affairs of the Corporation, report at each regular meeting of the Board of Directors, and participate in preparing the annual report of the Corporation and the filing of all required tax returns and other regulatory reports. The Treasurer shall perform such other duties as may be assigned to him or her by the Board of Directors or the President.

## **ARTICLE VI - CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS**

### SECTION 6.1 - EXECUTION OF CONTRACTS

The Board of Directors, except as these By-laws otherwise provide, may authorize any officer or officers, agent or agents, employee or employees, in the name of and on behalf of the Corporation, to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but,

unless so authorized by the Board of Directors, or expressly authorized by these By-laws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

#### SECTION 6.2 - LOANS

No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Directors.

#### SECTION 6.3 - CHECKS, DRAFTS, ETC.

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, must be signed on behalf of the Corporation by the President, Vice-President or Chief Executive Officer and the Secretary, Treasurer or Acting Secretary.

#### SECTION 6.4 - DEPOSITS

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Treasurer may recommend and the Board of Directors approves.

#### SECTION 6.5 - INVESTMENTS

The Board of Directors may authorize the Corporation to contract with an investment advisor and custodian to manage its investments in accordance with an investment policy established by the Board.

### ARTICLE VII - GENERAL

#### SECTION 7.1 - SEAL

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal, New York." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

#### SECTION 7.2 - BOOKS AND RECORDS

There shall be kept by the Corporation (1) correct and complete books and records of account, (2) minutes and statements of written action by the shareholders, (3) minutes of the proceedings of the Board of Directors and its committees, (4) a current list of the shareholders, Directors and officers of the Corporation and their residence addresses, (5) a copy of the Certificate of Incorporation, and (6) a copy of these By-laws.



### SECTION 7.3 - INDEMNIFICATION

The Corporation shall indemnify each shareholder, each Director, each officer, and, to the extent authorized by the Board of Directors, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under applicable law, as amended from time to time.

### SECTION 7.4 - INTERESTED DIRECTORS AND OFFICERS

The Board of Directors may adopt a policy regarding conflicts of interest which shall apply to all Directors and officers.

## **ARTICLE VIII - FISCAL YEAR**

The fiscal year of the Corporation shall commence on the first day of January of each calendar year and end on the last day of December.

## **ARTICLE IX - RULES OF ORDER AND BY-LAW CHANGES**

### SECTION 9.1 - BY-LAW CHANGES

These By-laws may be amended, repealed or adopted only by the shareholders of the Corporation.

Doc #9197657.3

[STAMP WATER WORKS, INC.]

## **AUDIT AND FINANCE COMMITTEE CHARTER**

Adopted pursuant to and in accordance with Section 2824(4) and Section 2824(8) of the Public Authorities Law

This Audit and Finance Committee Charter (the "Charter") was adopted by the Board of Directors (the "Board") of STAMP Water Works, Inc. ("SWWC"), a transportation corporation formed under Section 3 of the Transportation Corporations Law of the State of New York and in accordance with the procedure for the formation of corporations set forth in Article 4 of the Business Corporation Law of the State of New York.

### **Purpose**

The purpose of the Audit and Finance Committee (the "Committee") shall be to:

- Assure that the Board fulfills its responsibilities for SWWC's internal and external audit process, the financial reporting process and the system of risk assessment and internal controls over financial reporting;
- Recommend to the Board the hiring of a certified independent accounting firm;
- Establish the compensation to be paid to such accounting firm;
- Provide direct oversight of the performance of the independent audit performed by such accounting firm;
- Provide an avenue of communication between management, the independent auditors, and the board of directors;
- Review proposals for the issuance of debt by SWWC and its subsidiaries and to make recommendations; and
- Carry out any other responsibilities delegated by the Board relating to SWWC's audit and finances.

### **Powers of the Committee**

It shall be the responsibility of the Committee to:

- Appoint, compensate, and oversee the work of any public accounting firm employed by SWWC.
- Conduct or authorize investigations into any matters within its scope of responsibility.
- Seek any information it requires from SWWC employees, all of whom should be directed by the Board to cooperate with Committee requests.
- Meet with SWWC staff, independent auditors or outside counsel, as necessary.
- Retain, at SWWC's expense, such outside counsel, experts and other advisors as the Committee may deem appropriate.
- Review proposals for debt issuance by SWWC and its subsidiaries and to make recommendations.

The Board will ensure that the Committee has sufficient resources to carry out its duties.



### **Composition and Selection**

The membership of the Committee shall be as set forth in accordance with and pursuant to Article IV, Section IV.1 of SWWC's By-laws. The Committee shall be comprised of the President of the Board (the "Board President") and at least three additional "independent members", within the meaning of, and to the extent required by, Section 2825 of New York Public Authorities Law, as amended from time to time. The Committee members shall be appointed by the Board President. The Board President may designate one member of the Committee as the Committee Chair. The members shall serve until their resignation, retirement, removal by the Board or until their successors shall be appointed and qualified. When feasible, the immediate past Committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

All members of the Committee shall possess the necessary skills to understand the duties and functions of the Committee, including an understanding of governmental financial reporting and auditing.

The Committee shall have access to the services of at least one financial expert; whose name shall be disclosed in the annual report of SWWC.

The Committee's financial expert should have: 1) an understanding of generally accepted accounting principles and financial statements; 2) experience in preparing or auditing financial statements of comparable entities; 3) experience in applying such principles in connection with accounting for estimates, accruals and reserves; 4) experience with internal accounting controls, 5) experience with debt issuances, and 6) an understanding of audit and finance committee functions.

### **Meetings**

The Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in this Charter or as otherwise delegated to the Committee by the Board. All Committee members are expected to attend each meeting, in person or via videoconference. The Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information as necessary.

The Committee will meet with SWWC's independent auditor at least annually to discuss the financial statements of SWWC.

A meeting agenda will be prepared for every meeting and provided to the Committee members at least two days in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions. The Committee shall act only on the affirmative vote of a majority of the members at a meeting at which a quorum is present. Minutes of these meetings are to be recorded.

### **Responsibilities**

The Committee shall have responsibilities related to: (a) the independent auditor and the annual financial statements; (b) SWWC's internal auditors (if any); (c) oversight of management's

internal controls, compliance and risk assessment practices; (d) special investigations and whistleblower policies; (e) issuances of debt and (f) miscellaneous issues related to the financial practices of SWWC.

The Committee shall be responsible for reviewing financial statement accuracy and review of Revolving Loan Fund requests.

### **Independent Auditors and Financial Statements**

The Committee shall:

- Recommend to the Board the appointment of independent auditors retained by SWWC and pre-approve all audit services provided by the independent auditor.
- Establish procedures for the engagement of the independent auditor to provide permitted audit services. SWWC's independent auditor shall be prohibited from providing non-audit services unless having received previous written approval from the Committee. Non-audit services include tasks that directly support SWWC's operations, such as bookkeeping or other services related to the accounting records or financial statements of the authority, financial information systems design and implementation, appraisal or valuation services, actuarial services, investment banking services, and other tasks that may involve performing management functions or making management decisions.
- Review and approve SWWC's audited financial statements, associated management letter, report on internal controls and all other auditor communications.
- Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.
- Meet with the independent audit firm on a regular basis to discuss any significant issues that may have surfaced during the course of the audit.
- Review and discuss any significant risks reported in the independent audit findings and recommendations and assess the responsiveness and timeliness of management's follow-up activities pertaining to same.

### **Internal Controls, Compliance and Risk Assessment**

The Committee shall:

- Review management's assessment of the effectiveness of SWWC's internal controls and review the report on internal controls by the independent auditor as part of the financial audit engagement.

### **Special Investigations**

The Committee shall:

- Ensure that SWWC has an appropriate confidential mechanism for individuals to report suspected fraudulent activities, allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by the directors, officers, or employees of the authority or any persons having business dealings with SWWC, or breaches of internal control.
- Develop procedures for the receipt, retention, investigation and/or referral of complaints concerning accounting, internal controls and auditing to the appropriate body.

- Request and oversee special investigations as needed and/or refer specific issues to the appropriate body for further investigation (for example, issues may be referred to the State Inspector General or, other investigatory organization.)
- Review all reports delivered to it by the Inspector General and serve as a point of contact with the Inspector General.

**Other Responsibilities of the Audit and Finance committee**

The Committee shall:

- Present annually to the Board a report of how it has discharged its duties and met its responsibilities as outlined in the Charter.
- Obtain any information and training needed to enhance the Committee members' understanding of the role of internal audits and the independent auditor, the risk management process, internal controls and a certain level of familiarity in financial reporting standards and processes.
- Review the Charter annually, reassess its adequacy, and recommend any proposed changes to the Board. The Charter will be updated as applicable laws, regulations, accounting and auditing standards change.
- Conduct an annual self-evaluation of the Committee's performance, including its effectiveness and compliance with the Charter and request Board approval for proposed changes.
- Review proposals for the issuance of debt by SWWC and its subsidiaries and make recommendations.

Doc #10345169.2

[STAMP WATER WORKS, INC.]

**GOVERNANCE & NOMINATING COMMITTEE CHARTER**

Adopted pursuant to and in accordance with Section 2824(7) of the Public Authorities Law

This Governance & Nominating Committee Charter (the "Charter") was adopted by the Board of Directors (the "Board") of STAMP Water Works, Inc. ("SWWC"), a transportation corporation formed under Section 3 of the Transportation Corporations Law of the State of New York and in accordance with the procedure for the formation of corporations set forth in Article 4 of the Business Corporation Law of the State of New York.

**Purpose**

The purpose of the Governance & Nominating Committee (the "Committee") is to assist the Board by:

- Keeping the Board informed of current best practices in corporate governance;
- Reviewing corporate governance trends for their applicability to SWWC;
- Recommending updates to SWWC's corporate governance principles and governance practices;
- Advising those responsible for appointing directors to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board members;
- Nominating candidates for various offices including, but not limited to President, Vice-President, Secretary and Treasurer;
- Examining ethical and conflict of interest issues;
- Performing Board self-evaluations;
- Recommending By-laws which include rules and procedures for conduct of Board business; and
- Carrying out any other responsibilities delegated by the Board relating to SWWC's corporate governance process.

**Powers of the Committee**

The Board has delegated to the Committee the power and authority necessary to discharge its duties, including the right to:

- Obtain advice and assistance from in-house or outside counsel, accounting and other advisors as the Committee deems necessary; and
- Solicit, at SWWC's expense, persons having special competencies, including legal, accounting or other consultants as the Committee deems necessary to fulfill its responsibilities. The Committee shall have the authority to negotiate the terms and conditions of any contractual relationship to the Board's adopted procurement guidelines as per Public Authorities Law Section 2879, and to present such contracts to the Board for its approval.

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### **Composition and Selection**

The membership of the Committee shall be as set forth in accordance with and pursuant to Article IV, Section IV.1 of SWWC's By-laws. The Committee shall be comprised of the President of the Board (the "Board President") and at least three additional "independent members", within the meaning of, and to the extent required by, Section 2825 of New York Public Authorities Law, as amended from time to time. The Committee members shall be appointed by the Board President. The Board President may designate one member of the Committee as the Committee Chair. The members shall serve until their resignation, retirement, removal by the Board or until their successors shall be appointed and qualified. When feasible, the immediate past Committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

The Committee members should be knowledgeable or become knowledgeable in matters pertaining to corporate governance.

### **Meetings**

The Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in this Charter or as otherwise delegated to the Committee by the Board. All Committee members are expected to attend each meeting, in person or via videoconference.

A meeting agenda will be prepared for every meeting and provided to the Committee members at least two days in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions. The Committee shall act only on the affirmative vote of a majority of the members at a meeting at which a quorum is present. Minutes of these meetings are to be recorded.

### **Reports**

The Committee shall:

- Report its actions and recommendations to the Board at the next regular meeting of the Board;
- Report to the Board, at least annually, regarding any proposed changes to this Charter, the By-laws of SWWC, or the governance principles of SWWC; and
- Provide a self-evaluation of the Committee's functions on an annual basis.

### **Responsibilities**

To accomplish the objectives of good governance and accountability, the Committee has responsibilities related to: (a) the Board; (b) evaluation of the Board's policies; (c) corporate governance; (d) ethical and conflict of interests issues; and (e) other miscellaneous issues.

### **Relationship to the Board**

The Board has delegated to the Committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the Committee has specific expertise, as follows:

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**STAMP Water Works, Inc.**

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- Develop SWWC's governance practices. These practices should address transparency, independence, accountability, fiduciary responsibilities, and management oversight; and
- Develop the skills, competencies and personal attributes required of members of the Board.

In addition, the Committee shall:

- Develop and recommend to the Board the number and structure of committees to be created by the Board;
- Develop and provide recommendations to the Board regarding Board member education, including new member orientation and regularly scheduled Board member training to be obtained from state-approved trainers;
- Develop and provide recommendations to the Board of performance evaluations, including coordination and oversight of such evaluations of the Board, its committees and senior management in SWWC's governance process.

### **Evaluation of the SWWC's Policies**

The Committee shall:

- Develop, review on a regular basis, and update as necessary SWWC's code of ethics and written policies regarding conflicts of interest. Such code of ethics and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees;
- Develop and recommend to the Board any required revisions to SWWC's written policies regarding whistleblower protections;
- Develop and recommend to the Board any required revisions to SWWC's equal opportunity and affirmative action policies;
- Develop and recommend to the board any required updates to SWWC's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence SWWC's procurement process;
- Develop and recommend to the Board any required updates to SWWC's written policies regarding the disposition of real and personal property;
- Develop and recommend to the Board any other policies or documents relating to the governance of SWWC, including rules and procedures for conducting the business of the Board, such as SWWC's By-laws. The Committee will oversee the implementation and effectiveness of the By-laws and other governance documents and recommend modifications as needed.

### **Other Responsibilities**

The Committee shall:

- Annually review, assess and make necessary changes to this Charter and provide a self-evaluation of the Committee.
- Annually review the general performance of SWWC relative to budget, capital investment and jobs created.

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## **STAMP WATER WORKS, INC.**

### **CODE OF ETHICS**

The members of the Board of Directors (the "Board") of STAMP Water Works, Inc. (the "Corporation"), a duly established transportation corporation of the State of New York (the "State"), along with the officers and employees of the Corporation, shall comply with and adhere to the provisions of this Code of Ethics ("Code"), adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law.

#### **ARTICLE I CONFLICTS OF INTEREST**

No officer, director or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties to the Corporation or the public interest, or which could adversely affect his or her judgment in the discharge of his or her responsibilities.

No officer, director or employee shall:

1. Accept other employment which will impair his or her independence of judgment in the exercise of his or her duties.
2. Accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her position or authority.
3. Disclose confidential information acquired by him or her in the course of his or her duties nor use such information to further his or her personal interests.
4. Use or attempt to use his or her position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state or the Corporation for private business or other compensated non-governmental purposes.
5. Engage in any transaction as a representative or agent of the state or the Corporation with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties.
6. By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.
7. If employed on a full-time basis, individually or through any firm or association of which such an officer or employee is a member nor corporation a substantial portion of which is owned or controlled directly or indirectly by such officer or employee, sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state or the Corporation in which such officer or employee serves or is employed.

8. Take action or participate in any manner whatsoever in his or her official capacity in the discussion, negotiation or the awarding of any contract or in any business or professional dealings with the Corporation in which the official or employee has or will have an interest, direct or indirect, in such contract or professional dealings.
9. Engage in, solicit, negotiate for or promise to accept private employment or render services for his or her personal benefit when such employment or service creates a conflict or impairs the proper discharge of his or her official duties.
10. Directly or indirectly solicit, accept, or agree to accept any gift or financial benefit from any person, other than a family member, who the Corporation officer or employee knows is considering, has, or within the previous twelve months has had, any business dealing with the Corporation that involves any discretionary act by the Corporation officer or employee. An Corporation officer or employee may accept from such person a gift or gifts which are customary on family, social, holiday or civic occasions, provided they do not total more than seventy-five dollars from any person within any calendar year, and further provided that they were not received under circumstances in which it reasonably might be inferred that such gift or gifts were intended to influence the officer or employee in the performance of his or her official duties or reward him or her for any official action. A gift or financial benefit shall include money, services, loan, travel, entertainment, hospitality, thing or promise thereof, or any other gratuity or promise thereof, including any financial transaction on terms not available to the general public, but shall not include a campaign contribution. Travel, room and board expenses incurred in the performance of official duties providing a legitimate public purpose shall be excluded from the provisions of this section.
11. Take action on a matter before the Corporation when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself.

An officer, director or employee shall:

1. Abstain from making personal investments in enterprises in which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.
2. Endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

## **ARTICLE II PROCEDURES FOR DISCLOSURE**

All directors, officers or employees of the Corporation shall adhere to the following procedures:

1. All conflicts of interest shall be disclosed in writing to the Ethics Officer as soon as practicable after learning of the conflict. In addition, in the event a director on the Board has a conflict, he or she shall verbally disclose the conflict during a public session of a Board meeting

at which the matter creating the conflict appears on the agenda. Such verbal disclosure shall be recorded in the minutes of the meeting and be made part of the public record.

2. The director, officer or employee with the conflict of interest shall refrain from participating in discussions or decisions on the matter creating the conflict. In addition, in the event a director on the Board has a conflict, he or she shall recuse him or herself from any deliberations and abstain from voting on such matter creating the conflict.

### **ARTICLE III PENALTIES**

Failure to comply with this Code may result in penalties as provided for in law.

### **ARTICLE IV ETHICS OFFICER**

The Board shall designate an officer, director or employee of the Corporation to serve as the Ethics Officer of the Corporation. In the event of a vacancy, the President of the Board shall serve as the Ethics Officer until such time as the Board appoints a successor.

### **ARTICLE V PROHIBITED CONFLICTS OF INTEREST**

Notwithstanding any other provision contained in this Code, the directors, officers and employees of the Corporation shall comply with Article 18 of the General Municipal Law of the State of New York ("GML").

Doc #10345659.2

**STAMP WATER WORKS, INC.**  
**DISPOSITION OF PROPERTY GUIDELINES (THE "GUIDELINES")**  
Adopted pursuant to and in accordance with Sections 2824 and 2896 of the Public Authorities Law

**SECTION 1. DEFINITIONS**

- A. "Contracting Officer" shall mean the officer or employee of STAMP Water Works, Inc. (hereinafter, the "Corporation") who shall be appointed by resolution to be responsible for the disposition of property.
- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with Section 2897 of the Public Authorities Law.
- C. "Property" shall mean personal property in excess of five thousand dollars (\$5,000) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

**SECTION 2. DUTIES**

- A. The Corporation shall:
- (i) maintain adequate inventory controls and accountability systems for all property owned by the Corporation and/or under its control;
  - (ii) periodically inventory such property to determine which property shall be disposed of;
  - (iii) produce a written report of such property in accordance with subsection B herewith; and
  - (iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.
- B. The Corporation shall:
- (i) publish, not less frequently than annually, a report listing all real property owned by the Corporation. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser for all such property sold by the Corporation during such period; and
  - (ii) deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, and the New York State Legislature (via distribution to the majority leader of the senate and the speaker of the assembly).

**SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY**

- A. Supervision and Direction. Except as otherwise provided herein, the duly appointed Contracting Officer shall have supervision and direction over the disposition and sale of property of the Corporation. The Corporation shall have the right to dispose of its property for any valid corporate purpose.



B. Custody and Control. The custody and control of Corporation property, pending its disposition, and the disposal of such property, shall be performed by the Corporation or by the Commissioner of General Services when so authorized under Section 2897 of the Public Authorities Law.

C. Method of Disposition. Unless otherwise permitted, the Corporation shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Corporation and/or Contracting Officer deems proper. The Corporation may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of these Guidelines. Provided, however, that no disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other property which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

D. Sales by the Commissioner of General Services (the "Commissioner"). When the Corporation shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Corporation may enter into an agreement with the Commissioner where under such Commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms of Section 2897 of the Public Authorities Law and references to the Contracting Officer shall be deemed to refer to such Commissioner.

E. Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property of the Corporation in accordance herewith shall be conclusive evidence of compliance with the provisions of these Guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

F. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

(i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Corporation or Contracting Officer shall be made after publicly advertising for bids except as provided in subsection (iii) of this Section F.

(ii) Whenever public advertising for bids is required under subsection (i) of this Section F:

(A) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;

(B) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(C) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Corporation, price and other factors considered; provided, that all bids may be rejected at the Corporation's discretion or when it is in the public interest to do so.

