

WATER SUPPLY AGREEMENT

THIS AGREEMENT, made this 21st day of June, 2017, by and between the Seneca Nation of Indians, a sovereign Nation and federally recognized Indian Tribe, maintaining its principal business office at 3582 Center Road, Box 231, Salamanca, New York 14779 and 1490 Route 438, Irving, New York (hereafter referred to as the "Nation" or "SNI") and the Town of North Collins Lawtons Water District, (hereafter referred to as "Lawtons Water"), maintaining its principal business office at 10569 Main Street, PO Box # 2, North Collins, NY 14111;

WITNESSETH:

WHEREAS, Lawtons Water desires to purchase water from SNI in order to provide same to the residents of the hamlet of Lawtons; and

WHEREAS by Resolution dated May 13, 2017, the SNI Tribal Council has evidenced the Nation's willingness to sell water to Lawtons Water from the SNI water system, subject to the terms of this Agreement; and

WHEREAS, by Resolution dated June 14, 2017, the North Collins Town Board evidenced its willingness to purchase water from SNI on behalf of the Lawtons Water District, subject to the terms of this Agreement; and

WHEREAS, this Agreement is premised upon the following provisions and understandings: (1) this agreement is premised upon the mutual assumption that the Nation has and will have an adequate water supply to meet Lawtons Water demand for water; and (2) that Lawtons Water expressly agrees that it will not resell any water so supplied to any third party except as may be specifically agreed to in writing by the Nation; and (3) any sale of water to Lawtons Water shall be upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of mutual covenants and agreements hereinafter contained, the parties do hereby agree as follows:

1. Lawtons Water will construct, provide and maintain, at its sole cost and expense, all water mains, services connections, hydrants, meters and other appurtenances within the Lawtons Water permissive service area.
2. During the term of this agreement, the Nation agrees that it will sell and deliver to

Lawtons Water through the Nation's present system of water mains to the "master meter" of Lawtons Water located in Lawtons, New York, from the Nation's water supply, such amount of potable water which shall not exceed a daily average of up to 20,000 gallons per day, computed monthly and any additional amount to be defined as "excess supply."

3. Water rates shall be determined and billed by SNI to Lawtons Water as follows.

A. The Nation shall set a base water rate for each calendar year. The base rate shall be established by the Nation in January of each year. The base rate may be adjusted at any time upon thirty days written notice in the event there is an actual change in supply cost to the SNI. The base water rate shall not exceed the existing rate at the time set by the Erie County Water Authority for general metered purposes, or such other rates as may be applicable to the Nation's water supply. The parties intend to link the cost of water supplied by the Nation to Lawtons Water to the cost actually paid by the Nation for equivalent external water supply. Therefore, the Parties expressly agree the Nation shall not be obligated to provide any water to Lawtons Water if doing so would result in "actual cost" to the Nation (actual cost shall be defined as any cost to the Nation in obtaining water supply which is in excess of the price paid from resale of same to Lawtons Water) and that the Nation shall not be obligated to provide any water if such sale would jeopardize or adversely affect the availability of any unrelated, external, water supply to the Nation for the Nation's internal use.

B. In the event that excess supply is available for sale by the Nation, and, in such event, should Lawtons Water usage exceed the average daily consumption provided above, then in such event, Lawtons Water shall pay an excess demand charge, equal to a three (3%) percent surcharge on the above base water rate, for all water use greater than an average of 20,000 gallons per day, calculated on an average monthly basis.

C. Lawtons Water shall pay to the Nation for the actual cost of annual meter testing as may be conducted from time to time by the Nation to test the accuracy of the Lawtons Water master meter or other meters utilized by the Nation for this purpose. The Nation will provide the results of such testing to Lawtons Water. Alternately, the Nation may establish its own meter to verify its rate of supply to Lawtons Water and nothing herein shall be construed as limiting Lawtons Water's ability to seek additional testing of such meter at Lawtons Water expense so as to verify the accuracy of same.

D. The Nation agrees to notify Lawtons Water as soon as practicable after determining the applicable rate for any calendar year. Any objections to said water rate shall be made in writing to the Nation within thirty (30) calendar days after Lawtons Water's receiving such notice, provided that rate adjustments shall not be considered objectionable if said adjustments merely result from a demonstrable "pass through" of cost borne by the Nation from its external supplier(s).

E. Lawtons Water agrees to pay for all water supplied by the Nation on a monthly basis, as follows.

- i. Commencing with the Nation's first monthly bill, generated and billed on a monthly basis, and calculated from the agreed per gallon base rate multiplied by the actual average daily useage of water used by Lawtons Water in the prior thirty day period and multiplied by the calendar days in the prior month. Billing by the Nation to Lawtons Water will commence one month after the master meter is turned on and shall thereafter be billed on the 5th day of each month thereafter.
- ii. Lawtons Water shall be liable for and shall pay such additional amounts as follows:
 - a. Late Fees: In the Nation's discretion a late fee may be assessed for any payment made by Lawtons Water more than thirty (30) days after the date contained on the billing document. Late fees may be assessed as:
 - b. An assessment corresponding to any late fee assessed by any Nation "external" supplier, or by a penalty of three percent (3%) of the outstanding balance, whichever amount is greater.

