

INTERMUNICIPAL AGREEMENT

Between

THE VILLAGE OF SCHUYLERVILLE

And

THE VILLAGE OF VICTORY

Dated June 22, 2001

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AGREEMENT

THIS AGREEMENT is made as of the 22nd day of June, 2001 by and between the Village of Victory, a municipal corporation with offices and principal place of business at 23 Pine Street, Victory Mills, New York 12884 ("Victory") and the Village of Schuylerville, a municipal corporation with offices and principal place of business at 35 Spring Street, Schuylerville, New York 12871 ("Schuylerville").

R E C I T A L S :

A. Victory and Schuylerville are each authorized to acquire, establish, supervise, operate and maintain a system of water works for supplying the Villages and their inhabitants with water (see Village Law, Article 11, §§ 11-1100 et seq.); and are further authorized to create a board of water commissioners to oversee and operate such water system and to establish the composition, powers, duties and responsibilities of such board.

B. Victory and Schuylerville are authorized to enter into an Inter-Municipal Agreement with respect to the joint ownership and operation of a municipal water system, pursuant to the provisions of General Municipal Law, §§ 111 and 119-O, Local Finance Law § 15.00, and New York State Constitution, Art. 8, § 1.

C. Victory and Schuylerville have previously entered into such an agreement, dated September 8, 1980, concerning the joint ownership, operation and maintenance of a water system for the benefit of the residents and property owners of the Villages of Victory and Schuylerville (the "Joint Water System").

D. The New York State Department of Health has required Victory and Schuylerville to upgrade and improve the Joint Water System in certain respects. Victory and Schuylerville desire to seek and obtain funding for these improvements and, in connection therewith, wish to

modify and amend in certain respects the Inter-Municipal Agreement made by them in 1980.

NOW, THEREFORE, in reliance upon the representations and warranties made herein, and in consideration of the premises, and the promises, covenants and agreements herein made, and the mutual benefits to be derived from this Agreement, the parties hereby understand and agree as follows:

SECTION 1.0

DEFINITIONS

As used herein, the following words, terms or phrases shall, unless the context clearly indicates otherwise, have the following meanings:

Section 1.1: **"Agreement"** means this Inter-Municipal Agreement, together with all attachments, exhibits, schedules, amendments, modifications and updates thereto.

Section 1.2: **"Approved Discretionary Improvements"** means Discretionary Improvements which are authorized and approved by Victory and Schuylerville pursuant to Section 3.2(b) of this Agreement.

Section 1.3: **"Average Annual Use Unit Ratio"** has the meaning given in Section 7.2(c)(v).

Section 1.4: **"Board of Water Management"** means the governing board of the Joint Water System. The Board of Water Management shall have the powers and duties which are enumerated in this Agreement.

Section 1.5: **"Cooperative Services"** has the meaning given in Section 4.8 hereof.

Section 1.6: **"Discretionary Improvements"** means any capital repairs, replacements, additions, enlargements or modifications to the Joint Water System which are considered by the Board of Water Management to be prudent or advisable, but which are not Mandatory

Improvements.

Section 1.7 **"Inside User"** means a User whose benefitted property is located partly or wholly within the corporate limits of Victory or Schuylerville.

Section 1.8: **"Joint Account"** has the meaning given in Section 4.6 hereof.

Section 1.9: **"Joint Capital Costs"** means the costs of any Mandatory Improvements and any Approved Discretionary Improvements; and shall include Joint Debt Service Payments and funds necessary to establish or maintain appropriate capital reserve accounts.

Section 1.10: **"Joint Debt"** means a debt contracted by the Water management Board or the Villages of Victory and Schuylerville for or in relation to the Joint Water System, and for which the joint faith and credit of Victory and Schuylerville is pledged for the payment thereof; a debt owed on account of the acquisition of real property the title to which has vested in Victory and Schuylerville, or the title to which Victory and Schuylerville have agreed to accept pursuant to a contract therefor, and for which payment has not been made; a debt arising from contracts for goods and services furnished or supplied to or for the benefit of the Joint Water System; or involuntary indebtedness incurred in relation to the operation of the Joint Water System.

Section 1.11: **"Joint Debt Service Payments"** means the payments required to be made to lenders on account of principal, interest and service charges with respect to Joint Debt.

Section 1.12: **"Joint Operation and Maintenance Costs"** means the reasonable and necessary costs of operating and maintaining the Joint Water System on a day to day basis, including, but not limited to, the cost of producing water, operating filtration and treatment plants, maintaining and protecting wells, reservoirs, water sheds and other water sources, repairing and maintaining transmission lines, pump stations, chlorination plants, water tanks and other equipment and apparatus, and providing administration and personnel needed in the yearly operation of the same.