- (iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:
    - (A) the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under subsections (i) and (ii) of this Section F, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
    - (B) the fair market value of the property does not exceed fifteen thousand dollars;
    - (C) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
    - (D) the disposal will be to the state or any political subdivision or public benefit corporation, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;
    - (E) under those circumstances permitted by Section (G) below; or
    - (F) such action is otherwise authorized by law.
  - (iv) (A) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
    - (1) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;
    - (2) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (3) and (4) of this subparagraph;
    - (3) any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of \$15,000; or
    - (4) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.
  - (B) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Corporation making such disposal.
- (G) Disposal of Property for less than Fair Market Value ("FMV").
- (i) No assets owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its FMV except if:



- (A) The transferee is a government or other public entity, and terms of transfer require that the ownership and use of the asset will remain with the government or any other public entity; or
  - (B) the purpose of transfer is within the purpose, mission or governing statute of the Corporation; or
  - (C) in the event the Corporation seeks to transfer an asset for less than its FMV to other than a governmental entity, which disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Corporation may effectuate such transfer. Provided, however, that with respect to a below market transfer by the Corporation that is not within the purpose, mission or governing statute of the Corporation, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which the Corporation resides, and the transfer is of property obtained by the Corporation from that political subdivision, then such approval shall be sufficient to permit the transfer.
- (ii) If a below FMV transfer is proposed, the following information must be provided to the Corporation's board and the public:
- (A) a full description of Asset;
  - (B) an appraisal of the FMV of the asset and any other information establishing the FMV sought by the board;
  - (C) a description of purpose of transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages, or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
  - (D) a statement of the value to be received compared to the FMV;
  - (E) the names of any private parties participating in the transfer, and if different than the statement required by subsection (D) of this Section, a statement of the value to the private party;
  - (F) the names of other private parties that have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- (iii) Before approving the disposal of any property for less than FMV, the board must consider the information described in the above Section 3(G)(ii) and make a written determination

that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

These Guidelines are subject to modification and amendment at the discretion of the Corporation's board and shall be filed annually with all local and state agencies as required under all applicable law.

The designated Contracting Officer for the Corporation is the **Corporation's Board President**.

This policy is hereby adopted and shall be effective immediately as approved and adopted \_\_\_\_\_, 2022.

Doc #10372586.2

**STAMP WATER WORKS, INC.**  
**TRAVEL POLICY**

Adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law

Section 1.     **APPLICABILITY**

This policy shall apply to every member of the board of directors (the "Board") of STAMP Water Works, Inc. (the "Corporation") and all officers and employees thereof.

Section 2.     **APPROVAL of TRAVEL**

All official travel for which a reimbursement will be sought must be approved by the Board President prior to such travel. Provided, however, in the instance where the Board President will seek reimbursement for official travel, such travel must be pre-authorized by the Vice President of the Corporation.

Section 3.     **PAYMENT of TRAVEL**

The Corporation will reimburse all reasonable expenses related to meals, travel and lodging that were incurred by any director, officer or employee as a result of the performance of their official duties. All official travel shall be properly authorized, reported and reimbursed. Under no circumstances shall expenses for personal travel be charged to, or temporarily funded by the Corporation. It is the traveler's responsibility to report his or her travel expenses in a responsible and ethical manner, in accordance with this policy.

Section 4.     **TRAVEL EXPENSES**

Travelers may use their private vehicle for business purposes if it is less expensive than renting a car, taking a taxi, or using alternative transportation, or if it saves time. The traveler will be reimbursed at a standard mileage reimbursement rate.

Meals will be reimbursed at actual expense or a per diem rate, whichever is less. Lodging will be reimbursed at actual expense up to certain daily rate caps established for various locations. The applicability of such caps shall be determined on a case by case basis taking into consideration availability of lodging and other extenuating circumstances.

Reimbursement for miscellaneous expenses shall be determined on a case by case basis. Mileage rates, per diem allowances and lodging caps will be established and from time to time amended by the Treasurer. All determinations made pursuant to this section shall be made by the Treasurer. In the instance where such determinations regard the travel of the Treasurer, the President shall make such determinations.

Approved and adopted this \_\_\_ day of \_\_\_\_\_, 2022.

**STAMP WATER WORKS, INC.**  
**DEFENSE AND INDEMNIFICATION POLICY**

Adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law

Pursuant to the Bylaws of STAMP Water Works, Inc. (the "Corporation"), the Corporation shall indemnify all members of the Board of the Corporation and each officer, and, to the extent authorized by the Board, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under the applicable laws of the State of New York.

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2022.

**STAMP WATER WORKS, INC.**

**WHISTLEBLOWER POLICY**

Adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law

Every member of the board of directors (the "Board") of STAMP Water Works, Inc. (the "Corporation") and all officers and employees thereof, in the performance of their duties shall conduct themselves with honesty and integrity and observe the highest standards of business and personal ethics as set forth in the Code of Ethics of the Corporation (the "Code").

Each member of the Board, officer and employee is responsible to report any violation of the Code (whether suspected or known) to the Corporation's Board President. Reports of violations will be kept confidential to the extent possible. No individual, regardless of their position with the Corporation, will be subject to any retaliation for making a good faith claim and, any member of the Board, officer, or employee who chooses to retaliate against someone who has reported a violation, shall be subject to disciplinary action which may include termination of employment. Regardless, any claim of retaliation will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate offense.

The Board President is responsible for immediately forwarding any claim to the Corporation's counsel who shall investigate and handle the claim in a timely manner.

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2022.



[STAMP Water Works, Inc.]

**STAMP WATER WORKS, INC.  
BOARD OF DIRECTORS DUTIES AND RESPONSIBILITIES**

**Purpose:** The purpose of this policy is to set forth minimum standards of the conduct and responsibilities of the board of directors in furtherance of the safe and sound operations of STAMP Water Works, Inc. ("SWWC").

- 1) Execute direct oversight of SWWC's chief executive and other management in the effective and ethical management of SWWC;
- 2) Understanding, reviewing and monitoring the implementation of fundamental financial and management controls and operational decisions of SWWC;
- 3) Establishing policies regarding the payment of salary, compensation and reimbursements to, and establishing rules for the time and attendance of, the CEO and senior management;
- 4) Adopting a code of ethics applicable to each officer, director and employee;
- 5) Establishing written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of SWWC, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services;
- 6) Adopting a defense and indemnification policy and disclosing such plan to any and all prospective board members; and
- 7) Performing each of their duties as board members, including but not limited to those imposed by this policy, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of SWWC, its mission and the public.

**Training:** Board members must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of SWWC within one year of appointment to the board.

Board members must participate in continued training as may be required to remain informed of best practices, and regulatory and statutory changes relating to effective oversight of the management and financial activities of SWWC and to adhere to the highest standards of responsible governance.

Adopted this \_\_\_ day of \_\_\_\_\_, 2022.

Doc #10373450.2

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STAMP Water Works, Inc.

99 MedTech Drive, Suite 106, Batavia, New York 14020

585-343-4866 Fax: 585-343-0848

Email: \_\_\_\_\_ Web: \_\_\_\_\_

**STAMP WATER WORKS, INC.**

**POLICY PROHIBITING EXTENSION OF CREDIT  
TO OFFICERS, BOARD MEMBERS OR EMPLOYEES**

Adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law

The Board of Directors is prohibited from extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit, in the form of a personal loan or for any officer, board member or employee of STAMP Water Works, Inc.

Approved and adopted this \_\_\_ day of \_\_\_\_\_, 2022.

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**STAMP Water Works, Inc.**

99 MedTech Drive, Suite 106, Batavia, New York 14020

585-343-4866 Fax: 585-343-0848

Email: \_\_\_\_\_ Web: \_\_\_\_\_

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**CERTIFICATE OF INDEPENDENCE  
FOR MEMBERS OF THE BOARD OF DIRECTORS OF  
STAMP WATER WORKS, INC.**

The undersigned, having been appointed to serve as a member of the Board of Directors of STAMP Water Works, Inc. (the "Corporation") on or after [DATE], hereby certifies, pursuant to subdivision 2 of Section 2825 of the Public Authorities Law, as follows:

He or she is not, and in the past two (2) years, has not been, employed by the Corporation or an affiliate in an executive capacity.

He or she is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the Corporation or received any other form of financial assistance valued at more than \$15,000 from the Corporation.

He or she is not a relative of an executive officer or employee in an executive position of the Corporation or an affiliate.

He or she is not, and in the past two (2) years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Corporation or an affiliate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Name: \_\_\_\_\_

# STAMP WATER WORKS, INC.

## Procurement Policies and Procedures



Adopted: \_\_\_\_\_, 2022



STAMP WATER WORKS, INC.

PROCUREMENT POLICIES AND PROCEDURES

1. INTRODUCTION
2. DECLARATION OF POLICY
3. DEFINITIONS
4. DETERMINATION OF PROCUREMENT
5. NO COMPETITIVE BIDDING
6. COMPETITIVE QUOTATIONS
  - 6.1. Written Descriptions Required
  - 6.2. Soliciting Competitive Quotations
  - 6.3. Exceptions
  - 6.4. Authorization
  - 6.5. Award of Contract
  - 6.6. Purchases (\$5,000 or less)
  - 6.7. Policies for Corporation's Benefit
7. MISCELLANEOUS
8. PROCUREMENT POLICY SUMMARY CHART

NOTE: THESE POLICIES AND PROCEDURES APPLY ONLY TO GOODS AND SERVICES PAID FOR BY THE CORPORATION FOR ITS OWN USE AND ACCOUNT. THEY DO NOT APPLY TO GOODS OR SERVICES (SUCH AS, BUT NOT LIMITED TO, BOND COUNSEL OR CORPORATE COUNSEL) PROCURED IN CONNECTION WITH SALE LEASEBACK OR A BOND ISSUANCE, FOR WHICH GOODS AND SERVICES A COMPANY PAYS.

**1. INTRODUCTION**

The policies and procedures set forth herein have been developed by STAMP Water Works, Inc. (the "Corporation") pursuant to Section 2824 of the Public Authorities Law regarding the procurement of Goods and Services not required by law to be procured pursuant to competitive bidding.

These policies and procedures apply only to Goods and Services paid for by the Corporation for its own use and account. They do not apply to Goods or Services (such as, but not limited to, Bond Counsel or construction services) for a project for which the Corporation will not be the project operator or occupant.

**2. DECLARATION OF POLICY**

Goods and Services which are not required by law to be procured pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of Corporation moneys in the best interest of the Corporation, to facilitate the acquisition of Goods and Services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption. To further these objectives, the Members have adopted the policies and procedures set forth herein governing all procurement of Goods and Services which are not required to be procured pursuant to competitive bidding.

**3. DEFINITIONS**

The following terms shall have the following meanings:

1. "Corporation" shall mean STAMP Water Works, Inc..
2. "Competitive Quotations" means the procurement of Goods and/or Services, in accordance with the provisions of Section "6" herein.
3. "Contract" shall mean a public work contract, a purchase contract, or, generally a contract for Goods or Services in accordance with the provisions herein.
4. "County" shall mean the County of Genesee, New York.
5. "Goods" shall mean products, materials, supplies, equipment, apparatus and other like items, and the necessary Services related to these items.
6. "Members" shall mean the Board of Directors of the Corporation.

7. "Procurement" or "procure" shall mean the obtaining, through Contract or agreement of Goods and/or Services in accordance with these policies and procedures.

8. "Procurement Officer" shall mean the Treasurer of the Corporation or such other officer, or employee, or individual designated by the Members to carry out the general and specific provisions of the policies and procedures set forth herein.

9. "Professional Services" means for those Services requiring special or technical skills, training, expertise, or licensing, or such Services which involve the use of professional judgment and/or a high degree of creativity, or which involve a relationship of personal trust or professional confidence including, but not limited to, engineering, architectural, medical, financial and legal services.

10. "Services" shall mean, generally, labor and/or construction to be performed.

11. "Sole Source Goods or Services" shall mean Goods or Services for which the Procurement Officer has determined that there is only one possible source from which to procure the desired Goods or Services, including, but not limited to, certain patented Goods or Services, or public utilities; provided, however, the Procurement Officer must certify that such Goods or Services are available from only one source so that no possibility of competition exists, including a showing that, at least (a) the unique benefits of the desired Goods or Services as compared to other such Goods or Services available in the marketplace, (b) no other Goods or Services provide substantially equivalent or similar benefits, and (c) considering the benefits received, the cost of the Goods or Services is reasonable, when compared to conventional methods;

12. "State" shall mean the State of New York.

13. "Vendor" shall mean a supplier or prospective supplier of Goods or Services.

#### 4. **DETERMINATION OF PROCUREMENT**

The Procurement Officer is hereby designated to be responsible for determining whether a procurement of Goods or Services is subject to Competitive Quotations or is exempt from such procurement, and the Procurement Officer is authorized to determine that the nature of a particular project or class of projects is exempt from the procurement policies described herein. The Corporation hereby finds and determines that Professional Services are, in all cases, exempt from these procurement policies and procedures, as solicitation of alternate proposals and quotations is not in the best interest of the Corporation in situations in which special skills and expertise are required.

**5. NO COMPETITIVE BIDDING**

As of the date of adoption of these policies and procedures, the Corporation is not subject to the competitive bidding requirements of Section 103 of the General Municipal Law.

**6. COMPETITIVE QUOTATIONS**

**6.1. Written Descriptions Required**

Upon a determination by the Procurement Officer that Goods or Services are to be procured through competitive or verbal quotations, the Procurement Officer shall cause to be made a written description for each such Goods or Services to be procured. Such description need not necessarily include detailed specifications but may be generic or in outline form or describe the result sought by the Corporation. Such written description shall contain that information deemed necessary for the procurement of the desired Goods or Services in accordance with the policies of the Corporation, including a statement that the requested bid or quotation price shall include a statement whether cost of delivery is included, a statement that the Corporation reserves the right to reject all bids or quotations, waive minor deviations, consider alternative bids or quotations, negotiate price and terms with those making a bid or quotation (provided that negotiations with all those making a bid or quotation will be on substantially the same basis and regarding substantially the same matters), subject to the same terms and conditions of the written descriptions being sought by the Corporation and a statement regarding security and/or insurance, if required.

**6.2. Soliciting Written Competitive Quotations**

1. If the cost of the Goods or Services to be procured, based upon the written description prepared for the desired Goods or Services, will require an expenditure of more than \$5,000, but less than \$10,000, the desired Goods or Services shall be procured through Competitive Quotations solicited from not less than two Vendors.

2. If the cost of the Goods or Services to be procured, based upon the written description prepared for the desired Goods or Services, will involve an expenditure of more than \$10,000, the desired Goods or Services shall be procured through Competitive Quotations solicited from not less than three Vendors.

3. If, following reasonable efforts, insufficient numbers of Vendors exist for the solicitation of the requisite number of Competitive Quotations, then the Procurement Officer shall cause to be solicited Competitive Quotations from less than the requisite number of Vendors; provided, however, that the basis and other



facts and circumstances or such efforts and/or findings relating to this provision shall be placed in writing.

4. The Procurement Officer shall cause to be made a record of the written description, the solicitation of the Competitive Quotations, the Competitive Quotations received and any other documents or materials prepared or received in connection with the procurement of Goods and Services of the Corporation.

5. Competitive Quotations need not be sealed and need not be opened and read at a stated time.

6. The Procurement Officer need not recommend the procurement of Goods and Services from the Vendor offering the lowest dollar quotation, but may recommend to the Members determinations of which quotations will fulfill or meet the best interests or needs of the Corporation, and each recommended determinations may be based on such factors as, without limitation, quality, features or options, reliability or reputation of the Vendor, availability of service, delivery time and location of the Vendor (local vis-a-vis non-local, in-state vis-a-vis out-of-state or country); and the Procurement Officer may negotiate terms and price with all Vendors submitting quotations (provided that all such negotiations will be on substantially the same basis and regarding substantially the same matters), and the determination of the Members pursuant to the Procurement Officer's recommendations made in good faith shall be final.

### **6.3. Exceptions**

1. General Exceptions. The following Goods and Services may be procured by the Corporation without soliciting competitive quotations:

a. Services performed by inmates, or Goods manufactured, in correctional facilities operated by the New York State Department of Correctional Services or in local correctional facilities of this State; provided, however, that the procurement of such Goods and Services shall be in accordance with Section 186 of the Correction Law;

b. Goods and Services produced or assembled by the blind or other severely handicapped; provided, however, that the procurement of such Goods and Services shall be in accordance with Section 175-B of the State Finance Law;

c. Goods procured by the County in accordance with subdivision (2) of Section 408-a of the County Law; provided, however that no such procurement shall be made from the County when Competitive Quotations have already been received, unless such procurement may be made upon

the same terms, conditions and specifications of a lower price through the County;

d. Goods in excess of \$500.00 procured by the State through the New York State Office of General Services, subject to rules established by such Office, in accordance with Section 163 of the State Finance Law; provided, however, that no such procurement shall be made from such Office when Competitive Quotations have already been received, unless such procurement may be made upon the same terms, conditions and specifications at a lower price through such Office;

e. Surplus and/or second hand Goods which are being offered for purchase from the Federal or State governments or any other political subdivision or public benefit corporation within the State of New York.

2. Special Exceptions. Upon a determination that Goods or Services are (i) Professional Services, (ii) Sole Source Goods or Services or (iii) Goods or Services deemed by the Procurement Officer, in his or her sole discretion, not in the best interest of the Corporation to be procured in accordance with the Competitive Quotation requirements set forth herein, the Procurement Officer may procure such Goods or Services in such manner as the Procurement Officer determines to be in the best interest of the Corporation and which otherwise is in accordance with the policies of the Corporation, as set forth in Section "2" herein.

#### **6.4. Authorization**

The procurement of Goods and Services which will involve an expenditure of less than \$5,000 may be approved by the Procurement Officer. Authorization for individual expenditures of \$5,000 and over shall require the formal review and approval of the Corporation's Members.

#### **6.5. Entering Into the Contract**

1. Except as provided in Section "6.5.2" herein, upon receipt of the requisite number of Competitive Quotations, the Procurement Officer shall recommend to the Members that the Corporation enter into a Contract, or enter into an agreement, for such Goods or Services to the Vendor that submitted the Competitive Quotation with the lowest dollar offer for such Goods or Services, but subject to the provisions of Section "6.2.6" hereof.
2. If the Procurement Officer shall recommend to the Members that the Corporation enter into a Contract for Goods or Services to a Vendor that did not submit the Competitive Quotation with the lowest dollar offer, the

Procurement Officer shall state the reasons such an award furthers the policy set forth in Section "2" herein and in accordance with Section "6.2.6" hereof.

3. Upon the procurement of Goods or Services in accordance with the provisions of Section "6.3" herein, the Procurement Officer shall recommend to the Members that the Corporation award a Contract, or enter into an agreement, for such Goods or Services to the Vendor identified by the Procurement Officer.
4. Upon receipt of the recommendation by the Procurement Officer regarding the entering into a Contract, the Members shall authorize the Procurement Officer to cause to be procured such Goods or Services with the recommended Vendor; provided, however, that the Members reserve the right to reject all bids or quotations, waive minor deviations, consider alternative bids or quotations, subject to the same terms and conditions of the written descriptions being sought by the Corporation.

#### **6.6. Purchases (\$5,000 or less)**

Notwithstanding the provisions set forth herein, the procurement of Goods or Services involving an expenditure of up to five thousand dollars (\$5,000.00) may be made without seeking Competitive Quotations; provided, however, that any agent of the Corporation authorized to make such a procurement shall use his or her best efforts to obtain the lowest cost for such Goods or Services, but taking into consideration the terms of Section "6.2.6" hereof.

#### **6.7. Policy for Corporation's Benefit**

These policies and procedures are intended solely for the benefit of the Corporation and are not intended for the economic or other benefit of any particular Vendor making a quotation; and accordingly, no Vendor shall have the right to challenge the determination of the Corporation to enter into Contracts for Goods and Services in accordance with the policies and procedures herein set forth.

### **7. MISCELLANEOUS**

1. Procurement of Insurance – Procurement of Insurance Brokerage/Agent is subject to this Policy as a Professional Service. Notwithstanding the foregoing, actual insurance policies procured are not subject to requirements of this Policy. Insurance Policies shall be reviewed by the Members annually.
2. Genesee County Business Enterprises – It is the preference of the Corporation to provide opportunities for the purchase of Good and Services from business enterprises located in Genesee County.