4. In the event of a suspected meter failure in a given month, and in the Nation's sole discretion, the Nation may bill based upon any of the following: 1) Lawtons Water consumption in the last calendar month prior to the given month; 2) Lawtons Water consumption in the same month in a prior calendar year; or 3) upon an average of the figures calculated under 1) and 2) above; or at any other rate that may be agreed to in writing by the parties.

5. The Nation reserves the right to limit the supply of water under this Agreement in the event that the Nation determines it is unable to meet the demands of Lawtons Water regardless of whether such inability results from:

- i. Problems in the Nation's "internal" supply, including but not limited to inadequate systemic-yield or inadequate supply caused by events, whether within or outside the Nation (e.g. unusual droughts, water main breaks or malfunctions, or equipment failure, or degradation of water quality through transporting through the Nation's mains); or,
- ii. The interruption of the Nation's "external" supply of supplies (including but not limited to any interruption attributable to the non-existence of an agreement considered satisfactory by the Nation with the Erie County Water Authority or any act of the Inter-Community Water Board with respect to supplying the Board's members, including with respect to the Nation as a constituent Board member); or
- iii. Increased domestic demand (and a Nation determination that it has insufficient surplus water to meet Lawtons Water demands after meeting the Nation's needs); and
- iv. "Legal impossibility", "impracticability", "frustration of purpose", any intervening acts of third parties, or any other cause.

6. Lawtons Water shall be responsible for all required monitoring of water quality within the 'Lawtons Water System' (including such monitoring as may be required to test 'water quality' for inorganic, organic, radiological, physical quality, turbidity, and microbiological reasons). The parties further agree that the water systems of both parties shall be considered wholly separate and wholly independent of one another, whether for inorganic, organic, radiological and physical quality purposes. The parties further agree that the water systems of both parties shall be considered wholly separate and wholly independent of one another for microbiological and distribution turbidity and that if any violation of applicable standards pertaining to any maximum contaminant level is either perceived or discovered and

documented in either the wholly separate Nation System or wholly separate Lawtons Water system, then any public notification as may be required by applicable standards applicable to the Nation to the wholly separate Nation system's customers, or Lawtons Water notice as required by standards applicable to Lawtons Water to the wholly separate Lawtons Water system's customers) and nothing in this agreement shall be construed as requiring any Notice by the Nation to Lawtons Water and/or Lawtons Water customers.

7. All notices and other communications related to this Agreement shall be delivered in writing and shall be deemed to have been duly given if delivered or mailed by certified mail, return receipt requested, postage prepaid, as follows:

To Nation: President, Seneca Nation of Indians
 1490 Route 438
 Irving, NY 14081

To Lawtons Water: Town Supervisor
 Town of North Collins
 Lawtons Water District
 PO Box 2
 10569 Main Street
 North Collins, NY 14111

Additionally, the parties may "consent" to notice by Facsimile, as evidenced by return fax bearing an authorized signature below the date and the phrase: "service of Notice dated (_____) accepted by facsimile."

8. Any modification or amendment to the mutual obligations under this Agreement shall be subject to the formal approval and ratification of the respective governing bodies of the parties to this Agreement, provided however that this section shall not be construed as reducing, restricting or otherwise limiting the Nation's sole and exclusive rights hereunder.

9. Sovereign Immunity. By entering into this agreement the Nation does not intend to waive its sovereign immunity and nothing contained herein shall be construed as limiting in any way or even partially waiving the Nation's sovereign immunity.

10. This Agreement constitutes the entire agreement between the parties and

supersedes any prior agreement between the parties relating to its subject provided that nothing herein shall be construed as altering the parties' respective obligations under any other agreement or as altering the Nation's rights under any other agreement. This agreement and any right or obligations under this agreement shall not be assigned without the express written consent of the Seneca Nation of Indians.

11. This agreement between the Nation and the Lawtons Water District shall remain in effect for a period of thirty (30) years, commencing upon completion of construction and installation of the master meter referred to in paragraph 2 and initial useage by the Lawtons Water District and ending 360 months thereafter.

12. Lawtons Water and its signatory affirmatively represent that the signatory is duly authorized, whether by Town of North Collins legislative act or by such other legislative act(s) as may be required, to act on behalf of and to bind the Lawtons Water District and its constituent members to the terms of this agreement.

IN WITNESS WHEREOF, the Parties hereto agree to be bound by the terms and conditions as set forth above on this 26th day of June, 2017.

THE SENECA NATION of INDIANS
BY 

Todd Gates, President
Dated: June 26, 2017

THE LAWTONS WATER DISTRICT
BY 

John Tobia,
North Collins Town Supervisor
Dated: June 26, 2017