Section 1.13: **"Joint Water System"** has the meaning given in Section 2.1 hereof and

includes, but is not limited to, the following:

(a) the real property located in the Town of Easton, having tax map no.: _____ and being more particularly described in: (i) a deed of conveyance from Ralph and Rena Remington to the Village of Schuylerville, dated February 20, 1923 and recorded in the Washington County Clerk's Office on the 11th day of April, 1923 in Book 180 of Deeds at page 105; (ii) the real property located in the Town of Easton, having tax map no. _____ and being more particularly described in a deed of conveyance from Ralph and Rena Remington to the Village of Schuylerville, dated October 11, 1949 and recorded in the Washington County Clerk's office on the 20th day of October, 1949 in Book 284 of Deeds at page 129; and (iii) the real property located in the Town of Easton, having tax map no. _____ and being more particularly described in a deed of conveyance from Albert R. Coffin and Ruth L. Coffin to the Village of Schuylerville, dated June 19, 1968 and recorded in the Washington County Clerk's office on the 20th day of June 1968 in Book 411 of Deeds at page 1075 (the "Easton Property").

(b) the real property located in the Village of Schuylerville, having tax map no.: _____ and being more particularly described in a deed of conveyance from Francesa Villa to the Village of Schuylerville, dated May 24, 1934 and recorded in the Saratoga County Clerk's Office on the 26th day of June, 1934 in Book 380 of Deeds at page 99 (the "Fort Hardy Property").

(c) the real property located in the Village of Victory, having tax map no.: 157.77-1-1 and being more particularly described in a deed of conveyance from Mary B. Gravelle and Clare M. McGuire to the Village of Victory, dated November 19, 1973 and recorded in the Saratoga County Clerk's Office on the _____ day of _____, 1973 in Book 933 of Deeds at page 6 (the "Victory Water Tank Property").

(d) the real property located in the Village of Victory, having tax map no.: 169.-2-13 and being more particularly described in a deed of conveyance from Theresa McCarty and Ronald S. McCarty to the Village of Victory, dated July 25, 1960 and recorded in the Saratoga County

Clerk's Office on the 7th day of August, 1962 in Book 725 of Deeds at page 222 (the "Victory Water Plant Property");

- (e) the water source and water shed located on the Easton Property;
- (f) the wells and pump station located on the Fort Hardy Property;
- (g) the water transmission line from the Easton property to the Fort Hardy pump station;
- (h) the transmission mains, laterals and service lines from the Fort Hardy pump station to the properties connected to the Joint Water System throughout Victory and Schuylerville, and to the properties outside Victory and Schuylerville who receive water from the Joint Water System as Outside Users;
- (i) the Water Tank located on the Victory Property;
- (j) the filtration, treatment and pump station located at the Victory Water Plant Property;
- (k) the stand pipes, chlorination equipment, filtration equipment, pumps and pumping equipment, replacement parts, chemical supplies, and other items of property used in connection with the operation and maintenance of the Joint Water System.

Section 1.14: "**Mandatory Improvements**" has the meaning given in Section 3.2(a) hereof.

Section 1.15: "**Outside User**" means a User whose benefitted property is located wholly outside the corporate limits of Victory and Schuylerville.

Section 1.16: "**Outside User Revenue**" means the revenue received from Outside Users for the consumption of water supplied by the Joint Water System, or for the extension of service to a benefitted property, located wholly outside the corporate limits of the Villages of Victory and Schuylerville.

Section 1.17: "**Person**" means any individual, corporation, limited liability company, partnership, limited partnership, trust, association, or other legal entity.

Section 1.18: "**Stranded Costs**" means the Joint Debt, if any, existing on the date of the

expiration or termination of this Agreement.

Section 1.19: “User” means a Person who consumes water supplied by the Joint Water System.

Section 1.20: “Use Unit” means the average annual amount of water, measured in cubic feet, consumed by the occupants of a single family home for normal household purposes.

Section 1.21: “Use Unit Ratio” means the ratio of total Inside User Use Units in Victory to the total Inside User Use Units in Schuylerville.

SECTION 2.0

STATEMENT OF PURPOSE; MANAGEMENT AND ADMINISTRATION

Section 2.1: Statement of Purpose. The purpose and intent of this Agreement is to authorize Victory and Schuylerville to continue to jointly acquire, own, construct, provide, maintain and operate, as a single unit, a water works system -- including, without limitation, real estate, water sheds, water-rights, aqueducts, reservoirs, pipes, pumping stations, filtration and treatment plants and all necessary equipment in connection therewith -- for the purpose of procuring and conveying a supply of potable water to said Villages and their inhabitants; to contract or incur “joint indebtedness”, as that term is defined in Section 15.00(b) of the New York Local Finance Law, for or in relation to such water works system; and to establish rules and procedures for the orderly and efficient conduct, administration and management of such system. The water system so owned and operated is hereinafter referred to as the “Joint Water System.”

Section 2.2: Management and Administration. The ownership, operation and maintenance of the Joint Water System shall be administered and accomplished by Victory and Schuylerville through a permanent governing body, to be known as the Board of Water Management, which body shall have the powers and duties hereinafter enumerated. Subject to

SCHEDULE "A"

JOINT WATER SYSTEM ASSETS & LIABILITIES

ASSET

LOCATION

- The land, buildings, fixtures, equipment and other property referred to and described in Section 1.13 of this Agreement

- The Ford 555E Backhoe loader referred to and described in the parties' Municipal Cooperation Agreement, dated June 3, 1997

- The existing inventories of equipment, parts and supplies kept and maintained by the parties' respective Departments of Public Works

LIABILITY

OBLIGOR

- Bond Anticipation Renewal Note #4, dated May 30, 2001, payable to Glens Falls National Bank and Trust Company having a principal balance of \$7,716.30

Village of Victory

- Rural Development Agency Loan # 91-01, having a principal balance of \$60,000.00

Village of Victory

such limitations as may hereinafter be provided, the Board of Water Management is hereby delegated, and shall hereafter have and be authorized to exercise and perform, all powers, rights, privileges and prerogatives to own, maintain and operate a water works system for the distribution of water as may from time to time be afforded to Victory and Schuylerville under the provisions of Article 11 of the Village Law of the State of New York, and other applicable provisions of law, and all laws amendatory and supplemental thereto.