3. Minority & Women Owned Business Enterprises (M/WBE) – The Corporation shall comply with all applicable legal requirements relating to the hiring of such businesses. It is understood that granting agencies may enforce requirements regarding M/WBE participation and the Corporation may not be able to choose lowest responsible bidders in order to comply in these situations.
4. Effect of Other Procurement Requirements – Where the procurement of a specific Good or Service is to be accomplished using funds other than the funds of the Corporation and such funding sources specify different or more restrictive procurement requirements than are provided for in this Policy, the procurement requirements of the funding source will supersede the requirements of this Policy.
5. The Members shall review the policies and procedures herein not later than March 31, 2023, and each year thereafter. Amendments to these policies and procedures may be made at any time during the year.
6. The unintentional failure to fully comply with the provisions of the policies and procedures set forth herein shall not be grounds to void action taken or give rise to a cause of action against the Corporation, the Members, the Procurement Officer, or any officer or employee of the Corporation.

**STAMP WATER WORKS, INC.**  
99 MedTech Drive, Batavia, NY 14020-3118  
Phone: 585/343-4866 Fax: 585/343-0848

**COMPETITIVE QUOTATION FORM**

Date: \_\_\_\_\_

1. **VENDOR:** \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax: \_\_\_\_\_  
\_\_\_\_\_

2. **REQUEST FOR QUOTATION** (to be completed by Corporation):  
**GOODS/SERVICES NEEDED**

Delivery Needed By: \_\_\_\_\_

Insurance  is  is not required

- The quotation should include charges, if any, for delivery.
- The Corporation encourages changes or suggestions offering cost savings.
- The Corporation reserves the right to reject all quotations, waive minor deviations or consider alternative quotations, subject to the same terms and conditions or negotiate with Vendors as to price, specifications or terms.
- If your Goods or Services deviate from the description herein, please note such deviation.
- Please submit any additional information that is pertinent to your quotation.

3. **QUOTATION:** The Corporation is requesting your competitive quotation of the Goods or Services described above. Please complete this quotation, sign and return not later than 5:00 p.m. on \_\_\_\_\_ Unsigned quotations will not be considered.

I, \_\_\_\_\_, am an employee of the Vendor identified above and am duly authorized to submit this quotation.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Corporation Employee Name]  
[Title]



STAMP WATER WORKS, INC.  
99 MedTech Drive, Batavia, NY 14020-3118  
Phone: 585/343-4866 Fax: 585/343-0848

**VERBAL QUOTATION FORM**

Date: \_\_\_\_\_

Procurement Officer/Corporation Employee: \_\_\_\_\_

**REQUEST FOR QUOTATION**

GOODS/SERVICES NEEDED

Delivery Needed By: \_\_\_\_\_

**QUOTATIONS**

VENDOR	TELEPHONE #	VENDOR REPRESENTATIVE	QUOTATION
1.			
2.			
3.			
4.			

STAMP Water Works, Inc.  
Procurement Policy Summary

AUTHORIZATION						Board
	None	2 Written	3 Written	Other*	Procurement Officer	
<b>Purchase Contracts:</b>						
\$1,000-\$5,000	X				X	
\$5,000-\$10,000		X				X
\$10,000 or greater			X			X
<b>Public Works Contracts:</b>						
\$1,000-\$5,000	X				X	
\$5,000-\$20,000		X				X
\$20,000 or greater			X			X
Professional Services				6.3.2		
Sole Source Goods or Services				6.3.2		
Other Exceptions				6.3.1		

\* Refer to Section indicated

[STAMP Water Works, Inc.]  
**Investment Policy**

Adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law

**I. Scope**

This Investment Policy ("Policy") applies to all moneys and other financial resources available for deposit and investment by STAMP Water Works, Inc. ("Corporation") for its own use and account. The Corporation adopted this Policy at a meeting held on \_\_\_\_\_, 2022.

**II. Investment Objectives**

The primary objectives of the Corporation's investment program shall be, in order of priority, to: (1) comply with all applicable provisions of law; (2) safeguard the principal of all deposits and investments; (3) provide sufficient liquidity to ensure that monies invested are available to meet expenditures as they come due; and (4) obtain the maximum rate of return that is consistent with the preceding objectives.

**III. Delegation Of Authority**

The members of the Corporation hereby delegate their responsibility for the implementation and administration of the Corporation's deposit and investment programs, including the authority to execute any security and custody agreements required by this Policy, to the Treasurer or his or her designee who shall establish written procedures for the operation of the programs consistent with this Policy. Such procedures shall regulate subordinate employees and include an adequate internal control structure to provide a satisfactory level of accountability based on a database or record incorporating descriptions and amounts of deposits and investments, transaction dates, interest rates, market prices and other information necessary to manage the portfolio and to identify the sources of all funds being invested.

**IV. Internal Controls**

The Treasurer is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized loss or disposition, that such transactions are executed in accordance with proper authorization and recorded properly and, that such transactions are managed in compliance with applicable laws and regulations.

**V. Prudence**

The Treasurer, his or her subordinates and any other Corporation employee having responsibility for the deposit or investment of Corporation moneys shall at all times act responsibly as custodian of the public trust. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their affairs not for speculation, but for investment, considering the safety of principal as well as the income to be derived. All Corporation directors, officers and employees involved in the execution of the investment program shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair their ability to make impartial investment decisions, and shall adhere to the Corporation's Code of Ethics.

**VI. Authorized Investments**

Except as otherwise may be provided in this Policy, monies not required for immediate expenditure may be otherwise invested in any of the following:

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**STAMP Water Works, Inc.**

99 MedTech Drive, Suite 106, Batavia, NY 14020

585-343-4866 Fax: 585-343-0848

Email: \_\_\_\_\_ Web: \_\_\_\_\_

- (1) Special time deposits or certificates of deposits in a bank or trust company located and authorized to do business in the State of New York ("bank");
- (2) Obligations of the United States of America;
- (3) Obligations guaranteed by agencies of the United States of America where the payment of principal and interest is guaranteed by the United States of America;
- (4) Obligations of the State of New York;
- (5) With the approval of the State Comptroller, obligations issued pursuant to Section 24.00 and Section 25.00 of the Local Finance Law by any municipality or district corporation;
- (6) Obligations of a public corporation which are made lawful investments by the Corporation pursuant to another provision of law; and
- (7) Certificates of participation issued pursuant to General Municipal Law ("GML"), section 109-b.

Investments shall be payable or redeemable at the option of the Corporation within such time as the proceeds shall be needed to meet expenditures for the purpose for which the monies were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Corporation within two years of the date of purchase.

## **VII. Deposits**

All monies collected by any officer or employee of the Corporation shall be deposited in such banks as have been authorized by a resolution of the Board of Directors for that purpose in an amount not to exceed the amount specified in such authorizing resolution. It is the policy of the Corporation that all moneys collected by any officer or employee of the Corporation shall be deposited within two days of receipt and under no circumstance shall deposits occur later than the end of the month in which payment was received.

## **VIII. Diversification**

Although it is the policy of the Corporation to diversify its investment portfolio, the opportunity to diversify among types of investments is very limited because of legal constraints. Subject to these constraints, however, investments and deposits shall be diversified by financial institution, maturity and type of investment, a specific bank or trading partner or a specific maturity.

## **IX. Authorized Banks and Trading Partners**

The Treasurer shall maintain a list of banks and other trading partners approved for investment purposes and if appropriate, establish limits on the amount of investments that may be outstanding with any bank or trading partner at any time. All banks and trading partners with which the Corporation conducts business must be creditworthy as determined by criteria established by the Treasurer. All banks with which the Corporation does business shall provide their most recent Consolidated Report of Condition (Call Report) to the Treasurer at his or her request. Trading partners not affiliated with a bank shall be recognized primary security dealers as designated by the Federal Reserve Bank of New York. The Treasurer is responsible for periodically evaluating the financial position of banks and trading partners with which the Corporation does business and, based on such evaluations, for revising the list of eligible banks and trading partners as he or she deems appropriate.

## **X. Procedures for Securing Deposits, Special Time Deposits and Certificate Of Deposit**

### **(A). Written Security Agreements**

Monies of the Corporation shall only be deposited, including certificates of deposit and special time deposits, in a bank with which the Corporation has entered into a written security agreement. Such security agreement shall require the bank to secure all Corporation deposits, in excess of the amount insured by the Federal Deposit Insurance Corporation, in the manner required by the New York State General Municipal Law ("GML"), section 10 and shall: (1) specify which types of eligible securities and other collateral authorized by Appendix "A" of this Policy and GML, section 10 are to be provided by the bank; (2) prescribe the maximum amount of collateral to be provided by the bank at any time; (3) prescribe the manner in which the market value of the collateral shall be determined and require any adjustments to market value as required by GML, section 10; (4) require the bank to provide

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#### **STAMP Water Works, Inc.**

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additional collateral if the market value falls below the required amount; (5) provide that the collateral is being provided by the bank to secure all Corporation deposits in the bank, together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default; (6) grant a security interest to the Corporation in any securities pledged by the bank to secure deposits; (7) set forth the conditions under which the collateral may be sold, presented for payment, substituted or released; (8) define the events of default that will enable the Corporation to exercise its rights against the pledged securities; (9) require that securities pledged to secure deposits and not registered in the name of the Corporation be delivered in a form suitable for transfer or with an assignment in blank to a custodial bank with which the Corporation has entered into a written custodial agreement; (10) provide for the frequency of valuation of collateral, which shall be no less frequently than monthly; (11) require that the agreement be properly authorized by the Board of Directors of the bank and that the bank maintain such agreement as an official record of the bank; and, (12) contain all such other provisions deemed necessary to enable the Corporation to enforce its interest in the collateral in the event of default by the bank.

**(B). Custody Agreement**

All securities pledged by a bank pursuant to a written security agreement shall be delivered to a bank with which the Corporation has entered into a written custody agreement ("Custodian"). The custody agreement shall: (1) specify the manner in which the custodian shall hold securities; (2) require the custodian to hold the securities as agent of, and custodian for, the Corporation and to keep such securities separate and apart from the general assets of the custodian and not permit them to become backing for any other deposits or liabilities of the custodian; (3) require the custodian to confirm in writing the receipt, substitution or release of any securities from the Corporation's custody account; (4) provide for the methodology and frequency of valuation of securities held by the custodian; (5) require the custodian to make appropriate entries on its books at all times showing the Corporation's interest in the securities; (6) require physical securities be kept in the custodian's vault and physically segregated from the custodian's property and other property held by the custodian; (7) require the custodian to subordinate any claims it may have against the pledged securities to the Corporation's interest therein; (8) permit the Corporation access to books and records maintained by the custodian with respect to the Corporation's account; and, (9) contain any other provisions deemed necessary and appropriate. A bank shall [not] be permitted to act as custodian of any securities pledged by such bank to secure Corporation deposits.

**XI. Purchase and Safekeeping of Investments**

The Treasurer shall establish operation procedures for making investments with approved banks and trading partners. In the case of investments in certificates of deposit and special time deposits, the procedures shall require the solicitation of quotations from more than one approved bank and whenever practicable, from banks located within Genesee County. In the case of investments in obligations, the procedures shall: (1) require the solicitation of quotes from more than one approved trading partner, except in the purchase of governmental securities at their initial auction; (2) require all purchased obligations, unless registered or inscribed in the name of the Corporation, to be purchased through, delivered to, and held in the custody of a bank with which the Corporation has entered into a written custodial agreement which complies with the requirements contained in paragraph (b) of section X of this Policy; (3) ensure that obligations are purchased, sold or presented for redemption or payment by a custodian only accordance with prior written authorization from the officer or employee authorized to make the investment; and, (4) provide that payment of the Corporation's funds shall only be made upon delivery of the purchased obligations to the custodian. The Treasurer is further authorized to purchase obligations; (1) subject to a repurchase agreement in accordance with the procedures enumerated in paragraph XII of this Policy; or (2) pursuant to an ongoing investment program which has been authorized by the members of the Corporation and which provides investment advisory and custodial services to the Corporation.

**XII. Procedures for Repurchase Agreements**

The Treasurer is authorized to purchase and sell obligations pursuant to repurchase agreements subject to the following restrictions:

- (1) No repurchase transaction shall be entered into with any trading partner until the Corporation has entered into a written master repurchase agreement with the trading partner;

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STAMP Water Works, Inc.

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585-343-4866 Fax: 585-343-0848

Email: \_\_\_\_\_ Web: \_\_\_\_\_

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- (2) Repurchase agreements shall be entered into only with trading partners approved by the Treasurer pursuant to Section IX of this Policy and shall be subject to any trading limits established for each trading partner;
- (3) Only obligations of the United States of America and obligations guaranteed by agencies of the United States of America where the payment of principal and interest is guaranteed by the United States of America shall be purchased pursuant to a repurchase agreement;
- (4) Obligations purchased pursuant to a repurchase agreement shall be held by a custodian, other than the trading partner, pursuant to a written custodial agreement;
- (5) The price paid for the securities shall not be in excess of the market value of the securities being purchased plus any accrued interest not reflected in the market price.

Master repurchase agreements between the Corporation and its trading partners shall: (1) contain procedures which ensure that the Corporation obtains a perfected security interest in the purchased securities; (2) define events of default; (3) prohibit the trading partner from substituting securities for the purchased securities during the term of the repurchase agreement; (4) limit the term of a specific repurchase transaction to a period of not more than thirty days; (5) contain appropriate margin requirements and procedures for timely correction of margin deficiencies or excesses; (6) provide that the Corporation shall not make payment for purchased securities until received by the custodian; (7) require that the terms of all specific repurchase transactions, including rate, price and a description of the specific securities being purchased, be confirmed in writing; (8) provide that all specific repurchase transactions shall be subject to the terms of the master repurchase agreement; and, (9) contain such other provisions as are deemed necessary and appropriate. The written custody agreement shall comply with the requirements of paragraph (b) of section X of the Policy.

### **XIII. Legal Review**

All security agreements, custodial agreements, letters of credit, surety bonds and repurchase agreements shall be reviewed by the Corporation Counsel or other attorney retained for this purpose to determine their compliance with the requirements of sections 10 and 11 of the GML and this Policy.

### **XIV. Reports**

The Treasurer shall provide quarterly written investment reports to the Board of Directors of the Corporation. Such reports shall describe investments in the portfolio and contain any other information deemed necessary for management purposes.

### **XV. Annual Review**

The Board of Directors shall review this Policy at least annually and make any amendments thereto as are deemed necessary.

Doc #10372891.2

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**APPENDIX A**  
**SCHEDULE OF ELIGIBLE COLLATERAL**  
**Eligible Securities**

Authorized  
(Yes or No)

- |     |        |  |
|-----|--------|--|
| Yes | (i)    | Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, a Corporation thereof or a United States government sponsored corporation.  |
| No  | (ii)   | Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.  |
| Yes | (iii)  | Obligations partially insured or guaranteed by any Corporation of the United States of America, at a proportion of the Market Value of the obligation that represents the amount of the insurance or guaranty.   |
| Yes | (iv)   | Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of this State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public moneys.                     |
| Yes | (v)    | Obligations issued by states (other than the State of New York) of the United States rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.  |
| No  | (vi)   | Obligations of Puerto Rico rated in one of the three highest rating categories by at least one of the three highest rating categories by at least one nationally recognized statistical rating organization.   |
| Yes | (vii)  | Obligations of counties, cities and other governmental entities of a state, other than the State of New York, having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization. |
| No  | (viii) | Obligations of domestic corporations rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.  |
| Yes | (ix)   | Any mortgage related securities, as defined in the Securities Exchange Act of 1934, as amended, which may be purchased by Federal banks under the limitations established by federal bank regulatory agencies.   |
| No  | (x)    | Commercial paper and bankers' acceptances issued by a bank, other than the bank with which the money is being deposited or invested, rated in the highest short term category by at least one nationally recognized statistical rating organization and having maturities of not longer than 60 days from the date they are pledged.                 |
| Yes | (xi)   | Zero coupon obligations of the United States government marketed as "Treasury STRIPS".   |

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**Other Eligible Collateral**

- No (i) A surety bond executed by an insurance company authorized to do business in the State of New York, the claims-paying ability of which is rated in the highest rating category by at least two nationally recognized statistical rating organizations.
- No (ii) An irrevocable letter of credit issued in favor of the local government for a term not to exceed ninety days by a bank (other than the bank with which the money is being deposited or invested) whose commercial paper and other unsecured short-term debt obligations (or, in the case of a bank which is the principal subsidiary of a holding company, whose holding company's commercial paper and other unsecured short-term debt obligations) are rated in one of the three highest rating categories (based on the credit of such bank or hold company) by at least one nationally recognized statistical rating organization or by a bank (other than the bank with which the money is being deposited or invested) that is in compliance with applicable federal minimum risk-based capital requirements.

Doc #10372891.2

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## Authorities Budget Office Policy Guidance



**No.** 10-01

**Date Issued:** March 1, 2010

**Supersedes:** New

**Subject:** Acknowledgement of Fiduciary Duty

**Statutory Citation:** Public Authorities Law Section 2824(1)(h)

**Provisions:** Section 6(i) of Public Authorities Law, as amended by Chapter 506 of the Laws of 2009 ("The 2009 Public Authorities Reform Act" or "PARA"), requires the Authorities Budget Office (ABO) to "develop and issue" a written acknowledgement that all board members must execute as part of their duties and responsibilities under Section 2824 of Public Authorities Law. By signing this acknowledgement a board member is stating "that he or she understands his or her role and fiduciary responsibilities" as well as his or her "duty of loyalty and care to the organization and commitment to the authority's mission and the public interest."

Pursuant to PARA, every board member of a Public Authority is required to sign an acknowledgement of fiduciary duty at the time he or she takes the oath of office. The effectiveness of the acknowledgement will be deemed applicable throughout the duration of such board member's term and/or for as long as such director continues to serve in such capacity. Board members appointed to their positions prior to the effectiveness of PARA and the implementation of this new requirement are required to execute an acknowledgement by May 1, 2010.

**Authorities Budget Office Policy Guidance:** The primary responsibility of a board member is to understand the mission and public purpose of the Authority and to act in the best interests of the Authority, its mission, and the public. The intent of this written acknowledgement is to re-affirm the importance of this duty to board members.

The ABO is directing all state and local public authorities to use the attached acknowledgement form to satisfy this statutory requirement. Public authorities are to maintain signed copies of the acknowledgement throughout the official term of each active board member. State and local authorities will also be expected to certify as part of the Annual Report submission that these statements were executed in accordance with Section 2824 of Public Authorities Law. The failure to execute this acknowledgment will be considered a failure to comply with the requirements of Public Authorities Law. The failure to act in accordance with the principles stated in this acknowledgment can be considered a breach of fiduciary duty and could result in a recommendation that the board member be sanctioned.

A board member is to sign a new acknowledgement document at the start of each new term to which the board member is appointed.





## *Acknowledgement of Fiduciary Duties and Responsibilities*

As a member of the Authority's board of directors, I understand that I have a fiduciary obligation to perform my duties and responsibilities to the best of my abilities, in good faith and with proper diligence and care, consistent with the enabling statute, mission, and by-laws of the Authority and the laws of New York State. The requirements set forth in this acknowledgement are based on the provisions of New York State law, including but not limited to the Public Authorities Reform Act of 2009, Public Officers Law, and General Municipal Law. As a member of the board of directors:

### I. Mission Statement

I have read and understand the mission of the Authority; and the mission is designed to achieve a public purpose on behalf of the State of New York. I further understand that my fiduciary duty to this Authority is derived from and governed by its mission.

I agree that I have an obligation to become knowledgeable about the mission, purpose, functions, responsibilities, and statutory duties of the Authority and, when I believe it necessary, to make reasonable inquiry of management and others with knowledge and expertise so as to inform my decisions.

### II. Deliberation

I understand that my obligation is to act in the best interests of the Authority and the People of the State of New York whom the Authority serves.

I agree that I will exercise independent judgment on all matters before the board.

I understand that any interested party may comment on any matter or proposed resolution that comes before the board of directors consistent with the laws governing procurement policy and practice, be it the general public, an affected party, a party potentially impacted by such matter or an elected or appointed public official. However, I understand that the ultimate decision is mine and will be consistent with the mission of the Authority and my fiduciary duties as a member of the Authority's board of directors.

I will participate in training sessions, attend board and committee meetings, and engage fully in the board's and committee's decision-making process.

### III. Confidentiality

I agree that I will not divulge confidential discussions and confidential matters that come before the board for consideration or action.

### IV. Conflict of Interest

I agree to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit me from performing my duties in good faith and with due diligence and care.

I do not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of my duties in the public interest.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Authority Name: \_\_\_\_\_

Date: \_\_\_\_\_



**New York State Local Public Authority Mission Statement and Measurement Report**

**Local Public Authority Name:** STAMP Water Works Corp. (SWWC)

**Fiscal Year:** January 1, 2022 – December 31, 2022

**Mission Statement:** STAMP Water Works, Corp.'s mission is to own, operate and maintain an onsite transmission system (including storage) to provide water to all tenants within the STAMP site that would be purchased from various municipal sources.

**2022 Measurements:**

1. Operate and maintain any onsite transmission water lines at the STAMP site.
2. Support the GCEDC economic development and selling process helping to facilitate capital investment and job creation commitments and tax base enhancement in the community.
3. Enter into Water Supply Agreements with any new tenants at the STAMP site.
4. Work with the GCEDC to obtain funding to expand the current source providers of water and the extension of any onsite water lines to support development of the STAMP site.

**Authority self-evaluation of prior year performance** (based upon established measurements): To Be provided by March 31, 2023 related to 2022 performance.

**Governance Certification:**

1. Have the Board members acknowledged that they have read and understood the mission of the public authority?

Board of Directors Response: Yes

2. Who has the power to appoint management of the public authority?

Board of Directors Response: The Board of Directors

3. If the Board appoints management, do you have a policy you follow when appointing the management of the public authority.

Board of Directors Response: The Board has not adopted a final, written policy; however, the Board follows the prudent and reasonable practice of appointing responsible individuals.

4. Briefly describe the role of the Board in the implementation of the mission.

Board of Directors Response: The role of the Board regarding the implementation of the public authority's mission is to provide strategic input, guidance, oversight, mission authorization, policy setting and validation of the authority's mission, measurements and results. The Board is also responsible for strategy development / strategy authorization and to implement established programs, processes, activities and policies to achieve the public authority's mission.

5. Has the Board acknowledged that they have read and understood the response to each of these questions?

Board of Directors Response: Yes

**Client Name: Genesee County Industrial Development Agency  
dba Genesee County Economic Development Center  
Genesee Gateway Local Development Corporation**

**GGLDC administrative tasks are performed by GCEDC employees**

**Audit & Finance Committee Last Reviewed: 7/6/22**

**CASH CONTROL ACTIVITIES**

***Cash Receipts***

The GCEDC/GGLDC does not routinely handle cash. When cash is received, it's generally once a year at the annual meeting location via registration fees paid. Mail is opened by the Operations Assistant. All receipts are immediately marked "for deposit only". The cash receipts are deposited every 3 – 5 days in the appropriate cash account either in Five Star Bank, Key Bank, or The Bank of Castile. Some receipts are received directly into bank accounts via ACH/wire transfer. Posting of cash receipts to accounts receivable is done by the Finance Assistant. The postings are done promptly and accurately recorded as to customer account, amount and period. The Operations Manager reviews deposits and postings to customer accounts and general ledger accounts. Any adjustments to cash accounts are approved by the CFO. Cash held on site is stored in a locked file cabinet and kept independent of mail receipts. A PayPal account is used for annual meeting registration fees paid. Email notifications are received when payments have been made. PayPal deposits are recorded in the general ledger weekly by the Finance Assistant and the Operations Manager reviews the monthly activity.

***Cash Disbursements***

Cash disbursements are made by check, online payments, online bill pay or bank wire, except for small amounts from petty cash. Online payments and online bill pay are only made to ensure that bills are paid on time and to prevent late payment charges.

All checks require two signatures. GCEDC checks must be co-signed by at least one board member. GGLDC checks are signed by two board members. The GCEDC and GGLDC Audit & Finance Committee members are authorized bank signers.

All GCEDC line of credit withdrawals must be co-signed by at least one board member. GGLDC line of credit withdrawals must be signed by two board members.

Checks are pre-numbered and the sequence is accounted for regularly. All blank checks are kept in a secure location. All cash disbursement records are matched against accounts payable/open invoice files by the Operations Manager.

Invoices received are date stamped by the Operations Assistant and given to the Finance Assistant for review, tracking against contracts in place, to make sure supporting documentation is attached, and to ensure that the appropriate person signs off for approval of payment. All invoices are then reviewed by the Operations Manager and the CFO prior to disbursement checks being prepared. Checks are prepared by the Finance Assistant, only after proper matching of supporting documentation. Supporting documentation is marked with the check number when a check is prepared. The check signer reviews all supporting documentation. Purchasing documents are accounted for and controlled by the Operations Manager. Signed disbursement checks are returned to the Finance Assistant / Operations Assistant for mailing. *Mitigating controls: The CFO opens and reviews bank statements and does not have authorization to sign checks.*

All bank and interfund transfers are authorized by the CFO and the Sr. VP of Operations.

***Electronic/Online Payments***

Online bill pay can be used for payments to vendors that are on the Audit & Finance Committee pre-approved list. The same cash disbursement control procedures are followed, except that payments are acknowledged by two authorized bank signers after the online payment is complete.

***Bank Account Reconciliations***

Bank accounts are reconciled monthly by the Finance Assistant and reconciliations are reviewed by the Operations Manager and the CFO. All reconciling items are appropriate and supported. All bank statements received in the mail are delivered unopened to the CFO who opens, reviews and signs off prior to reconciliations being performed.

***Journal entries***

Non-standard journal entries are recorded in the general ledger by Operations Manager and the Finance Assistant and reviewed by the CFO.

**SUPPORT, PROGRAM SERVICE FEES, REVENUE AND RECEIVABLE CONTROL ACTIVITIES**

***Program Service Receivables***

Invoices are prepared once a month by the Finance Assistant. All invoices are numbered and issued in sequential order. Invoices are posted to the accounting system as payment is received. The individual(s) charged with the billing duties is also responsible for accounts receivable with the Operations Manager monitoring and reviewing the process.

***Pledges Receivable (Not Applicable)***

***Collections***

There are no established credit policies.

When cash payments are received they are posted to customer accounts by the Finance Assistant. The GCEDC/GGLDC does not prepare regular customer statements. Invoices for rent and revolving loan fund payments are mailed once a month and outstanding invoices older than 30 days are followed up via telephone by the Operations Manager, Senior VP of Operations, or CFO.

***Trial Balance***

The accounts receivable aging is maintained separately from the general ledger. The aging is reconciled once a month by the Operations Manager. Program revenues recorded are compared with the budget monthly by the Operations Manager and any significant deviations from budget are investigated and explained.

***Allowance for Doubtful Accounts Program Services fee write-offs:***

All write-offs to rent or revolving loan fund accounts are approved by the GCEDC/GGLDC Board of Directors. The accounts receivable aging is reviewed monthly by the Operations Manager. Accounts are deemed possibly uncollectible and written off to the allowance for doubtful accounts when they meet the following criteria: When the board of directors determines that all efforts to collect have been exhausted.



## **INVESTMENTS AND DERIVATIVE CONTROL ACTIVITIES**

*The GCEDC and GGLDC's Investment Policies are provided separately.*

## **EXPENSES FOR PROGRAM AND SUPPORTING SERVICES AND ACCOUNTS PAYABLE AND PURCHASES CONTROL ACTIVITIES**

### ***Purchasing (Other than Inventory)***

Purchasing is done by the Operations Assistant. For all purchases (other than items of inventory), the purchases are supported by approvals and authorizations. The GCEDC/GGLDC does not require pre-numbered purchase orders. Individuals with the right to approve and authorize purchases are the President/CEO, CFO, and Senior VP of Operations. The Operations Manager approves purchases of supplies, equipment and postage that are within budget as well as any other purchases that were planned for within the budget.

### ***Receiving, Recording Payable and Expense***

When the ordered items are received they are inspected for condition and counted by the Operations Assistant. Due to the small nature of the organization, full segregation of duties is not possible. The individual responsible for receiving is also responsible for purchasing, with oversight by Operations Manager or Finance Assistant.

The invoices subsequently received from vendors are matched up to the purchase orders and receiving reports and compared for quantities received, product ordered, pricing and clerical accuracy by the Operations Manager. For any goods that are returned, the shipping documents are maintained and reviewed and matched to vendor credit memos.

The payables are paid approximately twice a month by the Finance Assistant. The checks are reviewed and signed by two authorized bank account signers.

### ***Trial Balance***

The accounts payable aging is maintained separately from the general ledger. The aging is reconciled monthly by the Operations Manager. The GCEDC/GGLDC does not prepare monthly vendor statements. The President/CEO, CFO and the Audit & Finance Committee review the detailed monthly financial statements and compare the balances in expense accounts to budgeted amounts and any significant deviations from expectations are investigated and explained.

## **GCEDC PAYROLL AND EMPLOYEE BENEFITS CONTROL ACTIVITIES**

### ***Payroll***

Employees are paid biweekly out of the Five Star Bank primary checking account. Funds are transferred into the account used for payroll from the Five Star Bank primary savings account by the Operations Manager. The GCEDC transfers funds to cover payroll as needed. All fund transfers are authorized by the CFO and Senior VP of Operations. Employees are never paid in cash.

Salaried employees are not required to submit weekly time records however; a record of absence is to be maintained by each employee, kept current and electronically stored in a common location as directed. Employees must have vacation compensation approved by the President/CEO or CFO. The individuals responsible for approving time are not responsible for processing or recording payroll.



Hourly employees are required to submit bi-weekly time records to their supervisor to report hours worked.

Complete Payroll Processing is the service provider used to process payroll. All the payroll information provided to the service organization such as pay rates and withholdings is authorized by the President/CEO and/or CFO. Bi-weekly payroll information is submitted to Complete Payroll Processing by the Operations Manager after compiling adequate support for the time worked by the employees. The registers produced by the service are reviewed after processing and approved by Operations Manager. The review is done to ensure the payroll transactions are only for authorized employees and that the correct pay rate is used. GCEDC does not pay commission to its employees.

All payroll checks are pre-numbered and used in sequence and any unissued checks are controlled by Complete Payroll Processing.

When new employees are hired they complete the appropriate paperwork including withholding forms and authorizations for payroll deductions that are maintained in personnel files by the Operations Manager and are entered into the payroll system by the Operations Manager. When employees are terminated they are removed from the payroll system by the Operations Manager. When there are raises or changes in pay rates, they are approved by the President/CEO or CFO and entered into the payroll system by the Operations Manager. All changes in personnel data are reported promptly so they can be properly taken care of in the payroll database.

The timely remittance of payroll taxes and of the payroll tax returns is overseen by Complete Payroll Processing.

### ***Employee Benefits***

For all benefits provided to employees such as health insurance, retirement plans, and fringe benefits, support is maintained in the personnel files authorizing deductions by the Operations Manager. Individuals with the appropriate level of knowledge are responsible for monitoring employee benefit matters and for ensuring withholdings such as 403(b) or NYS Deferred Compensation deferrals and cafeteria plan withholdings are remitted timely. These individuals include the CFO and Operations Manager.

### ***Trial Balance***

The Operations Manager reviews the monthly financial statements and compares the balances in the payroll and employee benefit expense accounts to budgeted amounts and any significant deviations from expectations are investigated and explained. The detailed payroll records are also reconciled by the Operations Manager to the payroll tax returns quarterly, and the total W-2s are reconciled to the general ledger at year end by the Operations Manager.

When necessary the appropriate payroll accruals including accruals for compensated absences are made to the general ledger by the Operations Manager.

### **Computers / IT**

All computers are password protected. Peachtree is password protected. Each user has an independent password. Those with access to the Peachtree system are the Operations Manager, Finance Assistant, and CFO. The CFO does not post or change any data in the system; he/she reviews data only.

All employee computer files are backed up to the server and the server is backed up to an off-site location (Erie County IDA) on a nightly basis. The back-up is monitored by the IT Consultant and the Operations Manager.

There is a firewall in place. Multi-factor authentication is used by all staff.

### *GCEDC Employee Reimbursements*

Employee reimbursement requests are submitted to and approved by the Senior VP of Operations and CFO. The President/CEO must sign off on requests submitted by the Senior VP of Operations or CFO. Two Board members must sign off on requests submitted by the President/CEO.

### *GCEDC Travel Authorization*

Travel involving overnight accommodation or travel outside of New York State requires prior approval of the President & CEO (or the Chairman or Vice-Chairman of the Board, in the case of the CEO's travel).

Signed travel authorization forms are attached to subsequent reimbursement requests to verify that expenditures are appropriate and in line with the prior approval.

**GCEDC / GGLDC**

**Pre-Approved List of Vendors That Can Be Paid Online:**

- Tompkins Trust Company (Visa)
- Selective Insurance
- Toshiba Financial Services
- National Grid
- National Fuel
- Five Star Bank (Loan payments)
- KeyBank (Line of Credit payments)
- Bank of Castile
- Five Star Bank
- Quadient (Postage)
- Traveler's (D&O Insurance)
- Town of Batavia (Water/Sewer)

List Last Reviewed & Approved by Audit & Finance Committee:

GCEDC - 7/6/2022

GGLDC - 7/6/2022

**STAMP Water Works Corporation  
September 20, 2022**

**Water Supply Agreement – Genesee County**

**Discussion:** In March of 2017 the GCEDC entered into a water supply agreement with Genesee County to supply STAMP with water. The GCEDC may pursue supplies outside of Genesee County once it becomes technically and economically unfeasible for the County to provide the quantities needed. If there are users at STAMP who are non-manufacturing companies, there is a 10% surcharge that MCWA will require Genesee County to pay them.

There is a clause in the agreement that allows for the GCEDC to transfer the Water Supply Agreement to a water works corporation that is formed under NYS Transportation Corporation law. The GCEDC will vote on the assignment at their next meeting. This assignment requires the GCEDC to notify the County.

**Fund Commitment:** None.

**Board Action Request:** Accept assignment of the Water Supply Agreement with Genesee County, conditioned upon the GCEDC approving such assignment.



## WATER SUPPLY AGREEMENT

### County of Genesee and Genesee County Economic Development Center

This Agreement made this 30<sup>th</sup> day of March, 2017, by and between the County of Genesee, with offices at 7 Main Street, Batavia, New York 14020 (hereinafter referred to as "County"), and the Genesee County Industrial Development Agency, doing business as the Genesee County Economic Development Center, with offices at 99 Medtech Drive, Suite 106, Batavia, New York 14020 (hereinafter referred to as the "GCEDC").

WHEREAS, the County has adopted a plan to acquire sources of water and to sell and transmit said water to various municipalities and water districts located in the County which plan is contained in the County's February 1999 Genesee County Water Supply System Final Environmental Impact Statement (hereinafter referred to as "Plan"); and

WHEREAS, the Plan includes the supplying of water to the Town of Alabama, New York ("Town") in their water system as defined in a preliminary engineering report dated March 10, 2010 and revised July 27, 2011 (Water Project); and

WHEREAS, the GCEDC and its affiliate, the Genesee Gateway Local Development Corporation ("GGLDC"), have been working for the last several years on the development of the Western New York Science & Technology Advanced Manufacturing Park ("STAMP"), a planned advanced manufacturing campus on approximately 1,262 acres of land located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway in the Town ("STAMP Site"); and

WHEREAS, at full build out, STAMP will be a high technology campus with the potential to accommodate over 6 million square feet ("sf") of advanced technology manufacturing and related uses and to create up to approximately 10,000 jobs; and

WHEREAS, STAMP will require a minimum amount of approximately 200,000 gallons per day (“gpd”) of water supply for its initial phase of development by approximately Spring 2018; and

WHEREAS, the County desires to sell water to the GCEDC for the initial phases of development at the STAMP Site on the terms and conditions hereinafter set forth; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed as follows:

**FIRST:** The County shall furnish or cause to be furnished water to the STAMP Site at a minimum of two hundred thousand (200,000) gpd and at a normal operating pressure of not less than forty (40) pounds per square inch. At no time shall the pressure provided be less than twenty (20) pounds per square inch at seven hundred (700) gallons per minute. Said pressure will be provided at the intersection of Alleghany Road (State Route 77) and the to be constructed main access road for STAMP. All water so furnished shall meet or exceed all applicable State and Federal Drinking Water Standards and have a hardness level of less than 141 mg/1 (approximately 2 grains). The County represents that it has adequate water supplies available to supply the STAMP Site as outlined above, and more if requested as long as it does not adversely impact any other water users in the County, and is in accordance with paragraph **TWELFTH**.

**SECOND:** All transmission mains and other water facilities on the STAMP Site used to transmit water within, through and/or out of the STAMP Site shall be maintained, repaired and operated by the GCEDC, its successors or assigns, unless otherwise agreed.

**THIRD:** The GCEDC shall install or cause to be installed, at its expense, a master meter(s) at such locations on the STAMP Site and/or the Alleghany Road Main so as to be able to

measure the amount of water being transmitted into the STAMP Site. The GCEDC shall maintain and operate said master meter(s). The County and/or the GCEDC shall have the right, at their expense, to have master meter(s) tested periodically if they so desire.

**FOURTH:** For and in consideration of \$448,500 in 12 annual payments that the GCEDC shall make to the County commencing in January 2020, and ending after final payment in January 2031, the County shall pay to the GCEDC a total sum of \$4,000,000 to put towards water improvements located in the Town of Alabama and Town of Pembroke and other Phase II improvements to be identified by the County. Such payment shall be made by the County to the GCEDC within 30 calendar days of receiving notice requesting payment associated with the installation of the Water Project but no sooner than January 1, 2018.

**FIFTH:** The GCEDC shall pay to the County (or its assignee) for water supplied, as defined in paragraph **THIRD**, a rate/surcharge equal to \$0.60/1000 gallons, or such surcharge rate as amended in the future, plus the weighted average (weighted by flow from the respective sources) of the "base" rate charged by the County to the City of Batavia (the total rate charged to the City of Batavia less the above 0.60/1000 gallons) for water supplied to the STAMP Site from the City of Batavia sources and treatment facilities and rate charged by the Monroe County Water Authority ("Authority") to the County for water used by the GCEDC or its customers at the STAMP Site. The parties agree that the pricing mechanism contained in this paragraph is based upon the use of only a Genesee County wholesale water source. In the event that another source of water is added to provide service to the STAMP site, then the parties acknowledge that this paragraph will need to be amended.

**SIXTH:** The County shall bill the GCEDC for all net water usage every three (3) months.

Any change to the rate of all water usage shall be communicated to the GCEDC at least three (3) months prior to imposition of the new rate.

A. The exact months of such billing shall be mutually agreed between the County and the GCEDC.

B. The master meter(s) shall be read by the County and it shall advise the GCEDC when said reading will take place and the GCEDC shall have the right to be present and observe said reading.

C. In the event the GCEDC or the County dispute or question said reading, the respective party shall have the right, at its own cost and expense, to have the meter tested.

**SEVENTH:** In the event that the County determines that a water emergency exists due to a reduced supply from one or more the County's supply sources or supply systems and imposes restrictions on other customers, the GCEDC agrees to impose such restrictions on water use by its customers. The GCEDC further agrees not to cause or create any potentially dangerous conditions that could contaminate a County supply source and to correct any such condition or conditions immediately upon written notification by the applicable County or State authorities.

**EIGHTH:** This agreement shall be interpreted pursuant to the laws of the State of New York and any action or proceeding brought to enforce any provision hereof shall be venued in Genesee County. No delay or failure by either party to exercise any right or remedy under this Water Supply Agreement will constitute a waiver of such right or remedy unless in writing and signed by an authorized representative of the party waiving its rights. A waiver by a party of any breach or covenant shall not be construed as a waiver of any



succeeding breach of any other covenant. If any provision of this Water Supply Agreement or the application of any such provision is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Water Supply Agreement or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Water Supply Agreement invalid, illegal, or unenforceable in any respect. This Water Supply Agreement is the entire agreement between the parties, and supersedes any prior negotiations and agreements, whether written or oral. This Water Supply Agreement may not be changed or amended except in a writing signed by the parties. The parties may execute this Water Supply Agreement in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**NINTH:** Each party giving or making any notice, request, demand or other communication (“Notice”) in accordance with this Water Supply Agreement shall give such Notice in writing and use one of the following methods of delivery, each of which for purposes of this Water Supply Agreement is in writing: (i) personal delivery; (ii) registered or certified mail (in each case, return receipt requested and postage prepaid); (iii) reputable overnight courier (with all fees prepaid); (iv) confirmed facsimile; (v) email. Such Notice is effective only if the party giving Notice has complied with this paragraph **NINTH** and if the Notice is received by the receiving party. Any party giving a Notice shall address the Notice to the appropriate person at the receiving party at the address first listed above, or to such other address as designated in writing by such party.

**TENTH:** The GCEDC shall indemnify, save harmless and defend the County from any and all liability, cost, claims and expense arising out of any occurrence related, directly or indirectly, to the GCEDC's ownership, control, operation, maintenance, repair, replacement, transmission or distribution of water through the STAMP Site water system.