SECTION 3.0

JOINT WATER SYSTEM

Section 3.1: Existing System. The assets and liabilities which currently constitute the Joint Water System are described on Schedule "A" hereto. From and after the date of this Agreement, said assets and liabilities shall be deemed the joint assets and liabilities of Victory and Schuylerville, to be used and disposed of in accordance with the provisions of this Agreement. Each party shall execute, acknowledge and deliver to the other such deeds, bills of sale, undertakings and other instruments of conveyance or title as may reasonably be necessary to accomplish and verify the parties' joint ownership of the assets and liabilities described on Schedule "A".

Section 3.2: Future Improvements and Extensions.

(a) Mandatory Improvements. The Water Management Board shall make such capital repairs, improvements and/or modifications to the Joint Water System as may from time to time be required by any Federal, State or local governmental board, agency, department or commission having regulatory jurisdiction over the joint water system (e.g.; U.S. Environmental Protection Agency, NYS Department of Health, etc.) in order to: (i) obtain and maintain compliance with all federal, state and local laws, rules, orders, regulations and rulings applicable to the ownership and operation of a municipal water system and, in particular, to the Joint Water

System; and (ii) provide a safe and adequate supply of potable water to the residents and business owners of Victory and Schuylerville. Such capital repairs, improvements and/or modifications are hereinafter referred to as the "Mandatory Improvements." By way of illustration of the foregoing general statement, but not of limitation thereof, the Water Management Board shall make improvements to the Joint Water System as described on Schedule "B" hereto as soon as reasonably practicable.

Whenever the Water Management Board determines that Mandatory Improvements are required to be made to the Joint Water System, it shall cause to be prepared a plan, estimate and other data pertaining thereto -- including a statement of the reason or reasons why the improvements are required to be made -- and transmit the same to Victory and Schuylerville through their elected Mayors. The estimate shall state the total amount of money required to be contributed by Victory and Schuylerville, in addition to any amounts previously contributed, to pay for the Mandatory Improvements; and the apportionment of such cost shall be determined in accordance with the provisions of Section 4.1 of this Agreement. The parties shall then be required to provide to the Water Management Board the funds indicated in the estimate, in order to fund the construction of the Mandatory Improvements.

(b) Discretionary Improvements. The Water Management Board may, upon approval by Victory and Schuylerville, make such other and further capital repairs, improvements and/or modifications to the Joint Water System as from time to time may be considered prudent or advisable. Such capital repairs, improvements and/or modifications are hereinafter referred to as the "Discretionary Improvements." Whenever the Water Management Board determines it to be in the best interests of the Joint Water System to make Discretionary Improvements to the Joint Water System, the Board shall cause to be prepared a plan, estimate and other data pertaining thereto -- including a statement of the reason or reasons why the improvements are felt to be advisable -- and transmit the same to Victory and Schuylerville through their elected Mayors.

The estimate shall state the total amount of money required to be contributed by each party, in addition to the amounts previously contributed, to pay for the Discretionary Improvements; and the apportionment of such cost, if approved, shall be determined in accordance with the provisions of Section 4.1 of this Agreement. If such plan and estimate shall be approved by Victory and Schuylerville, the parties shall then be required to provide the funds indicated in said estimate in order to fund the construction of the Discretionary Improvements; and the apportionment of such cost shall be determined in accordance with Section 4.1 of this Agreement. If Victory and Schuylerville do not approve such plan and estimate, however, then the Water Management Board shall not be authorized to proceed with the performance of the recommended improvements.

(c) Extensions and Enlargements. The Water Management Board shall, upon the request of either party, cause the Joint Water System to be extended or enlarged -- through the installation of new water mains or the addition of new water sources and/or pumping stations -- to serve additional properties within the corporate limits of Victory and/or Schuylerville; and the apportionment of the costs of such extensions or enlargements shall be determined in accordance with the provisions of Section 4.1 of this Agreement. Notwithstanding the foregoing, the Water Management Board shall have the authority to refuse the request of the party interested in the extension or enlargement of the Joint Water System if the Board determines that such requested extension or enlargement is not warranted by the anticipated revenue to be derived therefrom; provided, however, that in the event of such a refusal, the Water Management Board shall nonetheless be required to make the requested extension or enlargement in the event that the requesting party agrees to pay from its own funds the costs associated therewith, to collect such costs from the owners of the land benefitted by such extension or enlargement, or abutting on the street where such work is to be done, or to pay such costs partly from its own funds and partly by collection from such benefitted property owners.