**ELEVENTH:** The County Legislature has designated the entire STAMP Site a "Priority Development Area" pursuant to the County "Smart Growth Plan". Accordingly, after the STAMP Site water system is connected to the County Water System, new lateral connections within the STAMP Site will not require any review, approval and/or certification by the County.

**TWELFTH:** Nothing in this Water Supply Agreement shall prohibit the GCEDC from developing, securing or accessing other sources of water for the STAMP Site including, without limitation, the right to enter into water supply agreements with any other entities if and when it becomes technically and economically unfeasible for the County to provide that quantities needed for the STAMP Site, contingent upon the ability of Genesee County to secure an exemption from the MCWA agreement.

**THIRTEENTH:** This Water Supply Agreement shall inure to the benefit of and be binding upon the County and the GCEDC hereto and their respective successors and assigns. This Water Supply Agreement may not be assigned without the prior written consent of the parties except, however, it is acknowledged and agreed that the GCEDC may form an entity to own and operate water infrastructure associated with STAMP including, without limitation, a waterworks corporation pursuant to Article 4 of the Transportation Corporation Law ("Water Works Corp.") and the GCEDC may assign all of its rights and obligations under this Water Supply Agreement to such entity without County approval,

and to the extent required, the County approves the formation of a Water Works Corp. by the GCEDC or its affiliate the GGLDC to service the STAMP Site. The GCEDC shall provide the County with notice of any such assignment. Upon assignment of its rights and obligations under this Water Supply Agreement to an entity formed to own and operate water infrastructure associated with STAMP, the GCEDC shall have no obligations or liability to the County under this Water Supply Agreement and, upon such assignment with the exception of paragraph **FOURTH** which will survive any assignment and remain an obligation to the County from the GCEDC, the County hereby waives and releases the GCEDC, its officers, directors, representatives, employees, servants, agents, and affiliates from any and all liability, claims, actions, losses, damages, judgments, costs and expenses of any kind, whether caused by carelessness, negligence, gross negligence, negligent omissions, fault, want of due care, breach of contract, breach of warranty, or otherwise of GCEDC or any of the above persons, arising out of or in connection with this Water Supply Agreement.

**FOURTEENTH:** The term of this agreement shall be for a period of forty (40) years beginning the date first written above.

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**MONROE COUNTY WATER AUTHORITY**  
P.O. Box 10999 • 475 Norris Drive • Rochester, New York 14610-0999  
Phone: (585) 442-2000 Fax (585) 442-0220

**BOARD RESOLUTION**

**#17-247**

**RESOLUTIONS AUTHORIZING AMENDED AND RESTATED WATER DEVELOPMENT AND SUPPLY AGREEMENT WITH GENESEE COUNTY**

WHEREAS, Genesee County (the "County") and the Authority entered into that certain Water System Construction/Operation Agreement, dated May 24, 2000 (the "Original Agreement") setting forth the terms under which the County, in cooperation with existing municipal water purveyors, would engage the Authority to develop, acquire and construct a coordinated, comprehensive and integrated public water transmission system for the County (the "Water System"), including accommodating Smart Growth in designated development areas; and

WHEREAS, in connection with the Original Agreement, the County and the Authority also entered into that certain (i) Agreement for Specified Wholesale Water Supply to the County of Genesee, dated August 15, 2001 (the "Supply Agreement"), (ii) Facilities Lease Agreement, dated September 25, 2002 (the "Lease Agreement"), and (iii)

Supplemental Agreement, dated as of October 8, 2003 (the "Supplemental Agreement" and together with the Original Agreement, the Supply Agreement and the Lease Agreement, the "Prior Agreements"); and

WHEREAS, as a result of the Authority and the County implementing the Prior Agreements: (i) the Authority issued tax-exempt financing to fund construction of the Water System, (ii) the Authority successfully completed construction of the Water System, and (iii) the County and the Authority continue to cooperate in ways to provide for the smooth operation of the Water System; and

WHEREAS, the County advised the Authority that it seeks to amend and consolidate the Prior Agreements to (i) accommodate further expansion and improvement to the Water System and (ii) furnish the supply of water to the proposed Western New York Science and Technology Advanced Manufacturing Park project (the "STAMP Project") from the Authority, and if necessary, one or more alternative public sources; and

WHEREAS, although the Prior Agreements permit the County to use the Batavia Plant to produce water for sale to customers, the County and the Authority contemplated that the County would perform only regular maintenance (without capital improvements) at the Batavia Plant, and that eventually the Batavia Plant would be taken offline; and

WHEREAS, the Prior Agreements also required that the Authority be the sole source of new supply throughout the County; and

WHEREAS, despite the foregoing limitations, the Authority recognizes that it would be cost-prohibitive for the Authority to furnish the entire supply of water to the STAMP Project and related extensions from the Authority's production and transmission system; and

WHEREAS, to make the above-described changes and consolidate the terms set forth in the Prior Agreements, the County and the Authority intend to enter into an Amended and Restated Water Development and Supply Agreement to amend, restate, supersede, and replace the Prior Agreements in their entirety;

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE  
MONROE COUNTY WATER AUTHORITY:**

1. The Executive Director, with the advice of counsel, is hereby authorized to sign the Amended and Restated Water Development and Supply Agreement with Genesee County, with such terms and conditions as such person deems appropriate (his signature thereon being conclusive evidence of such approval), and the same shall be filed with the records of the Authority as soon as available after the execution and delivery thereof.
2. The Members and staff of the Authority are hereby authorized and directed for and on behalf of the Authority and in its name to do all acts and things required or provided by the provisions of the Amended and Restated Water Development and Supply Agreement, and to execute and deliver all such additional certificates, and to do all such further acts and things as may be necessary, or in the opinion of the person so acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Authority with all of the terms, covenants and provisions of the Amended and Restated Water Development and Supply Agreement.

On a motion made by Ms. Bleier-Mervis, seconded by Mr. Rulison, and duly put to a vote on roll call, the foregoing resolution #17-247 unanimously carried. AYES: 4 (Nasca, Volpe, Bleier-Mervis, Rulison); NAYS: 0.

\*\*\*

I, KATHLEEN EISENMANN, duly appointed and qualified Secretary of the Monroe County Water Authority do hereby CERTIFY that the foregoing resolution was adopted at a meeting duly called and held in the office of the Authority, a quorum being present on the 14<sup>th</sup> day of December, 2017, and that said copy is a true, correct and compared copy of the original resolution so adopted and that the same has not been revoked or rescinded.

WITNESSETH, my hand and seal this 2<sup>nd</sup> day of January, 2018.

  
Kathleen Eisenmann, Secretary to the Authority

## AMENDED AND RESTATED WATER DEVELOPMENT AND SUPPLY AGREEMENT

THIS AMENDED AND RESTATED WATER DEVELOPMENT AND SUPPLY AGREEMENT (the "**Agreement**") is made as of January 2, 2018 between the County of Genesee (the "**County**"), a New York municipality with offices at County Building No. 1, Main and Court Streets, Batavia, New York 14020 and the Monroe County Water Authority (the "**Authority**"), a public benefit corporation of the State of New York, with offices at 475 Norris Drive, Rochester, New York 14610.

WHEREAS, in the late 1990's, the County faced water supply and quality concerns, and commissioned a report by a consortium of engineers from the University of Buffalo, Syracuse University and Cornell University; and

WHEREAS, the County formed a Public Water Supply Task Force that reviewed the report, unanimously recommended a countywide water system linked to the Authority, and recommended that the Authority substantially develop, supply, finance, own and operate the system; and

WHEREAS, in December 1998, the County created the Genesee County Water Resources Agency (the "**Agency**") to implement the above recommendations, including entering into that certain Water System Construction/Operation Agreement, dated May 24, 2000 (the "**Original Agreement**"); and

WHEREAS, the Original Agreement set forth the terms under which the County, in cooperation with existing municipal water purveyors, would engage the Authority to develop, acquire and construct a coordinated, comprehensive and integrated public water transmission system for the County (the "**Water System**"), including accommodating Smart Growth in designated development areas; and

WHEREAS, in connection with the Original Agreement, the County and the Authority also entered into that certain (i) Agreement for Specified Wholesale Water Supply to the County of Genesee, dated August 15, 2001 (the "**Supply Agreement**"), (ii) Facilities Lease Agreement, dated September 25, 2002 (the "**Lease Agreement**"), and (iii) Supplemental Agreement, dated as of October 8, 2003 ("**Supplemental Agreement**" and together with the Original Agreement, the Supply Agreement and the Lease Agreement, the "**Prior Agreements**", and each individually being a "**Prior Agreement**"); and

WHEREAS, as a result of the Authority and the County implementing the Prior Agreements: (i) the Authority issued tax-exempt financing to fund construction of the Water System, (ii) the Authority successfully completed construction of the Water System, and (iii) the County and the Authority continue to cooperate in ways that ensure the smooth operation of the Water System; and

WHEREAS, the County recently advised the Authority that it seeks the amendments set forth herein, to (i) accommodate further expansion and improvement to the Water System and (ii) furnish the supply of water to the proposed Western New York Science and Technology



Advanced Manufacturing Park project (the “*STAMP Project*”) from the Authority, and if necessary, one or more alternative public sources; and

WHEREAS, although the Prior Agreements permit the County to use the Batavia Plant to produce water for sale to customers in the municipalities described in Section 5.3 of this Agreement, the County and the Authority contemplated that the County would perform only regular maintenance (without capital improvements) at the Batavia Plant, and that eventually the Batavia Plant would be taken offline; and

WHEREAS, the Prior Agreements also required that the Authority be the sole source of new supply throughout the County; and

WHEREAS, despite the foregoing limitations, the Authority recognizes that it would be cost-prohibitive for the Authority to furnish the entire supply of water to the STAMP Project from the Authority’s production and transmission system and that the Oakfield Extension will not materially impair the Authority’s interests; and

WHEREAS, to make the above-described changes and consolidate the terms set forth in the Prior Agreements, the County and the Authority intend for this Agreement to amend, restate, supersede, and replace the Prior Agreements in their entirety;

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of all of which are forever acknowledged and confessed, the parties agree as follows:

## ARTICLE 1 DEFINITIONS

1.1 “*Act*” means the Monroe County Water Authority Act, Title 5 of Article 5 of the New York Public Authorities Law, as the same may be amended.

1.2 “*Agreement*” means this Agreement, as the same may be amended.

1.3 “*Adjusted Base GPD*” means the greater of (i) the Base GPD or (ii) the Prior Year Minimum Monthly Average GPD.

1.4 “*Authority Obligations*” means the existing and any future bonds or bond anticipation notes of the Authority from time to time outstanding and issued by the Authority under the Indenture to finance or refinance the Costs of the Existing Subject Water Properties or any future County Costs and Expenses related to additional Subject Water Properties constructed after the date hereof.

1.5 “*Authority Rules*” means the Authority’s Rules for the Sale of Water and Collection of Rents and Charges, as the same may be amended from time to time.

1.6 “*Base GPD*” means, for each particular year, the average GPD shown on the

table attached hereto as Schedule 3.5.

1.7 ***“Business Day”*** means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a legal holiday in Rochester and Monroe County, New York.

1.8 ***“Change in Law”*** means either (a) the enactment, adoption, promulgation, modification or repeal after the date of this Agreement of any federal, state, county or other local law, ordinance, code, rule or regulation or either similar legislation which affects the commencement or continued construction (and ultimate operation) of the Subject Water Properties or (b) the delay in obtaining or failure to obtain any permit or approval, having made application therefor and having diligently pursued the obtaining thereof, or the withdrawal or modification of any permit or approval (but only to the extent that such withdrawal or modification was not a result of the willful or grossly negligent action of the party asserting the Change in Law) or the change in interpretation of any official permit, license or approval by any regulatory entity having jurisdiction with respect to the construction, operation or maintenance of the Subject Water Properties, or the imposition, after the date hereof, of any material conditions in the issuance or renewal of any official permit, license or approval necessary for the construction or the commencement of operation of the Subject Water Properties, which in either case, affect the development and commencement or continued construction (and the ability to commence operation) of the Subject Water Properties.

1.9 ***“Costs of Existing Subject Water Properties”*** means the County Costs and Expenses incurred in constructing the Subject Water Properties in existence on the date hereof.

1.10 ***“County Costs and Expenses”*** means: (a) the costs of any improvements to the existing Water Properties necessary or desirable for the construction, installation or commencement of operation of the Subject Water Properties; (b) the cost of acquiring any interest or option for any interest in real property necessary for the construction, acquisition, installation or the commencement of operation of all or portions of the Subject Water Properties, together with the costs, fees and expenses of any actions or proceedings that either of the Authority or the County may deem necessary or reasonably desirable to acquire, perfect or protect title thereto, and appraisal costs and survey costs with respect to any real property interests; (c) costs paid by the Authority or the County directly or indirectly for services, including, but not limited to, consulting, contracting, legal, accounting, engineering, architectural, surveying, environmental, archeological or like services; (d) the cost of construction, acquisition and installation of the Subject Water Properties and appurtenances thereto, including authorized extras, authorized changes and losses and liabilities to the extent not covered by the proceeds of insurance, the cost of insurance during construction, the cost of clearing or preparing the sites for the Subject Water Properties or demolition necessary to construct or acquire the Subject Water Properties, fees and costs payable or paid to any engineer or others to prepare the design, plans and specifications, contracts and bidding documents for or other architectural or engineering services prior to or during construction regarding the Subject Water Properties (and any preliminary plans, studies and estimates relating thereto, including an engineer’s report), acquiring and installing necessary utility services and site work, the expenses and administrative and any other expenses necessary or incidental to the above; (e) the pro-rated salaries and benefits of the Authority’s employees for their time devoted to the activities



associated with the Subject Water Properties incurred after January 1, 2000 as amended by the Authority because of annual wage and salary adjustments; (f) the costs of Authority crews or engineering staff incurred for the installation of service connections, meters or closure of wells; (g) the costs of whatever kind incurred in obtaining any required approval of any governmental body, bureau, department, official or agency or subdivision whatsoever for the design, capacity, characteristics, plans, specifications, construction, acquisition, installation or operation of the Subject Water Properties, and including the costs of any litigation or administrative proceedings in connection therewith; (h) the costs incurred in complying with the SEQRA Act or any other applicable environmental law, rule or regulation; (i) the fees, taxes, charges or other expenses for necessary recording or filing of any document; (j) the Authority's internal and third party costs of legal, accounting and any other fees, costs and expenses incurred in connection with the preparation, negotiation, reproduction, authorization, sale and issuance, execution and distribution, as the case may be, of the Authority Obligations, including costs of issuance thereof, or any other form of financing, constituting Authority Obligations directly relating to the Subject Water Properties, and any agreements entered into between the parties with respect to the Subject Water Properties, all construction contracts and equipment orders and all other documents in connection therewith; (k) reimbursement for the services of the engineering staff or personnel of the Authority after the receipt of bids for construction of the Subject Water Properties, for inspection, supervision and like services during the construction phase of constructing the facility; (l) capitalized interest expense and insurance expense during construction; (m) costs and expenses paid by the Authority pursuant to the Municipal Contracts and not included as a surcharge on or component to the Service Fee; (n) legal expenses incurred by the Authority with respect to any of the costs herein enumerated, and including the prosecution or defense of any administrative, quasi-legislative or judicial proceeding or any legal proceeding or litigation, including appeals; and (o) any direct out-of-pocket costs or expenses of the Authority including pro-rated items of general overhead not otherwise expressly enumerated herein.

1.11 "***Current Year Minimum Monthly Average GPD***" means the greater of (i) the Adjusted Base GPD or (ii) the Prior Year Highest Monthly Average GPD.

1.12 "***Force Majeure Event or Events***" means events having a materially adverse impact (including on a cumulative basis) on the schedule for completing an action provided such delay or failure is not a result of the willful or deliberate acts or omissions of the party asserting such Force Majeure. Without limiting the generality of the foregoing, such events include: delays in obtaining or failure to obtain rights of way and interests in real property (including delays caused by the necessity to commence and prosecute eminent domain proceedings); acts of God; slow downs, strikes, lockouts or other labor disturbances; acts of the public enemy; pending litigation or administrative proceedings, orders, injunctions, judgments or priorities of any kind of any court, the government of the United States of America or the State of New York or any municipality or official or any of their respective departments, agencies, political subdivisions, public authorities or offices including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity (excepting decisions interpreting federal, state and local tax laws); provided, however, that such litigation proceeding, order, injunction or judgment shall not arise in connection with or be related to the negligent or willful action or inaction of the party relying

thereon and that neither the contesting in good faith of any such order or judgment nor the reasonable failure to so contest shall constitute or be construed as a willful or negligent action or inaction of the party; the acts, priorities, or orders of any civil or military authority other than the County; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; accident or breakage to facilities, pumps, machinery, equipment, reservoirs, dams, pipes, conduits or tunnels; shortages of labor, material, supplies or transportation; the failure to issue (having made due application therefor and having diligently pursued the obtaining thereof), or the suspension, termination, interruption, denial, failure or renewal of any permit, license, consent, authorization or approval necessary under this Agreement; or any other similar or different cause not reasonably within the control of the party affected by and claiming such inability. Any delay occasioned by any such cause shall be remedied with all reasonable dispatch to the extent it is possible to do so. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other labor disturbances shall be entirely within the discretion of the party having the difficulty and that any requirement that "*force majeure*" be reasonably beyond the control of the party and be remedied with all reasonable dispatch shall be deemed to be fulfilled even though each existing or impending strike, lockout or other industrial disturbance may not be settled and could have been settled by acceding to the demands of the opposing person or persons, when such course is, in the good faith judgment of the party having the difficulty, unfavorable to it.

1.13 "***GPD***" means gallons per day.

1.14 "***Indenture***" means the Trust Indenture dated as of October 1, 1991 from the Authority to The Bank of New York Mellon, as successor to Chase Lincoln First Bank, N.A., as Trustee, as it has been and in the future may be amended from time to time in accordance with the provisions thereof.

1.15 "***Interest Payment Date***" means each August 1 and February 1 or such semi-annual interest payment dates provided for in the Indenture or any supplement thereto.

1.16 "***Municipal Contracts***" means agreements relating to the provision of water by the Authority between the Authority and participating municipalities within the County.

1.17 "***Nonqualifying STAMP Customer***" means any entity, facility, business, building or residence located within the STAMP Project Area not engaged in or being used for STAMP Project Operations.

1.18 "***Permits***" means any and all entitlements, permits, approvals, authorizations and consents necessary for the construction and operation of the Subject Water Properties.

1.19 "***Principal Payment Date***" means each February 1 or the yearly principal payment date provided for in the Indenture or any supplement thereto.

1.20 "***Prior Year Highest Monthly Average GPD***" means, for a calendar year, the amount determined by multiplying the highest monthly average GPD for any month in the immediately preceding calendar year by 0.9.



1.21 “*Prior Year Minimum Monthly Average GPD*” means for the preceding calendar year the greater of (i) the Base GPD or (ii) the Prior Year Highest Monthly Average GPD.

1.22 “*SEQR Act*” means the New York State Environmental Quality Review Act, as amended from time to time, together with any permitted local modifications thereof and applicable to either the County or the Authority.

1.23 “*STAMP Project Operations*” means these activities: (i) nanotech-oriented manufacturing (e.g., semiconductor, flat panel display, photovoltaic and bio-manufacturing companies), (ii) high-tech manufacturing, or (iii) those that support the research and development or supply chain functions of a company listed in items (i) or (ii).

1.24 “*Subject Water Properties*” means those Water Properties of the Authority now or in the future owned by it and described on the map attached hereto as Schedule 1.24 and to be developed, constructed and operated under this Agreement (including the Expanded Systems), whether or not financed, in whole or in part, with Authority Obligations, in either case as the same may be amended by agreement of the respective Designated Representatives of the parties, together with appurtenances thereto and lands, easements, rights in land and rights of way.

1.25 “*Term*” has the meaning given in Section 8.1.

1.26 “*Water Properties*” means the water system of the Authority, whether owned or leased by the Authority, including the source of water supply and the water supply and distribution system of the Authority, including the plants, works, instrumentalities or parts thereof and appurtenances thereto, lands, easements, rights in lands and water rights, rights of way, contract rights, franchises, approaches, connections, dams, reservoirs, water mains and pipe lines, pumping stations and equipment, and any other property, real, personal or mixed, incidental to and included in such source of supply and such system or parts thereof, and any improvements, extensions and betterments, now or hereafter constructed, acquired or made by the Authority.

## ARTICLE 2 WATER PROPERTIES

2.1 The parties acknowledge and agree that, prior to the date hereof, the Authority developed and constructed the existing Subject Water Properties in accordance with the terms of the Original Agreement.

2.2 The Authority financed the Costs of the Existing Subject Water Properties by issuing Authority Obligations, including, at the request of the County, certain refinancing obtained through the New York State Environmental Facilities Corporation. Subject to the limitations set forth below, upon request by and at the expense of the County, the Authority will use its best efforts to issue additional Authority Obligations to fund County Costs and Expenses for future Subject Water Properties. The Authority will have no obligation to issue, or use any efforts to issue, Authority Obligations unless the issuance is a minimum project size of \$5

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million and the Authority has sufficient debt capacity to issue the requested amount of Authority Obligations at such time. In addition, the Authority will not be obligated to issue, or use any efforts to issue, Authority Obligations more than once in any two consecutive calendar years. For any disclosure documents used to sell any additional Authority Obligations, the County will furnish all information regarding the County deemed necessary by the Authority and its advisers.

2.3 As provided in the Act, legal title to the Subject Water Properties shall be and remain with the Authority.

2.4 The Authority may, in its sole discretion and at its own cost and expense, make replacements, additions, betterments and improvements to the Subject Water Properties to provide an adequate supply of water to customers of the Authority. Such replacements, additions, betterments, and improvements may be installed at such locations as the Authority may determine and may be connected and interconnected with the Subject Water Properties or the Water Properties in such manner as the Authority shall determine and if located on County-owned property, the County shall provide all necessary easements at no cost to the Authority. As provided in the Act, legal title to such replacements, additions, betterments, and improvements made by the Authority at its own cost and expense shall be and shall remain in the Authority. If any such changes affect the locations or areas within the County served by the Authority, the Authority will first obtain the County's approval, which approval shall not be unreasonably withheld or delayed.

2.5 Provided that the relevant Municipal Contract is then in full force and effect, the Authority shall connect to the Subject Water Properties those customers within the County who shall make complete and proper application to the Authority for water service, directly or indirectly, from the Subject Water Properties. Complete and proper application by the customer shall include proof of approval of hook-up to the Subject Water Properties by the County or its municipal designee. The County and/or its municipal designee must approve all new service connections and extensions of service areas. Furnishing water and performing services by the Authority to all its customers shall be in accordance with and governed in all respects by (i) this Agreement, (ii) the Authority Rules, as the same may be amended from time to time, and (iii) the Municipal Contracts.

2.6 The County agrees that the Authority may, without reducing, abating or altering the obligations of the County hereunder, and without the necessity of paying the County any transmission, rental or other fees in respect thereof, utilize the Subject Water Properties and make any interconnections thereto, to serve areas outside and beyond the areas served by the Subject Water Properties so long as such interconnections do not impair the integrity of the Subject Water Properties or have an adverse impact on the use of the Subject Water Properties as intended by this Agreement or be contrary to or inconsistent with any applicable SEQR Act documents.

2.7 Consistent with the Indenture, the Authority may remove, disconnect, or abandon any portion of the Subject Water Properties as long as it certifies to the County that such removal, disconnection, or abandonment does not impair the integrity of the remaining Subject Water Properties or have an adverse impact on their use as intended by this Agreement.



2.8 Pursuant to the provisions of Section 1105 of the Public Authorities Law, the Authority shall not be required to pay any taxes, fees or assessments of any kind or nature (including any sanitary sewerage, storm water, pure waters, special districts or other levies, charges, taxes or assessments) upon the Subject Water Properties or any other properties, replacements, betterments and improvements owned by the Authority or under its supervision or control.

2.9 In consideration of the Authority's undertakings set forth in this Article 2, the County agrees to pay the Authority a service fee (the "**Service Fee**") as, when and in the amounts provided for in this section 2.9. The obligations of the County to make the payments of the Service Fee shall be absolute and unconditional without offset or deduction of any kind or nature whatsoever for any cause whatsoever.

(a) The amount of the Service Fee payable by the County to the Authority shall be the sum of: (i) the total principal, interest and sinking fund installments due and payable with respect to Authority Obligations on each Interest Payment Date, Principal Payment Date or sinking fund redemption date; plus (ii) any principal, interest, premium or fees due with respect to any other redemption of Authority Obligations; plus (iii) the Trustee or paying agent's fees or expenses with respect to the Authority Obligations; less (iv) the amount of any grants received by the Authority in respect of the Subject Water Properties; and less (v) the amount of interest, if any, earned thereon while being held by the Trustee pending an Interest Payment Date or a Principal Payment Date.

(b) Subject to item (a) above, the County shall pay to the Authority each component of the Service Fee no less than twenty (20) calendar days prior to its due date, including any surcharges for Trustee or paying agent fees, expenses or other charges ("**Surcharges**"), if any.

(c) If requested by the County, the Authority shall direct the Trustee to provide the County with all documents necessary to evidence the outstanding principal of existing Authority Obligations and all scheduled payments of principal, interest, sinking fund installments and Trustee fees. Within 60 days of issuance (or refunding, as the case may be) of any existing or additional Authority Obligations, the Authority shall prepare a schedule showing (i) the total principal amount of such Obligations on the date of issuance thereof; (ii) the amounts and dates of payment of principal or sinking fund installments; and (iii) the amounts of interest (including accrued interest at closing) payable and the due dates thereof, which amounts shall be included in the Service Fee hereunder.

(d) Payments by the County to the Authority hereunder shall be made without notice on the date when due, except in the case of Surcharges, in which case the Authority shall notify the County of the amounts and dates when due.

2.10 The County acknowledges that it will be required to construct additional water system improvements (the "**Expanded Systems**") to accommodate the increased supply of water contemplated by Article 3. From time to time during the Term, the County shall submit engineering analysis reports for the conceptual design of the Expanded Systems to the Authority for its review and approval. The Authority will provide reasonable assistance to the County in

planning for the Expanded Systems. If such design concepts are approved by the Authority, the Authority shall design and construct, subject to any applicable limitations of Section 2.2, the Expanded Systems for the County. The Expanded Systems will be "Subject Water Properties" hereunder and legal title to the Expanded Systems shall be and remain with the Authority. The County Costs and Expenses incurred in connection with the design, development and construction of the Expanded Systems shall be paid for by the County.

2.11 If the Authority incurs any County Costs and Expenses, the County shall reimburse the Authority for such amounts within twenty (20) calendar days of the date of the Authority's invoice, unless financed through the issuance of additional Authority Obligations.

2.12 Notwithstanding Section 2.11, as soon as reasonably practical after the Authority learns of actual or threatened litigation, it will provide notice thereof to the Genesee County Attorney (the "County Attorney"). During any such litigation, the Authority will regularly advise the County Attorney and, upon request, furnish the County Attorney with copies of relevant documents. Prior to paying any County Costs and Expenses for litigation and seeking reimbursement from the County, the Authority shall provide the County Attorney with bills and invoices submitted to the Authority for payment (with no deletions or redactions) and then wait at least fifteen (15) days. Given the common interest between the Authority and the County in defending claims, potential claims and lawsuits, the parties intend and agree that such sharing of information (including invoices) under this Agreement will (i) be strictly privileged and confidential and (ii) be made without waiving or intending to waive attorney-client communication, attorney work product, material prepared for litigation, common interest, and all other grounds for privilege that may be asserted by the Authority and/or its counsel.

### ARTICLE 3 WHOLESALE WATER SUPPLY

3.1 The County agrees to take all water furnished under this Agreement from the existing metered connections located on Route 5 and Route 33 east of the border of the Town of Batavia as identified on a map of the Water System attached hereto as Schedule 3.1 and at such future connections included in the Expanded Systems (the "*County Connections*").

3.2 The Authority agrees to sell and the County agrees to purchase from the Authority at the County Connections water of the same quality and content furnished to other Authority customers.

3.3 So long as the County is not in breach hereof, the Authority agrees to sell and the County agrees to take and pay for all water taken by the County at the Authority's wholesale rates applicable to the County Connection at which the water is supplied as set forth in the Authority's current rate schedule in effect and as amended from time to time by the Authority in its sole discretion (the "*Current Rate Schedule*"). If the County (i) fails to take and timely pay for the applicable Minimum Monthly Purchase Requirement, or (ii) takes more than the Maximum Purchase Amount, or (iii) sells water purchased hereunder contrary to this Agreement, then, in any such event, the Authority's highest supplemental supply rate applicable in Genesee County as set forth in the Current Rate Schedule shall apply to all water purchased hereunder for

the duration of any billing cycle in which such breach occurs and continues, even if less than a full billing cycle.

3.4 During each calendar year during the Term, the County acknowledges and agrees that to avail itself of the wholesale rate, each month it must (and hereby agrees to) take and pay an average GPD for the month that is not less than the Current Year Minimum Monthly Average GPD (the "**Minimum Monthly Purchase Requirement**"). If the County's actual average GPD during a month ("**Actual Average GPD**") is less than the applicable Current Year Minimum Monthly Average GPD, then the County will make an additional payment to the Authority (the "**Minimum Purchase Payment**") in an amount calculated by multiplying (i) the difference between the Current Year Minimum Monthly Average GPD and the Actual Average GPD by (ii) the highest supplemental supply rates applicable in Genesee County as set forth in the Current Rate Schedule. In January of each calendar year, the Authority shall calculate the Current Year Minimum Monthly Average GPD for such calendar year and notify the County of such amount in writing. For illustrative purposes only, Schedule 3.5 sets forth example calculations of the Current Year Minimum Monthly Average GPD. The parties acknowledge that the actual amounts may vary from the amounts used in the example calculations.

3.5 Without the prior written consent of the Authority, for each calendar year during the term, the County may not purchase in any month an average GPD in excess of one hundred thirty five percent (135%) of the Current Year Minimum Monthly Average GPD applicable for such calendar year ("**Maximum Purchase Amount**").

3.6 The Authority will bill the County monthly for water purchased plus the Minimum Purchase Payment (if any) hereunder. Payment shall be due upon the County's receipt of the Authority's invoice.

3.7 The Authority reserves the right to install metered connections to the Water System at such locations as the Authority may determine are necessary to supply Authority customers. All water that the Authority draws from any such connections will be subtracted from the gallons sold and billed to the County on a monthly basis, such that the amount actually billed to the County will be net of sales back to the Authority.

3.8 During the term of this Agreement, all sales of water and the performance of services by the Authority to the County shall be made in accordance with and governed by the Authority's Rules for the sale of Water and the Collection of Rents and Charges, as amended from time to time by the Authority in its sole discretion (the "**Authority's Rules**") and Subpart 5-1, Public Water Supplies, of the New York State Sanitary Code.



3.9 The County shall maintain its public water system in accordance with all State and Federal rules, regulations or other applicable approvals. The County agrees to implement Cross Connection Control Program Policies no less stringent than the Authority's.

3.10 If pressure in the County's mains is inadequate and using pumps is necessary, such pumps shall be installed, operated and maintained by and at the expense of the County. No pumps shall be installed to take water without the prior written consent of the Authority.

3.11 It is understood and agreed that the Authority makes no guarantees as to pressure, quantity, quality or continuity of service, and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure in the supply of water, whether caused by the shutting off of water in case of an accident, or for alterations, extensions, connections or repairs, or for any cause whatsoever. In the event of an emergency or other necessity, the Authority may shut off or reduce the flow of water for such periods as are necessary. The Authority shall restore service and provide water as soon as reasonably possible.

3.12 The Authority may, and intends to, use the facilities of districts served by the Authority and/or the County to serve the Authority's customers and that any such use shall be without imposing any rent or other charges of whatever kind. The Authority agrees that such use by it of such facilities shall not reduce below customary standards the supply or pressure of water then being furnished by the Authority to the County.

3.13 At any metered point of interconnection, the parties hereby agree that the meter will be maintained within the accuracy limits as specified for repair of meters in the then latest revision of the A.W.W.A. standards for testing coldwater meters, Series C-700. Irrespective of which party owns the meter, the Authority shall maintain the meter and pay for such maintenance. Either party may test the meter accuracy at any reasonable time and at its own expense.

3.14 If, in the opinion of the Authority, a meter has stopped registering or is improperly registering at a metered interconnection, the Authority will estimate consumption based upon actual consumption during the corresponding months of previous years or such other method as may be reasonable and is agreed upon by both parties. The Authority will promptly repair any such meter as herein provided.

3.15 If a Town, Village or City within the County becomes a retail customer of the Authority and such lost volume is not replaced by adding new customers of the County, the County may request in writing that the Base GPD and Current Year Minimum Monthly Average GPD amounts for each subsequent year as shown on Schedule 3.5 be adjusted downward by the amount of such lost volume.

#### **ARTICLE 4 LEASED FACILITIES**

4.1 In consideration of the mutual promises and undertakings contained herein, but without requirement of any rental or similar cash consideration, the Authority hereby leases to the County, and the County hereby accepts in AS-IS, WHERE-IS condition, the tank and line



situated in the Town of Stafford more particularly described on Schedule 4.1 (the "*Leased Facilities*") for the term hereof.

4.2 The Authority will periodically inspect the Leased Facilities and consult with the County on any maintenance or repair that the Authority determines is necessary or advisable.

4.3 During the term hereof, the Leased Facilities shall be maintained, operated, repaired and, if necessary, replaced by the County at its expense in accordance with and governed in all respects by the Authority's Rules, standards and specifications as in effect from time to time. No changes, modifications, replacements, relocations, extensions, or connections to the Leased Facilities shall be allowed without the prior written consent of the Authority.

4.4 The County shall not make any future connections to the Leased Facilities during the term hereof that would interfere with the utility of the Leased Facilities to the Authority at the expiration or termination of this Agreement. Future connections shall be made under the Authority's supervision and direction, at such locations and in such a manner as the Authority and other appropriate parties, depending on source and ownership, shall direct. As between the Authority and the County, the full cost and expense of all work, supplies, meters, materials and other facilities required for such future interconnections requested by the County, regardless of who shall have furnished or installed the same, shall be borne and paid for by the County.

## ARTICLE 5 OBLIGATIONS OF THE COUNTY

5.1 The County shall not, directly or indirectly, develop, or cause to be developed, new or additional water supply capacities (whether such water is treated or untreated) or enhance, improve or modify existing water production facilities to produce additional new water (whether such water is treated or untreated) within the County, except for the STAMP Project exception set forth in Article 6.

5.2 With respect to the City of Batavia water treatment plant and/or water production system (the "*Batavia System*"), the County and the City of Batavia entered into an agreement, dated January 20, 2000 (the "*City/County Agreement*"), a true and correct copy of which is attached hereto as Schedule 5.2. The City/County Agreement may be renewed or extended, upon the same terms. If the City and County propose material changes to the City/County Agreement, they must obtain the prior approval of such changes from the Authority. This Agreement shall not be construed by either party hereto to alter, modify, suspend or terminate any terms or conditions of the City/County Agreement.

5.3 The Batavia System currently produces up to 6.0 million gallons per day ("*MGD*"). Notwithstanding Sections 5.1 and 5.2 and with respect to the Batavia System, the County may develop Well C, conduct maintenance and make repairs, provided that doing so does not increase the amount of water that can be supplied by the Batavia System above the 6.0 MGD limit.

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5.4 The County may continue to use the Batavia Plant to produce water for sale to customers in the City of Batavia and portions of all of the Towns of Batavia, Elba, Alexander, Alabama and Oakfield (and any Villages therein), and to have the County lease certain water facilities from the Authority within the Town of Stafford, as long as such sources/treatment facilities are viable, cost-effective, and in compliance with applicable state and federal laws and regulations, and the terms and conditions of this Agreement.

5.5 The County shall not compete against the Authority for the contracting of water services (whether for treated or untreated water) with any individuals, companies, water districts, agencies, or municipalities within the County. The parties acknowledge and agree that the City/County Agreement does not constitute a breach by the County of this Section 5.4.

5.6 The County shall not directly or indirectly, sell, or make available for sale, water anywhere outside the County, without the express prior written consent of the Authority.

5.7 When so required, the County shall acquire such interests in land, at its cost and expense, as are required for any replacements, additions, betterments and improvements to the Subject Water Properties that may be made under this Agreement. The County agrees, whenever necessary or appropriate to exercise its powers of eminent domain under the New York Eminent Domain Procedure Law, and grants the Authority consent to construct any such replacements, additions, betterments and improvements within any highway right of way over which the County has jurisdiction.

## ARTICLE 6

### STAMP PROJECT

6.1 **Alternative Source of Water.** Once the water supplied to the real property described on Schedule 6.1 (the "**STAMP Project Area**") exceeds 200,000 GPD (as measured by one or more master water meters located at the boundary of the STAMP Project Area), the County may submit a written request to the Authority to permit a public source other than the Authority (an "**Alternative Source**") to supply water to the STAMP Project Area. The Authority shall have thirty (30) days to review the request (the "**Review Period**"). If the Authority approves the request in writing or fails to reject the request in writing during the Review Period, then the County may use the Alternative Source ("**Approved Source**") to supply water exclusively to the STAMP Project Area subject to the terms of this Article 6. Provided the County complies with this Article 6, using an Approved Source to supply water to the STAMP Project Area will not violate Article 5 of this Agreement. If an Approved Source does not award a contract to construct the water system to supply water to the STAMP Project Area within twelve (12) months of the date of the Authority's approval of the Approved Source, then the Authority's approval shall expire and any supply of water by the Approved Source will violate Article 5 until such time that the County submits and the Authority approves a new request under this Section 6.1.

6.2 Use of an Alternative Source to supply water to the STAMP Project Area shall not result in a downward adjustment in the Current Year Minimum Monthly Average GPD.

6.3 For all water provided to a Nonqualifying STAMP Customer, the County shall pay the Authority a ten percent (10%) surcharge on the amount charged to Nonqualifying STAMP Customers in addition to the amounts due pursuant to Section 3.4 hereof. Upon reasonable advance notice, the County will provide the Authority with access to the invoices and billing statements sent to each Nonqualifying STAMP Customer and to the water meter at the location of each Nonqualifying STAMP Customer. The County shall secure access rights and other rights necessary from each Nonqualifying STAMP Customer and their respective Alternative Source water suppliers for the Authority to obtain the access and information described in this Section 6.3.

6.4 The County shall provide the Authority with access to, and shall secure access rights and other rights necessary for the Authority to access, the master water meters located at the boundary of the STAMP Project Area.

## ARTICLE 7 WARRANTIES AND INDEMNIFICATION

7.1 Each of the parties warrants to the other party that: (a) each such party is, respectively, duly authorized to enter into, execute and deliver this Agreement under applicable law and all duly adopted resolutions, authorizations, and governmental and regulatory approvals, no other approvals being necessary therefor; and (b) this Agreement and the obligations and agreements herein contained are the legally binding agreements and obligations of each such



party, respectively, enforceable against each such party, respectively; and (c) this Agreement, as so executed and delivered, does not and will not violate or breach any legal requirement or restriction, any charter or by-law, or any ordinance, indenture or agreement binding on each such party, respectively, or is binding on each such party's properties, respectively; and (d) in that connection, each party hereto believes that it has complied with the SEQR Act.

7.2 The Authority hereby agrees to defend, indemnify and save harmless the County, its officers, official agents, and employees from all claims, liabilities and judgments of any person (including employees of the Authority), firms, corporations, or associations, for, but only with respect to, injury to persons, including death, or physical damage to property, to the extent such injury or damage arises out of the Authority's activities, if any, for the installation or construction of the Subject Water Properties or the Authority's control, supervision, inspection, acceptance, operation, management, repair or maintenance thereof. This indemnity shall survive the termination of this Agreement. This indemnity is not intended to otherwise modify the obligations of the County elsewhere herein contained.

7.3 In addition to the payments made by the County under Article 2, Article 3 and Article 6, the County will defend, indemnify and save harmless the Authority, including its members, officers, agents, and employees from any monetary liabilities or judgments, directly or indirectly, caused by or arising out of (a) the development, planning and design of the Subject Water Properties (other than for (i) those matters referred to in the immediately preceding paragraph and (ii) to the extent caused by the willful or grossly negligent acts or omissions of the Authority) or (b) any breach by the County of its representations, warranties or covenants in this Agreement; and this indemnity shall survive the termination of this Agreement notwithstanding any contrary provisions of this Agreement.

## **ARTICLE 8 TERM**

8.1 The term of this Agreement shall expire upon the later of (i) that date that all outstanding Authority Obligations and any Service Fees owing hereunder are paid and (ii) forty (40) years from the date of this Agreement (the "Term").

8.2 No termination or expiration of this Agreement will affect the provisions relative to the title, use and operation of the Subject Water Properties.