Section 3.3: Maintenance and Repairs. The Water Management Board shall make and perform all necessary and appropriate maintenance and repairs to the Joint Water System, including the repair or replacement of any obsolete, inadequate, damaged, destroyed or worn out mains, distribution and supply connections, equipment and apparatus, and the routine maintenance, testing and repair of filtration and treatment facilities, as may from time to time be deemed prudent and appropriate. The parties shall be required to provide adequate funds to pay the costs of such maintenance and repairs, in accordance with the formula for allocation set forth in Section 4.1 of this Agreement. It is expressly agreed that the filtration, treatment and pumping station located at the Victory Water Plant Property shall be repaired, restored to good working condition, and maintained as part of the Joint Water System.

Section 3.4: Ownership of Improvements and Replacements. All land, equipment, apparatus, wells, water rights and other tangible and intangible assets acquired and incorporated into the Joint Water System from and after the date of this Agreement, whether as an addition to the System pursuant to the provisions of Section 3.2 above concerning Improvements and Extensions, or as a replacement or substitution of or for an asset now or hereafter comprising part of the Joint Water System pursuant to the provisions of Section 3.3 above concerning maintenance and repairs, shall be owned jointly by Victory and Schuylerville.

Section 3.5: Right of Re-Acquisition for Certain Contributed Property.

Section 3.5-1: The Easton Property. Should the Board of Water Management determine at any time prior to the expiration, or termination of this Agreement that the Easton Property is no longer needed as an asset of the Joint Water System, then Schuylerville shall have the option, exercisable within 90 days of the date that such determination is made, to re-acquire said property from the Joint Water System on the following terms:

(a) If the Easton Property is improved by any facilities, structures, fixtures or apparatus added or constructed after the date of this Agreement (the "New Improvements"),

Schuylerville shall pay to the Joint Water System, as consideration for the re-acquisition, such sum of money as will compensate the Joint Water System for the then fair market value of the New Improvements.

(b) If the Easton Property is not improved by any "New Improvements", no payment will be required to be made by Schuylerville as consideration for the re-acquisition. In this regard, the parties expressly agree that any facilities, structures, fixtures or apparatus existing on the Easton Property as of the day of this Agreement (the "Existing Improvements") shall, upon Schuylerville's exercise of its right of re-acquisition, be returned to Schuylerville at no cost, "AS IS" and "WHERE IS".

Section 3.5-2: The Victory Property. Should the Board of Water Management determine at any time prior to the expiration or termination of this Agreement that the Victory Property is no longer needed as an asset of the Joint Water System, then Victory shall have the option, exercisable within 90 days of the date that such determination is made, to re-acquire said property from the Joint Water System on the following terms:

(a) If the Victory Property is improved by any facilities, structures, fixtures or apparatus added or constructed after the date of this Agreement (the "New Improvements"), Victory shall pay to the Joint Water System, as consideration for the re-acquisition, such sum of money as will compensate the Joint Water System for the then fair market value of the New Improvements.

(b) If the Victory Property is not improved by any "New Improvements", no payment will be required to be made by Victory as consideration for the re-acquisition. In this regard, the parties expressly agree that any facilities, structures, fixtures or apparatus existing on the Victory Property as of the day of this Agreement (the "Existing Improvements") shall, upon Victory's exercise of its right of re-acquisition, be returned to Victory at no cost, "AS IS" and "WHERE IS".

Section 3.5-3: The Fort Hardy Property. Should the Board of Water Management determine at any time prior to the expiration or termination of this Agreement that the Fort Hardy Property is no longer needed as an asset of the Joint Water System, then Schuylerville shall have the option, exercisable within 90 days of the date that such determination is made, to re-acquire said property from the Joint Water System on the following terms:

(a) If the Fort Hardy Property is improved by any facilities, structures, fixtures or apparatus added or constructed after the date of this Agreement (the "New Improvements"), Schuylerville shall pay to the Joint Water System, as consideration for the re-acquisition, such sum of money as will compensate the Joint Water System for the then fair market value of the New Improvements.

(b) If the Fort Hardy Property is not improved by any "New Improvements", no payment will be required to be made by Schuylerville as consideration for the re-acquisition. In this regard, the parties expressly agree that any facilities, structures, fixtures or apparatus existing on the Fort Hardy Property as of the day of this Agreement (the "Existing Improvements") shall, upon Schuylerville's exercise of its right of re-acquisition, be returned to Schuylerville at no cost, "AS IS" and "WHERE IS".

Section 3.5-4: The Victory Water Tank Property. Should the Board of Water Management determine at any time prior to the expiration or termination of this Agreement that the Victory Water Tank Property is no longer needed as an asset of the Joint Water System, then Schuylerville shall have the option, exercisable within 90 days of the date that such determination is made, to re-acquire said property from the Joint Water System on the following terms:

(a) If the Victory Water Tank Property is improved by any facilities, structures, fixtures or apparatus added or constructed after the date of this Agreement (the "New Improvements"), Schuylerville shall pay to the Joint Water System, as consideration for the re-

acquisition, such sum of money as will compensate the Joint Water System for the then fair market value of the New Improvements.