## **ARTICLE 9 MISCELLANEOUS**

9.1 The Prior Agreements are hereby replaced and superseded by this Agreement in their entirety and are no longer in full force and effect. The parties acknowledge and agree that except as otherwise provided in this Agreement, the obligations of each party required by the Prior Agreements were either performed in their entirety or waived.

9.2 Any notices given pursuant to this Agreement will be deemed to have been given if by certified mail, return receipt requested, if:



To the County: County of Genesee  
County Building No. 1  
Batavia, New York 14020  
Attn: Chairman of the County Legislature

With a required copy to: County Water Resources Agency  
County Building No. 1  
Main and Court Streets  
Batavia, New York 14020  
Attn: Chairman

To the Authority: Monroe County Water Authority  
475 Norris Drive  
Rochester, New York 14610  
Attn: Executive Director

9.3 In making and performing under this Agreement, the parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venture, or partner of the other party for any purpose. Neither party shall have any authority to act for or to bind the other party, nor shall either party hold itself out as having such authority.

9.4 Neither party shall assign or transfer this Agreement nor delegate any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any assignment, transfer or delegation of rights or obligations hereunder in contravention of this Section shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and permitted assigns.

9.5 No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed on behalf of the party against whom it is asserted. Any consent by any party to, or waiver of, a breach of the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach of this Agreement by such party.

9.6 This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without giving effect to its conflict of laws provisions.

9.7 This Agreement sets forth the entire understanding between the parties. This Agreement supersedes all prior or contemporaneous representations, discussion, negotiations, letters, proposals agreements and understandings between the parties, whether written or oral. This Agreement may be amended, modified or supplemented only in a writing (an "**Amendment**") duly executed by an authorized representative of each of the County and the

Authority.

9.8 Except for the payment of amounts when due hereunder, either party shall be excused from failures or delays in delivery or performance hereunder if such failure or delay is attributable to a Force Majeure Event.

9.9 Unless the context of this Agreement clearly requires otherwise, (i) references to the plural include the singular, the singular the plural, the part the whole, (ii) references to any gender include all genders, (iii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iv) "including" has the inclusive meaning frequently identified with the phrase "but not limited to," and (v) references to "hereunder" or "herein" relate to this Agreement.

9.10 Nothing in this Agreement will be construed as giving rise to any right to enforce its provisions to any person not a party to this Agreement under any legal theory.

9.11 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and both of which, taken together, shall constitute one agreement binding on both parties. A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and absent an original signature, shall constitute the original signature.

9.12 The heading references herein are for convenience only, constitute no part of this Agreement and shall not be deemed to alter or affect the meaning or interpretation of any of the provisions hereof.

*[Signature page to follow]*

IN WITNESS WHEREOF, this Agreement has been duly executed by each of the parties hereto by their respective duly authorized officers as of the date and year first above written.

COUNTY OF GENESEE

By: Raymond A. Crawford

MONROE COUNTY WATER AUTHORITY

By: Nicholas A. Noce  
Nicholas A. Noce  
Executive Director

State of New York)  
County of Genesee)

*Raymond Cianfini.*

On this 29 day of November, 2017, before me came \_\_\_\_\_, to me personally known, who being by me duly sworn, did depose and say that [he] resides in Dunkirk; that [he] is the [Chairman of the Legislature of the County of Genesee]; that [he] knows the seal of said County; that the seal affixed to said instrument is such seal; that it was so affixed by order of the said County; and that he signed his name thereto by like order.

**SARAH KINGDON**  
Notary Public-State of New York  
No. 01K16054749  
Qualified in Genesee County  
Commission Expires 02/12/19

*Sarah Kingdon*  
\_\_\_\_\_  
Notary Public

State of New York)  
County of Monroe)

On this 2 day of January, <sup>2018</sup>2017, before me came Nicholas A. Noce, to me personally known, who being by me duly sworn, did depose and say that he resides in Gates, Chili, New York; that he is the Executive Director of the Monroe County Water Authority; that he knows the seal of said Authority; and that he signed his name thereto by like order.

*Stephen M. Savage*  
\_\_\_\_\_  
Notary Public

State of New York)  
County of Monroe)

**STEPHEN M. SAVAGE**  
Notary Public, State of New York  
No. 01SA6142080  
Qualified In Monroe County  
Commission Expires 3/15/2018



SCHEDULE 3.5

Year	Amount
2017	300,000
2018 and 2019	500,000
2020, 2021 and 2022	600,000
2023, 2024 and 2025	800,000
2026, 2027 and 2028	1,000,000
2029, 2030 and 2031	1,250,000
2032, 2033 and 2034	1,500,000
2035, 2036 and 2037	1,750,000
2038, 2039, and 2040	2,000,000
2041, 2042 and 2043	2,250,000
2044, 2045, 2046, 2047, 2048 and 2049	2,500,000
2050 and each calendar year thereafter	3,000,000

Here are two example calculations of the Current Year Minimum Monthly Average GPD for the 2026 calendar year:

**EXAMPLE 1**

For 2025, the Prior Year Minimum Monthly Average GPD was 1,100,000. The County's actual average GPD for each month in 2025 was as follows:

- January - 900,000
- February - 900,000
- March - 925,000
- April - 925,000
- May - 950,000
- June - 975,000
- July - 1,200,000
- August - 1,500,000
- September - 1,000,000
- October - 975,000
- November - 950,000
- December 900,000

Step 1: Determine the Prior Year Highest Monthly Average GPD.

Because the highest monthly average gallons per day for 2025 was in August, you would multiply 1,500,000 by 0.9. This results in an applicable Prior Year Highest Monthly Average GPD for 2026 of 1,350,000.

Step 2: Determine the Adjusted Base GPD.

Because the Prior Year Minimum Monthly Average GPD from 2025 (1,100,000) is greater than the Base GPD shown on the above chart, the Adjusted Base GPD for 2026 is 1,100,000.

Step 3: Determine the Current Year Minimum Monthly Average GPD .

Because the Prior Year Highest Monthly Average GPD (1,350,000) is greater than the Adjusted Base GPD for 2026 (1,100,000), the **Current Year Minimum Monthly Average GPD for 2026 is 1,350,000.**

## EXAMPLE 2

For 2025, the Prior Year Minimum Monthly Average GPD was 900,000. The County's actual monthly average GPD for each month in 2025 was as follows:

- January - 900,000
- February - 900,000
- March - 925,000
- April - 925,000
- July - 1,100,000
- August - 1,000,000
- September - 975,000
- October - 950,000

- May - 950,000
- June - 975,000
- November - 925,000
- December 900,000

Step 1: Determine the Prior Year Highest Monthly Average GPD.

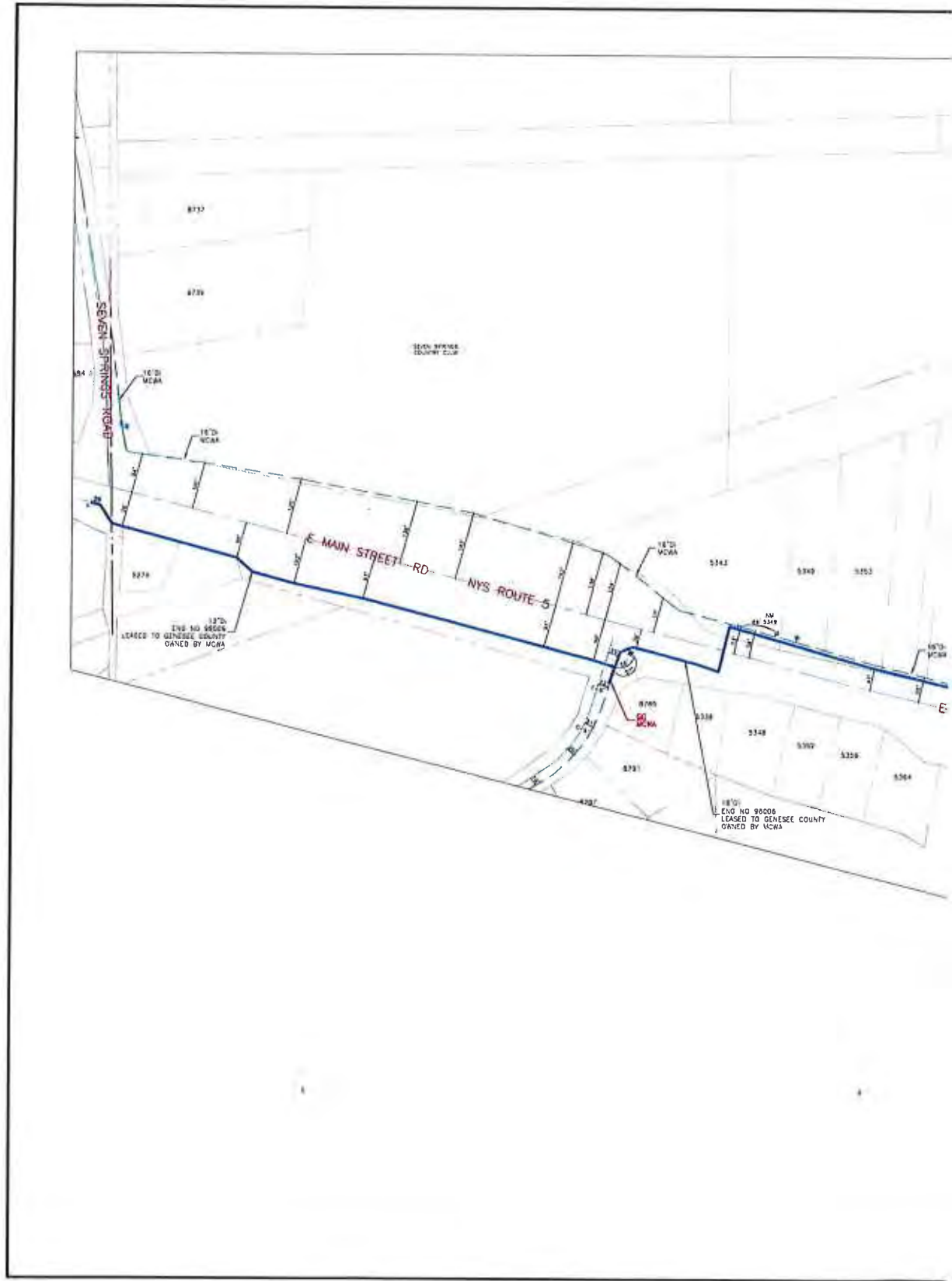
Because the highest monthly average gallons per day for 2025 was in July, you would multiply 1,100,000 by 0.9. This results in an applicable Prior Year Highest Monthly Average GPD for 2026 of 990,000.

Step 2: Determine the Adjusted Base GPD.

Because the Base GPD shown on the above chart for 2026 (1,000,000) is greater than the Prior Year Minimum Monthly Average GPD from 2025 (900,000) the Adjusted Base GPD for 2026 is 1,000,000.

Step 3: Determine the Current Year Minimum Monthly Average GPD .

Because the Adjusted Base GPD (1,000,000) is greater than the Prior Year Highest Monthly Average GPD (990,000), the **Current Year Minimum Monthly Average GPD for 2026 is 1,000,000.**





**RESOLUTION NO. 420 AMENDED AND RESTATED AGREEMENT – MONROE COUNTY WATER AUTHORITY—COUNTYWIDE WATER PROJECT —APPROVAL OF**

Legislator Stein offered the following resolution:

**WHEREAS**, Genesee County has requested modifications to the existing water operating agreement with the Monroe County Water Authority, and

**WHEREAS**, The several agreements that Genesee County has with the Monroe County Water Authority relative to the operation of the Countywide Water System have been consolidated into one restated and amended agreement, and

**WHEREAS**, The Genesee County Highway Superintendent and the County Attorney have reviewed this agreement and do recommend approval of the agreement at this time, and

**WHEREAS**, The Committees on Public Service and Ways and Means have reviewed this request and do concur at this time, Now, therefore, be it

**RESOLVED**, The Genesee County Legislature hereby authorizes and directs the Chairperson of the Legislature to execute the Amended and Restated Water Operating Agreement between Genesee County and the Monroe County Water Authority at this time.

**Budget Impact:** There is no direct budget impact to the County by executing this agreement. The amended and restated agreement does give the County the flexibility it needs to move forward with planned water supply modifications.

Legislator Torrey seconded the resolution which was adopted by 279 votes, Young (47) no.



**State of New York  
County of Genesee**

I hereby certify that the foregoing is a true and correct transcript of a resolution duly adopted by the Genesee County Legislature on the 20<sup>th</sup> day of November 2017.  
Dated, Batavia, New York

November 21, 2017

*Pamela LaHou*  
Clerk of the Genesee County Legislature

### **Water Supply Agreement - Tenants**

**Discussion:** STAMP Water Works Corp. needs to enter into water supply agreements with tenants at STAMP. Attached is a draft that prepare by Phillips Lytle for SWC to utilize. Plug Power would be the first tenant to enter into this agreement.

**Fund Commitment:** None.

**Board Action Request:** Discussion of water supply agreement. Approval of supply agreement, or approval with modifications.

**AGREEMENT FOR OPERATION AND MAINTENANCE  
OF WATER FACILITIES FOR  
STAMP WATER WORKS, INC.**

**THIS AGREEMENT**, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the **TOWN OF BATAVIA**, a Municipal Corporation of the State of New York, with offices located at 3833 West Main Street Road, Batavia New York 14020, (hereinafter "Batavia"); and the **STAMP WATER WORKS, INC.**, a Transportation Corporation of the State of New York, with offices located at 99 MedTech Drive, Suite 106, Batavia, NY 14020, (hereinafter "SWWC"); (hereinafter collectively referred to as the "Parties").

**WITNESSETH:**

**WHEREAS**, Batavia has previously entered into a Water Supply Agreement with the County of Genesee, whereby the County supplies an adequate quantity of water for use by Batavia's residents who are obtaining water services, and

**WHEREAS**, the Genesee County Economic Development Center ("GCEDC") has previously entered into a Water Supply Agreement with the County of Genesee, which will be assigned to SWWC in accordance with its terms (the "Genesee Water Supply Agreement"), whereby the County supplies at a minimum of two hundred (200,000) gallons per day for use by tenants of the STAMP Site who are obtaining water services, and

**WHEREAS**, the GCEDC and its affiliate, the Genesee Gateway Local Development Corporation ("GGLDC"), have been working for the last several years on the development of the Western New York Science & Technology Advanced Manufacturing Park ("STAMP"), a planned advanced manufacturing campus on approximately 1,262 acres of land located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway in the Town ("STAMP Site"); and

**WHEREAS**, at full build out, STAMP will be a high technology campus with the potential to accommodate over 6 million square feet ("sf") of advanced technology manufacturing and related uses and to create up to approximately 10,000 jobs; and

**WHEREAS**, the GGLDC has formed SWWC under New York State Transportation Corporation Law to own, operate and maintain the onsite water system at the STAMP Site,

**WHEREAS**, an onsite water distribution system will be constructed within the STAMP Site consisting of initially approximately 5,000 linear feet of new 12-inch diameter water main, together with all related hydrants, valves, apparatus, conduits, pipes, casings, meters and manholes, to also include all interests in real property of any kind or nature to the extent assignable, to be installed within the STAMP Site as more fully described on the Boundary Map for said STAMP Site attached hereto as Exhibit B (hereinafter referred to collectively as the “Facilities” or the “Project”), with future extensions and installations of water lines to be done as tenants commit and build at the STAMP Site, and

**WHEREAS**, SWWC has established the STAMP Site to provide water services (hereafter “Water Service Area”), and

**WHEREAS**, SWWC desires to contract for the operation and maintenance of the Facilities, as well as for the billing and collection of the costs to provide and pay for the water service, and

**WHEREAS**, Batavia will lease the Facilities from SWWC in order to perform the services and responsibilities as set forth herein, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. SWWC does hereby lease the Facilities to the Town of Batavia for the term as hereinafter set forth in this Agreement.
2. The leased Facilities include replacements, additions, betterments and improvements, which may hereinafter during the term of this Agreement be furnished and installed within or on behalf of the Water Service Area by SWWC .
3. Batavia agrees to operate and maintain the entire Facilities and to distribute water on behalf of SWWC to the Water Service Area, using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The schedule of services to be provided under this Agreement are more fully set forth on **EXHIBIT A**, attached hereto and made a part hereof, identified as the tasks to be performed Daily, Weekly, Monthly, Quarterly, Semi-annually and Annually (hereinafter, “Fixed Rate Services”).



4. For the provision of the Fixed Rate Services by Batavia to the SWWC, the SWWC agrees to pay Batavia a fixed annual fee which shall cover the period from January 1 to December 31 of each year of this Agreement, as extended from time to time. The annual fee for the first year of operation, which is anticipated to commence January 1, 20-- and end December 31, 20---, shall be the sum of \$3,500.00. This sum is based upon the unit rates for anticipated services to be performed by Batavia over a 12-month period as set forth on Exhibit A. This sum shall be a fixed fee for the entire year, and due no later than March 31 of such year. In succeeding years of this Agreement, as extended, the parties agree to negotiate in good faith as to the annual rate to be paid by SWWC to Batavia for the provision of such Fixed Rate Services.

5. All other services performed by Batavia shall be provided on a time and material basis (the "Time and Material Services"). [Batavia shall not perform Time and Material Services without first obtaining the permission or consent from SWWC to perform such Time and Material Services.] "Excepting circumstances, which in the judgement of the Town, require services to be performed that are beyond ordinary maintenance, and must be completed on an emergency basis to protect the integrity of the system, without enough time to obtain prior SWWC consent." Materials shall be billed to SWWC at Batavia's cost. In the event labor is contracted to an outside vendor, the actual cost incurred by Batavia for such contracted labor shall be billed by Batavia to SWWC. In the event Batavia force labor is utilized, such labor costs shall be billed by Batavia to SWWC at Batavia's then-applicable wage rates, plus 40% for administrative overhead, benefits, and supervision. Time and Material Services shall include:

- a. additional services required to be performed by New York State Department of Health, including but not limited to those tasks outlined as "Potential Additional NYSDOH Requirements" on **EXHIBIT A**, attached hereto;
- b. capital improvements, if any; and
- c. repairs, which for purposes of this Agreement are defined as any project beyond ordinary maintenance resulting from damage or defects in materials, design and/or construction, and involving replacement of facilities or components before the expiration of their period of probable usefulness.

Payment for Time and Material Services shall be made by SWWC to Batavia within 30 days of invoice delivered by Batavia to SWWC accompanied by receipts and supporting documentation reasonably acceptable to SWWC, except for any amounts disputed by SWWC in good faith.

6. All performance of services that will be provided by Batavia shall be pursuant to Subpart 5-1, Public Water Supplies of the New York State Sanitary Code, Batavia's Water Ordinance, (hereinafter the "Ordinance"), and the terms of SWWC's water supply agreements with customers. All services to be provided by Batavia, including Fixed Rate Services and Time and Material Services, shall be provided by Batavia using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The Ordinance may be amended from time to time by Batavia. However, Batavia agrees to provide SWWC at least forty-five (45) days advance written notice before implementing any such amendments. During this forty-five (45) day period, the Supervisor from Batavia and President of SWWC shall meet at least once to discuss the proposed Ordinance changes.

7. Upon request, Batavia shall supply to SWWC copies of any test reports required by the New York State Department of Health.

8. Batavia shall read all meters and invoice the customers of the Water Service Area, for the amounts established and amended by SWWC. SWWC shall set the rates and penalties and/or any other charges to be collected by Batavia.

9. All Batavia invoices to the Water Service Area customers included in this Agreement, shall be due and paid by such customers according to the terms of the Ordinance, in effect as of the date of the invoice for such water. In the event that any such customer is delinquent for more than ninety (90) days, SWWC shall have in effect and shall maintain throughout this Agreement rules and regulations to enforce collection of such charges.

10. At least monthly, Batavia will transfer all money collected directly to an account designated by SWWC, and Batavia shall notify SWWC when any customer payments are delinquent.

11. Customers within the Water Service Area shall purchase water to serve present and future needs of this Water Service Area pursuant to the Genesee Water Supply Agreement, and any other applicable water supply agreement.

12. A map of the Water Service Area service areas to be served by SWWC is annexed hereto and made a part of this Agreement as **EXHIBIT B**. This map shall be amended as necessary from time to time to reflect any customers added by the Water Service Area. Any such amendment

that expands or extends the Water Service Area, shall be approved by Batavia and shall not negatively affect supply or service to existing Town of Batavia service area customers.

13. All extensions to the Water Service Area after the execution of this Agreement shall be made under the exclusive control and jurisdiction of SWWC and shall be subject to the provisions of the Transportation Corporation Law and any amendments thereto. In the event that SWWC shall form one or more extensions, SWWC shall have the exclusive right to determine the amount of any fee to be charged to any such extension and to be paid to it by the customers in the extension for the right to connect to the existing Facilities of the Water Service Area. The fee shall belong exclusively to SWWC, and Batavia shall have no right or interest to this fee or any other charges related thereto.

14. It is understood and agreed that, except as otherwise set forth in this Agreement, Batavia makes no guarantee as to the pressure, quantity, quality or continuity of service, and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure in the supply of water whether caused by shutting off water in case of accident, or for alterations, extensions, connections or repairs or for any other cause of any kind or nature.

15. In the event of an emergency or other necessity, Batavia shall have the right to shut off or reduce the flow of water for such periods that it deems necessary.

16. In the event that Batavia deems it necessary to shut off or reduce the flow of water supply, Batavia shall provide tenants of the STAMP Site with reasonable advance notice when possible. Batavia shall restore water supply as soon as practicable. In such cases, SWWC shall have the right to request that Batavia temporarily turn off its transmission main and SWWC shall be able to temporarily obtain water from another source, but only until such time as the restorative measures taken by Batavia have been inspected and approved by Batavia's Water Department.

17. If Batavia deems that there is a condition in the Water Service Area that could contaminate the water supply, Batavia will notify SWWC, and SWWC will correct the condition as soon as practicable. Batavia may temporarily discontinue water service to the Water Service Area until the necessary corrections have been made.

18. In the event that a water emergency is declared by Batavia, Batavia shall notify the SWWC President and request that the SWWC President perform the following: (i) cause or use all reasonable efforts to cause the SWWC to declare a similar emergency with respect to all water supplied to customers within the Water Service Area and (ii) use all commercially reasonable



efforts to cause the SWWC to duplicate any emergency measures taken by Batavia during such water emergency.

19. SWWC shall immediately notify Batavia of any information or complaints that it receives from customers within the Water Service Area; as well as any problems or difficulties relating to the Facilities and the water distribution system.

20. There are no other Agreements or understandings, either oral or written, by and among the parties effecting this Agreement. No changes, addition or deletions of any portions of this Agreement shall be valid or binding upon the parties hereto, unless the same is approved in writing by the parties.

21. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of both parties.

22. This Agreement shall be binding upon and shall inure to the benefit of both of the parties hereto and their respective successors and permitted assigns.

23. This Agreement and any transactions by and between the parties hereunder shall be governed by, construed and interpreted in accordance with the Laws of the State of New York.

24. The parties shall execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purpose and intent of this Agreement.

25. No waiver of compliance with any provision or condition of this Agreement, and no consent provided for herein, shall be effective, unless evidenced by instrument in writing, duly executed by the parties sought to be charged therewith.

26. No failure on the part of either party to exercise and/or any delay in exercising any of its rights hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

27. All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.

28. This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.

29. The term of this Agreement shall be for a period of one (1) year, with the following provisions:



A. This Agreement may be terminated or extended upon a written instrument executed by both Parties.

B. SWWC may terminate this Agreement upon at least 120 days prior written notice to Batavia.

C. Batavia may terminate this Agreement upon at least 120 days prior written notice to SWWC.

D. Upon termination of this Agreement, master meters must be installed (if not already installed) in the Water Service Area at no cost to the Town Batavia.

**[SIGNATURES FOLLOW ON SUCCEEDING PAGES]**

**IN WITNESS WHEREOF** the parties have last signed this Agreement the day and year first written above.

TOWN OF BATAVIA

(SEAL)

\_\_\_\_\_  
Gregory H. Post, Supervisor

State of New York}  
County of Genesee}ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned, personally appeared Gregory H. Post, 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

**IN WITNESS WHEREOF** the parties have last signed this Agreement the day and year first written above.

STAMP Water Works, Inc

(SEAL)

\_\_\_\_\_, President STAMP Water Works, Inc.

State of New York}  
County of Genesee}ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
SCHEDULE OF SERVICES**

<b>Frequency &amp; Task</b>	<b>Hours/Task</b>	<b>Total Hours</b>	<b>Rate/Hour</b>	<b>Cost</b>
<b>Daily</b>				
1. None	N/A	0	\$48.00	\$0.00
<b>Weekly</b>				
1. Quality Sampling: Chlorine Residual, Ph, Temperature	0.2	10.4	\$48.00	\$499.20
2. Security Checks	0.1	5.2	\$48.00	\$249.60
3. Master Meter Reads	0.1	5.2	\$48.00	\$249.60
<b>Monthly</b>				
1. Utility Stakeouts	1	12	\$48.00	\$576.00
<b>Quarterly</b>				
1. Mainline Flushing	1	4	\$48.00	\$192.00
2. Customer Meter Reading/Billing/Collections	4	16	\$48.00	\$768.00
3. Private Fire System Testing/Coordination/Inspection	2	8	\$48.00	\$384.00
<b>Semi-Annually</b>				
1. String Trimming All Hydrants	1	2	\$48.00	\$96.00
<b>Annually</b>				
1. Hydrant and Valve Maintenance (9)	1	9	\$48.00	\$432.00

**Total Annual Cost: \$3,446.40**  
**Budgetary Cost: \$3,500.00**

<b>Potential Additional NYSDOH Requirements: (1)</b>
1. Vulnerability Assessment
2. Emergency Response Plan
3. Lead and Copper Testing (Annually for 3 years, then every 3 years)
4. NYSDOH Operator Reports (Monthly)
5. Asbestos Waiver
6. Bacteriological Testing (Monthly)
7. Disinfection Byproducts Sampling
<b>Estimated Cost Range: \$2,000 to \$5,000</b>
*Above can be avoided if NYSDOH allows the Phase 1 STAMP area be included in the Town of Alabama Public Water Supply

**Additional Services "At Cost":**

1. Any watermain/hydrant leaks/breaks will be repaired and billed "at cost"
2. Any capital improvements requested will be billed "at cost"

10.

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**EXHIBIT B**  
**BOUNDARY MAP OF STAMP SITE**

### **Water facilities operation and maintenance agreement**

**Discussion:** The Town of Batavia has provided an agreement for the operation and maintenance of the water facilities for STAMP Water Works Corp.

**Fund Commitment:** \$3,500. This amount will need to be modified as more tenants come on board at STAMP and costs change based on usage.

**Board Action Request:** Approval of the Agreement for Operation and Maintenance of Water Facilities for STAMP Water Works, Corp., Inc.

**AGREEMENT FOR OPERATION AND MAINTENANCE  
OF WATER FACILITIES FOR  
STAMP WATER WORKS, INC.**

**THIS AGREEMENT**, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the **TOWN OF BATAVIA**, a Municipal Corporation of the State of New York, with offices located at 3833 West Main Street Road, Batavia New York 14020, (hereinafter “Batavia”); and the **STAMP WATER WORKS, INC.**, a Transportation Corporation of the State of New York, with offices located at 99 MedTech Drive, Suite 106, Batavia, NY 14020, (hereinafter “SWWC”); (hereinafter collectively referred to as the “Parties”).

**WITNESSETH:**

**WHEREAS**, Batavia has previously entered into a Water Supply Agreement with the County of Genesee, whereby the County supplies an adequate quantity of water for use by Batavia’s residents who are obtaining water services, and

**WHEREAS**, the Genesee County Economic Development Center (“GCEDC”) has previously entered into a Water Supply Agreement with the County of Genesee, which will be assigned to SWWC in accordance with its terms (the “Genesee Water Supply Agreement”), whereby the County supplies at a minimum of two hundred (200,000) gallons per day for use by tenants of the STAMP Site who are obtaining water services, and

**WHEREAS**, the GCEDC and its affiliate, the Genesee Gateway Local Development Corporation (“GGLDC”), have been working for the last several years on the development of the Western New York Science & Technology Advanced Manufacturing Park (“STAMP”), a planned advanced manufacturing campus on approximately 1,262 acres of land located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway in the Town (“STAMP Site”); and

**WHEREAS**, at full build out, STAMP will be a high technology campus with the potential to accommodate over 6 million square feet (“sf”) of advanced technology manufacturing and related uses and to create up to approximately 10,000 jobs; and

**WHEREAS**, the GGLDC has formed SWWC under New York State Transportation Corporation Law to own, operate and maintain the onsite water system at the STAMP Site,

**WHEREAS**, an onsite water distribution system will be constructed within the STAMP Site consisting of initially approximately 5,000 linear feet of new 12-inch diameter water main, together with all related hydrants, valves, apparatus, conduits, pipes, casings, meters and manholes, to also include all interests in real property of any kind or nature to the extent assignable, to be installed within the STAMP Site as more fully described on the Boundary Map for said STAMP Site attached hereto as Exhibit B (hereinafter referred to collectively as the “Facilities” or the “Project”), with future extensions and installations of water lines to be done as tenants commit and build at the STAMP Site, and

**WHEREAS**, SWWC has established the STAMP Site to provide water services (hereafter “Water Service Area”), and

**WHEREAS**, SWWC desires to contract for the operation and maintenance of the Facilities, as well as for the billing and collection of the costs to provide and pay for the water service, and

**WHEREAS**, Batavia will lease the Facilities from SWWC in order to perform the services and responsibilities as set forth herein, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. SWWC does hereby lease the Facilities to the Town of Batavia for the term as hereinafter set forth in this Agreement.
2. The leased Facilities include replacements, additions, betterments and improvements, which may hereinafter during the term of this Agreement be furnished and installed within or on behalf of the Water Service Area by SWWC .
3. Batavia agrees to operate and maintain the entire Facilities and to distribute water on behalf of SWWC to the Water Service Area, using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The schedule of services to be provided under this Agreement are more fully set forth on EXHIBIT A, attached hereto and made a part hereof, identified as the tasks to be performed Daily, Weekly, Monthly, Quarterly, Semi-annually and Annually (hereinafter, “Fixed Rate Services”).

11.

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4. For the provision of the Fixed Rate Services by Batavia to the SWWC, the SWWC agrees to pay Batavia a fixed annual fee which shall cover the period from January 1 to December 31 of each year of this Agreement, as extended from time to time. The annual fee for the first year of operation, which is anticipated to commence January 1, 20-- and end December 31, 20---, shall be the sum of \$3,500.00. This sum is based upon the unit rates for anticipated services to be performed by Batavia over a 12-month period as set forth on Exhibit A. This sum shall be a fixed fee for the entire year, and due no later than March 31 of such year. In succeeding years of this Agreement, as extended, the parties agree to negotiate in good faith as to the annual rate to be paid by SWWC to Batavia for the provision of such Fixed Rate Services.

5. All other services performed by Batavia shall be provided on a time and material basis (the "Time and Material Services"). [Batavia shall not perform Time and Material Services without first obtaining the permission or consent from SWWC to perform such Time and Material Services.] "Excepting circumstances, which in the judgement of the Town, require services to be performed that are beyond ordinary maintenance, and must be completed on an emergency basis to protect the integrity of the system, without enough time to obtain prior SWWC consent." Materials shall be billed to SWWC at Batavia's cost. In the event labor is contracted to an outside vendor, the actual cost incurred by Batavia for such contracted labor shall be billed by Batavia to SWWC. In the event Batavia force labor is utilized, such labor costs shall be billed by Batavia to SWWC at Batavia's then-applicable wage rates, plus 40% for administrative overhead, benefits, and supervision. Time and Material Services shall include:

- a. additional services required to be performed by New York State Department of Health, including but not limited to those tasks outlined as "Potential Additional NYSDOH Requirements" on **EXHIBIT A**, attached hereto;
- b. capital improvements, if any; and
- c. repairs, which for purposes of this Agreement are defined as any project beyond ordinary maintenance resulting from damage or defects in materials, design and/or construction, and involving replacement of facilities or components before the expiration of their period of probable usefulness.

Payment for Time and Material Services shall be made by SWWC to Batavia within 30 days of invoice delivered by Batavia to SWWC accompanied by receipts and supporting documentation reasonably acceptable to SWWC, except for any amounts disputed by SWWC in good faith.

6. All performance of services that will be provided by Batavia shall be pursuant to Subpart 5-1, Public Water Supplies of the New York State Sanitary Code, Batavia's Water Ordinance, (hereinafter the "Ordinance"), and the terms of SWWC's water supply agreements with customers. All services to be provided by Batavia, including Fixed Rate Services and Time and Material Services, shall be provided by Batavia using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The Ordinance may be amended from time to time by Batavia. However, Batavia agrees to provide SWWC at least forty-five (45) days advance written notice before implementing any such amendments. During this forty-five (45) day period, the Supervisor from Batavia and President of SWWC shall meet at least once to discuss the proposed Ordinance changes.

7. Upon request, Batavia shall supply to SWWC copies of any test reports required by the New York State Department of Health.

8. Batavia shall read all meters and invoice the customers of the Water Service Area, for the amounts established and amended by SWWC. SWWC shall set the rates and penalties and/or any other charges to be collected by Batavia.

9. All Batavia invoices to the Water Service Area customers included in this Agreement, shall be due and paid by such customers according to the terms of the Ordinance, in effect as of the date of the invoice for such water. In the event that any such customer is delinquent for more than ninety (90) days, SWWC shall have in effect and shall maintain throughout this Agreement rules and regulations to enforce collection of such charges.

10. At least monthly, Batavia will transfer all money collected directly to an account designated by SWWC, and Batavia shall notify SWWC when any customer payments are delinquent.

11. Customers within the Water Service Area shall purchase water to serve present and future needs of this Water Service Area pursuant to the Genesee Water Supply Agreement, and any other applicable water supply agreement.

12. A map of the Water Service Area service areas to be served by SWWC is annexed hereto and made a part of this Agreement as **EXHIBIT B**. This map shall be amended as necessary from time to time to reflect any customers added by the Water Service Area. Any such amendment

that expands or extends the Water Service Area, shall be approved by Batavia and shall not negatively affect supply or service to existing Town of Batavia service area customers.

13. All extensions to the Water Service Area after the execution of this Agreement shall be made under the exclusive control and jurisdiction of SWWC and shall be subject to the provisions of the Transportation Corporation Law and any amendments thereto. In the event that SWWC shall form one or more extensions, SWWC shall have the exclusive right to determine the amount of any fee to be charged to any such extension and to be paid to it by the customers in the extension for the right to connect to the existing Facilities of the Water Service Area. The fee shall belong exclusively to SWWC, and Batavia shall have no right or interest to this fee or any other charges related thereto.

14. It is understood and agreed that, except as otherwise set forth in this Agreement, Batavia makes no guarantee as to the pressure, quantity, quality or continuity of service, and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure in the supply of water whether caused by shutting off water in case of accident, or for alterations, extensions, connections or repairs or for any other cause of any kind or nature.

15. In the event of an emergency or other necessity, Batavia shall have the right to shut off or reduce the flow of water for such periods that it deems necessary.

16. In the event that Batavia deems it necessary to shut off or reduce the flow of water supply, Batavia shall provide tenants of the STAMP Site with reasonable advance notice when possible. Batavia shall restore water supply as soon as practicable. In such cases, SWWC shall have the right to request that Batavia temporarily turn off its transmission main and SWWC shall be able to temporarily obtain water from another source, but only until such time as the restorative measures taken by Batavia have been inspected and approved by Batavia's Water Department.

17. If Batavia deems that there is a condition in the Water Service Area that could contaminate the water supply, Batavia will notify SWWC, and SWWC will correct the condition as soon as practicable. Batavia may temporarily discontinue water service to the Water Service Area until the necessary corrections have been made.

18. In the event that a water emergency is declared by Batavia, Batavia shall notify the SWWC President and request that the SWWC President perform the following: (i) cause or use all reasonable efforts to cause the SWWC to declare a similar emergency with respect to all water supplied to customers within the Water Service Area and (ii) use all commercially reasonable



efforts to cause the SWWC to duplicate any emergency measures taken by Batavia during such water emergency.

19. SWWC shall immediately notify Batavia of any information or complaints that it receives from customers within the Water Service Area; as well as any problems or difficulties relating to the Facilities and the water distribution system.

20. There are no other Agreements or understandings, either oral or written, by and among the parties effecting this Agreement. No changes, addition or deletions of any portions of this Agreement shall be valid or binding upon the parties hereto, unless the same is approved in writing by the parties.

21. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of both parties.

22. This Agreement shall be binding upon and shall inure to the benefit of both of the parties hereto and their respective successors and permitted assigns.

23. This Agreement and any transactions by and between the parties hereunder shall be governed by, construed and interpreted in accordance with the Laws of the State of New York.

24. The parties shall execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purpose and intent of this Agreement.

25. No waiver of compliance with any provision or condition of this Agreement, and no consent provided for herein, shall be effective, unless evidenced by instrument in writing, duly executed by the parties sought to be charged therewith.

26. No failure on the part of either party to exercise and/or any delay in exercising any of its rights hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

27. All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.

28. This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.

29. The term of this Agreement shall be for a period of one (1) year, with the following provisions:



A. This Agreement may be terminated or extended upon a written instrument executed by both Parties.

B. SWWC may terminate this Agreement upon at least 120 days prior written notice to Batavia.

C. Batavia may terminate this Agreement upon at least 120 days prior written notice to SWWC.

D. Upon termination of this Agreement, master meters must be installed (if not already installed) in the Water Service Area at no cost to the Town Batavia.

**[SIGNATURES FOLLOW ON SUCCEEDING PAGES]**

**IN WITNESS WHEREOF** the parties have last signed this Agreement the day and year first written above.

TOWN OF BATAVIA

(SEAL)

\_\_\_\_\_  
Gregory H. Post, Supervisor

State of New York }  
County of Genesee } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned, personally appeared Gregory H. Post, 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

**IN WITNESS WHEREOF** the parties have last signed this Agreement the day and year first written above.

STAMP Water Works, Inc

(SEAL)

\_\_\_\_\_, President STAMP Water Works, Inc.

State of New York}  
County of Genesee}ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
SCHEDULE OF SERVICES**

<b>Frequency &amp; Task</b>	<b>Hours/Task</b>	<b>Total Hours</b>	<b>Rate/Hour</b>	<b>Cost</b>
<b>Daily</b>				
1. None	N/A	0	\$48.00	\$0.00
<b>Weekly</b>				
1. Quality Sampling: Chlorine Residual, Ph, Temperature	0.2	10.4	\$48.00	\$499.20
2. Security Checks	0.1	5.2	\$48.00	\$249.60
3. Master Meter Reads	0.1	5.2	\$48.00	\$249.60
<b>Monthly</b>				
1. Utility Stakeouts	1	12	\$48.00	\$576.00
<b>Quarterly</b>				
1. Mainline Flushing	1	4	\$48.00	\$192.00
2. Customer Meter Reading/Billing/Collections	4	16	\$48.00	\$768.00
3. Private Fire System Testing/Coordination/Inspection	2	8	\$48.00	\$384.00
<b>Semi-Annually</b>				
1. String Trimming All Hydrants	1	2	\$48.00	\$96.00
<b>Annually</b>				
1. Hydrant and Valve Maintenance (9)	1	9	\$48.00	\$432.00

**Total Annual Cost: \$3,446.40**  
**Budgetary Cost: \$3,500.00**

<p><b>Potential Additional NYSDOH Requirements: (1)</b></p> <ol style="list-style-type: none"> <li>1. Vulnerability Assessment</li> <li>2. Emergency Response Plan</li> <li>3. Lead and Copper Testing (Annually for 3 years, then every 3 years)</li> <li>4. NYSDOH Operator Reports (Monthly)</li> <li>5. Asbestos Waiver</li> <li>6. Bacteriological Testing (Monthly)</li> <li>7. Disinfection Byproducts Sampling</li> </ol> <p><b>Estimated Cost Range: \$2,000 to \$5,000</b></p> <p><small>*Above can be avoided if NYSDOH allows the Phase 1 STAMP area be included in the Town of Alabama Public Water Supply</small></p>
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**Additional Services "At Cost":**

1. Any watermain/hydrant leaks/breaks will be repaired and billed "at cost"
2. Any capital improvements requested will be billed "at cost"

11.

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**EXHIBIT B**  
**BOUNDARY MAP OF STAMP SITE**

**Water rate calculation**

**Discussion:**

See attached spreadsheet for discussion.

STAMP Water Works Corp.  
Water rate calculation

	Per 1,000 gallons MCWA Sourced	Per 1,000 gallons NCWD Sourced
Purchase of water	\$ 2.48	
Unbilled purchase of water (flushing)	0.10	
Genesee County surcharge	1.20	
System reserve	0.02	
Operation and maintenance	0.02	
	<u>\$ 3.82</u>	