(b) If the Victory Water Tank Property is not improved by any "New Improvements", no payment will be required to be made by Schuylerville as consideration for the re-acquisition. In this regard, the parties expressly agree that any facilities, structures, fixtures or apparatus existing on the Victory Water Tank Property as of the day of this Agreement (the "Existing Improvements") shall, upon Schuylerville's exercise of its right of re-acquisition, be returned to Schuylerville at no cost, "AS IS" and "WHERE IS".

SECTION 4.0

COSTS AND EXPENSES

Section 4.1: Apportionment of Costs and Expenses. All Joint Capital Costs and Joint Operation and Maintenance Costs shall be allocated and apportioned by the Water Management Board among Victory and Schuylerville as follows:

(a) For the period beginning June 1, 2001 and ending May 31, ~~2001~~2002, Joint Capital Costs and Joint Operation and Maintenance Costs shall be allocated twenty-four percent (24%) to Victory and seventy-six percent (76%) to Schuylerville, in accordance with the estimated Use Units Ratio existing on the date of this Agreement.

(b) From June 1, 2001 to the date, if any, that a system of water meters has been installed in the Joint Water System which enables the Water Management Board to determine the total quantity of water consumed on an annual basis by water users in each Village, the Joint Capital Costs and Joint Operation and Maintenance Costs shall be allocated and apportioned annually among Victory and Schuylerville in accordance with the Use Units Ratio existing on December 31st of each immediately preceding year.

(c) From and after the date, if any, that a system of water meters has been installed in the

Joint Water System as aforementioned, Joint Capital Costs and Joint Operation and Maintenance Costs shall be allocated and apportioned annually among Victory and Schuylerville in the same ratio that the total quantity of water consumed by the users of the Joint Water System in each Village (measured in cubic feet) bears to the total quantity of water consumed system-wide.

Section 4.2: Budget. The Water Management Board shall meet in January of each year to prepare a budget for the Joint Water System for the coming fiscal year of the Villages. This budget shall be submitted to the Mayors of Victory and Schuylerville on or before March 1st, and shall contain the following information:

(a) Expenditures.

(i) a description of any Joint Capital Costs budgeted for the coming fiscal year, and the amount thereof;

(ii) a description of any Joint Operation and Maintenance Costs budgeted for the coming fiscal year, and the amount thereof;

(iii) a description of any Joint Debt Service Payments budgeted for the coming fiscal year, and the amount thereof;

(iv) a description of any contingencies budgeted for the coming fiscal year (including, without limitation, any reserves for emergencies), and the amount thereof; and

(v) a description of any other costs or expenses budgeted for the coming fiscal year, and the amount thereof.

(b) Revenues.

(i) a description of any Outside User Revenue budgeted for the coming fiscal year, and the amount thereof;

(ii) a description of any Inside User connection fee revenue budgeted for the coming fiscal year, and the amount thereof; and

(iii) a description of any other revenue budgeted for the coming fiscal year (other

than water rents and debt service payments to be collected from inside users), and the amount thereof.

(c) Budget Deficit Amount and Payment Allocation.

(i) a description of the net budget deficit amount to be funded by Victory and Schuylerville, and the amount thereof; and

(ii) a proposed allocation between Victory and Schuylerville of the net budget deficit amount based upon the applicable apportionment formula set forth in Section 4.1 above, adjusted for any accumulated Joint Account surplus or shortfall which has been credited or debited to a party, or is projected to be credited or debited to a party, pursuant to Section 4.6 hereof for previous budget years.

(d) Joint Account Credits/Debits.

(i) a description of any credits or debits allowed or taken as adjustments against a party's share of the net budget deficit based upon the existence of Joint Account surpluses or shortfalls, and the amount thereof.

(e) Other.

(i) such other information as may be useful or helpful to the Boards of Trustees of Victory and Schuylerville in reviewing, understanding and acting upon the proposed budget.

Section 4.3: Payment of Proportionate Share. Victory and Schuylerville shall pay their proportionate share of the allocation of net budget deficit set forth in the budget in two (2) equal semi-annual installments, in advance. The first installment shall be due and payable on ~~July~~October 1st and the second on ~~January~~April 1st. Each Village shall receive credit against the payment of their Proportionate Share payments for any water bill receipts received by the Joint Water System from Inside Users of such Village.

Section 4.4: Funding of Proportionate Share. The parties may, at their joint option, fund the payment of its proportionate share of the net budget deficit through tax levy, local or general

assessments, water rates and charges, or any other means permitted by law. Both parties shall utilize the same method to fund the payment of their proportionate shares.

Section 4.5: Establishment of Water Rates. To the extent that the parties jointly utilize the imposition and collection of water rates and rents as a means to fund the payment of their proportionate shares of the net budget deficit and so inform the Water Management Board of this fact, it shall be the responsibility of the Water Management Board to formulate and recommend to each municipality a rate to be charged to users within the corporate limits of that municipality for the consumption of water provided by the Joint Water System. Such rate shall, when taken together with any other monies to be contributed by the municipality from other sources toward the payment of its proportionate share of the net budget deficit, be comprised of amounts necessary to pay the municipality's proportionate share of the net budget deficit projected for all the Joint Water System for the coming fiscal year. The ultimate responsibility for establishing, imposing and collecting water rates and rents shall rest with the Villages.

Section 4.6: Joint Account. The parties shall establish and maintain a Joint Account at the Glens Falls National Bank and Trust Company, into which all proportionate share payments made by Victory and Schuylerville shall be deposited and from which all Joint Water System expenditures shall be made. All Joint Capital Costs and Joint Operation and Maintenance Costs for the Joint Water System shall be paid from this account. Periodically, but no less frequently than annually, the parties shall meet to determine whether there is a shortage or surplus in the Joint Account. If there is a shortage, it shall be allocated between Victory and Schuylerville in the manner set forth in Section 4.1 of this Agreement and each Village will then be required to take all steps necessary to raise the necessary funds to correct such shortage. If there is a surplus in the Joint Account, it shall be allocated between Victory and Schuylerville in accordance with the allocation set forth in Section 4.1 above and each Village shall have the right to determine whether to withdraw its share of the surplus, or to retain such reserve on account for itself in the

Joint Account. Such surplus may not be used to reduce the water rents payable by the Village's Inside Users, if such reduction would cause a disparity to then exist between the rents payable by those Inside Users and the rents payable by the Inside Users of the other Village. The Lead Fiscal Agent for the Joint Water System, shall keep and maintain a set of books and records for the Joint Water System which includes, among other things, separate sub-accounts for each Village reflecting credits and debits for surpluses and shortages in the Joint Account.

Section 4.7: Lead Fiscal Agent. Unless mutually agreed to the contrary, Victory and Schuylerville shall alternate annually as Lead Fiscal Agent of the Joint Water System. The Lead Fiscal Agent shall have the following powers, duties and responsibilities:

- (a) maintain all books and records of the Board of Water Management;
- (b) maintain all statements, checks, deposit slips, ledgers, books of account and other records relating to the Joint Account;
- (c) coordinate and facilitate the process of preparing and adopting budgets for the Joint Water System;
- (d) receive and deposit into the Joint Account all monies collected for the benefit of the Joint Water System from the proportionate contributions of Victory and Schuylerville, grants, and loans, and other revenue sources, and pay from the Joint Account all authorized expenditures associated with the ownership and operation of the Joint Water System;
- (e) coordinate and facilitate the process of processing, auditing, approving and paying authorized expenditures of the Joint Water System, in accordance with the policies and procedures applicable from time to time to the payment of general municipal claims and expenses by the Villages of Victory and Schuylerville;
- (f) make, keep and maintain accurate records of the names and addresses of all Users of the Joint Water System and their status as either Inside Users or Outside Users;
- (g) make, keep and maintain accurate records of the number of Use Units within Victory

and Schuylerville;

(h) coordinate and facilitate the preparation, delivery and collection by each Village of bills for water rents, charges and fees imposed upon the Inside Users within each Village;

(i) prepare, deliver and collect bills for water rents, charges and fees imposed upon Outside Users of the Joint Water System;

(j) coordinate and facilitate the billing, collection and payment of all proportionate share payments required to be made by Victory and Schuylerville pursuant to the provisions of Section 4.3 of this Agreement;

(k) execute, acknowledge and deliver loan instruments, agreements and guarantees relating to Joint Debt;

(l) examine, review and audit the individual records of Victory and Schuylerville pertaining to the ownership, maintenance and operation of the Joint Water System -- including, without limitation, the records of the Village Clerks and Superintendents of Public Works regarding the number of Use Units in each Village and the labor expended by Village employees and officials in the performance of Joint Water System duties, and the records of the Treasurers regarding the Joint Water System revenues collected from water rents, charges and user fees, appropriations, and other sources -- to the extent required to perform the powers, duties and responsibilities hereinabove set forth; and

(m) exercise such other powers, duties and responsibilities as may from time to time be agreed upon by Victory and Schuylerville.

Section 4.8: Administrative and Operational Credits. Victory and Schuylerville may each utilize, from time to time, their equipment and the services of their respective clerks, treasurers, engineers, attorneys, D.P.W. employees, and other employed, appointed or elected officials or individuals, to perform administrative, operational or professional services for or on behalf of the Joint Water System (the "Cooperative Services"). Each Village providing

Cooperative Services shall:

(a) be responsible for injury to any of its employees if it is a workers' compensation injury pursuant to Workers' Compensation Law Section 2(7);

(b) pay its personnel as it would if the work were performed for the provider municipality;

(c) be liable for negligence of its employees occurring in the performance of their duties in the same manner and to the same extent as if the negligence occurred in the performance of their duties for the provider municipality;

(d) be responsible for all repairs to its equipment except those caused by the negligence of the receiver (borrower) of equipment. If participants cannot agree on responsibility for payment, the matter shall be subject to review by mediation or arbitration as provided in Section 8.0 of this Agreement;

(e) keep records of the days and hours (as appropriate) that Cooperative Services were used and provide copies of this documentation to the Board of Water Management and Chief Fiscal Officer for verification;

(f) be entitled to receive a credit for the Cooperative Services which it provides, in an amount equal to the actual costs incurred for the provision of such services. Unless otherwise mutually agreed to the contrary, the actual cost of equipment usage shall be based on the fair market rental value of the equipment at the time of its use, and the actual cost of services rendered shall be based upon the budgeted or contracted compensation (including fringe benefits, where applicable) of the individuals performing such services at the time they are rendered.

The parties shall prepare and exchange annually, statements showing the nature, description and amounts of administrative and operational credits claimed by them on account of Cooperative Services they have rendered. In the event that either Village has contributed a greater amount of Cooperative Services in a given year, as measured by the actual cost of such

services, it shall be entitled to a credit for such services, to be paid as an expense item in the following year's budget for the Joint Water System, or in such other manner as the parties may mutually agree upon.

SECTION 5.0

BOARD OF WATER MANAGEMENT

Section 5.1: Composition. The Board of Water Management shall consist of four (4) managers, two (2) of whom shall be appointed by each Village to serve for a term of two (2) years at the pleasure of the Board of Trustees of each Village. The initial members of the Board of Water Management, and the dates of their terms, shall be as follows:

<u>Member</u>	<u>Representing</u>	<u>Term</u>
1. Larry Wolcott	Victory	06/01/01 to 05/31/03
2. Douglas Root	Victory	06/01/01 to 05/31/03
3. Michael Hughes (Chairman)	Schuylerville	06/01/01 to 05/31/03
4. Penny Downs	Schuylerville	06/01/01 to 05/31/03

The Mayors of each Village shall also serve on the Board of Water Management as "*Ex Officio*" members. Such members shall be non-voting members and shall not be deemed members of the Board for purposes of the quorum or voting requirements specified in Sections 5.8 and 5.9 following.

Section 5.2: Eligibility for Appointment. To be eligible to serve as a member of the Board of Water Management, a person must be a citizen of the United States, at least 18 years of age, and a resident of the Village he or she is appointed by. No person shall be disqualified from serving on the Board of Water Management by reason of holding any elective or appointive public office -- including a public office of the Village he or she is appointed by -- unless such public officer could not fully discharge the duties and obligations of membership on the Board of

Water Management while carrying out the duties and obligations of any such other office.

Section 5.3: Alternate Members. Victory and Schuylerville may each appoint two (2) Alternate Board of Water Management members for purposes of substituting for the regular members appointed by each Village, in the event that such regular members are unavailable to participate due to sickness, conflict of interest or other unavailability. Alternate members of the Board of Water Management shall be appointed in the same manner as regular members, and shall serve for two (2) year terms at the pleasure of the Board of Trustees of each Village. The Mayors of the Villages shall not be qualified to serve as alternate members. The initial alternate members of the Board of Water Management, and the date of their terms, shall be as follows:

	<u>Alternate Member</u>	<u>Representing</u>	<u>Term</u>
1.	Daniel Blake	Schuylerville	06/01/01 to 05/31/05
2.	Wendy Lukas	Schuylerville	06/01/01 to 05/31/03
3.	Agatha White	Victory	06/01/01 to 05/31/03
4.	Leslie Dennison	Victory	06/01/01 to 05/31/02

Section 5.4: Vacancy. If a vacancy shall occur on the Board of Water Management otherwise than by expiration of term, the Mayor of the Village represented by such vacant seat shall appoint a new member to serve for the unexpired term.

Section 5.5: Removal of Members. Each Village shall have the power to remove, with or without cause, any person appointed by it to serve as a member or alternate member of the Board of Water Management.

Section 5.6. Officer(s). The Board of Water Management shall have a chairperson, a secretary and such other officers as the Villages from time to time determine. The chairperson, secretary and other officers, if any, shall be elected annually by the Board of Water Management. Officers of the Board of Water Management shall serve for one year, or until their successors are duly elected and qualified, but may be re-appointed or re-elected for additional terms in

accordance with the procedure herein specified.

Section 5.7: Chairperson Duties. All meetings of the Board of Water Management shall be held at the call of the chairperson and at such other times as the Board may determine. In the event of the absence or unavailability of the chairperson, the duties of the chairperson shall be performed by one of the alternate Board of Water Management members of the Village which appointed the chairperson; or, if no such alternate members have been appointed, then by the Secretary of the Board.

Section 5.8: Quorum. The presence of at least three (3) members of the Board of Water Management shall constitute a quorum at a meeting of the Board for the transaction of any business. The managers present may adjourn the meeting despite the absence of a quorum.

Section 5.9: Voting Requirements. All actions of the Board of Water Management shall require the affirmative vote of at least three (3) members.

Section 5.10: Other Rules and Procedures. Subject to the provisions of this Agreement, the Board of Water Management may adopt such by-laws, rules, policies and procedures concerning its meetings and the conduct of its business as it may deem desirable.

Section 5.11: Powers of the Board. Subject to the limitations of this Agreement, the Board of Water Management shall have full and plenary power and authority to manage and operate the Joint Water System for the Villages. By way of illustration of the foregoing general statement, but not of limitation thereof, the Board shall have the power to:

(a) select and appoint, and at pleasure remove, such attorneys, engineers, surveyors, draftsmen, stenographers, clerks and other agents or employees as may be necessary, and to fix their compensation;

(b) purchase, construct, maintain and operate the Joint Water System and, in connection therewith:

(i) extend water mains and distribution pipes;

(ii) repair or replace damaged, obsolete, inadequate, destroyed or worn out pipes, apparatus and equipment;

(iii) improve or reconstruct existing facilities and appurtenances and acquire or construct new or additional facilities and appurtenances;

(iv) cause water mains and pipes to be laid, relaid or replaced under any public highway in the Villages of Victory and Schuylerville for the purpose of introducing or carrying water through said Villages;

(v) install and maintain water supply pipes and determine the manner and conditions under which such installations and maintenance shall take place;

(vi) assess the cost of installing and maintaining connection pipes, and such other service charges as may be permitted by law, upon the property benefitted by connection to the Joint Water System and, in the event of the failure of the property owner to pay any charges so assessed, add such cost or charge to the annual tax on such property;

(vii) restrict the amounts of water to be taken by Inside Users and Outside Users in the event of a drought or other water emergency;

(viii) enter into a contract with any person owning or controlling a supply of water, to supply water to the Joint Water System in bulk;

(ix) enter into a contract to sell to an Outside User the right to make connections with the mains or distribution pipes of the Joint Water System for the purpose of drawing water therefrom, and fix the prices, conditions and terms therefor (provided that said contract is authorized and approved by the Mayors of both Villages);

(x) sell or otherwise dispose of any property which in its judgment is not necessary for the maintenance or operation of the Joint Water System, or which in its judgment it is advisable to sell or dispose of, with any funds derived from such sale or disposition to be credited ratably to each Village in accordance with the Use Unit Ratio existing at the time of the

sale or disposition;

(xi) formulate and recommend water rates and charges, as provided in Section 4.5 of this Agreement; and

(xii) adopt such rules, regulations and procedures, not inconsistent with this Agreement or applicable provisions of law, as it may determine to be useful, necessary or desirable in order to provide for the safe, efficient and effective operation and maintenance of the Joint Water System and the performance of its duties and responsibilities in connection therewith.

(c) provide, procure or cause to be prepared such surveys, maps, plans, reports, estimates and budgets as are necessary, appropriate or desirable in order to enable the Board to perform its duties hereunder;

(d) sue in its own name (provided that such suit is authorized and approved by resolution of the Boards of Trustees of both Villages);

(e) make all necessary contracts for labor, material and supplies in connection with the acquisition, construction, maintenance and operation of the Joint Water System, and any authorized improvements, enlargements or extensions of the Joint Water System;

(f) act as the duly constituted agent of the Villages in the performance of all rights, powers and authority conferred by law upon the Villages with respect to the acquisition, ownership, operation and maintenance of a municipal water system.

Section 5.12: Limitations on Powers. Notwithstanding anything hereinbefore or hereinafter contained to the contrary, the Board of Water Management shall not be authorized to do any of the following without first obtaining the prior express written consent of Victory and Schuylerville:

(a) incur any indebtedness in connection with the Joint Water System which has not been authorized as part of an approved Joint Water System budget, unless the same is necessary to

finance or pay for the cost of a Mandatory Improvement, Joint Debt Service Payments, Approved Discretionary Improvements or unbudgeted emergency repairs or improvements which, in the judgment of the Board, are required to be made in order to protect public health, maintain compliance with applicable laws, and/or insure the continued provision of a safe and adequate supply of potable water to the Users of the Joint Water System;

(b) enter into any contract for the purchase or sale of goods, services, materials, property or supplies which does not comply with applicable procurement and surplus property policies and regulations adopted for the Joint Water System by Victory and Schuylerville;

(c) permit any Person to become or be a User of the Joint Water System, except in compliance with the Local Laws of Victory and Schuylerville in effect from time to time governing the duties and obligations of Joint Water System Users;

(d) sell or dispose of any property of the Joint Water System, except in compliance with the provisions of Section 3.5 of this Agreement;

Section 5.13: Records. The Water Management Board shall make and keep minutes of its meetings and records regarding the ownership and operation of the Joint Water System, and shall make such minutes and records available to the Villages at all times. The originals of such records shall be physically stored and kept by the Chief Fiscal Officer of the Joint Water System.

SECTION 6.0

TERM

Section 6.1: Term. The term of this Agreement shall begin on the 1st day of June, 2001, and unless sooner terminated by mutual agreement of the parties, shall end on the 31st day of May, 2042.

SECTION 7.0

EFFECT OF EXPIRATION OR TERMINATION

Section 7.1: General Provisions. Upon the termination of this Agreement as hereinabove provided, neither party shall have any further obligations hereunder except for: (a) unperformed obligations occurring prior to the date of termination; and (b) obligations, promises or covenants contained herein, which are expressly made to extend beyond the term of this Agreement.

Section 7.2: Disposition of Joint Water System Property. Any property owned by the Joint Water System on the expiration or termination of this Agreement shall be disposed of as follows:

(a) the parties shall confer in good faith in an effort to agree on a disposition of all assets constituting a part of the Joint Water System and shall be bound by any agreement arrived at as a result of such effort.

(b) If the parties are unable to reach agreement on a disposition of the Joint Water System assets within sixty (60) days of the expiration or termination of this Agreement, then the assets shall be offered for sale, as a going concern, to third party purchasers and sold for the highest price obtainable. Each party shall have the right to become a purchaser of the assets upon submitting the highest bid therefor.

(c) Upon a sale of the Joint Water System assets, the proceeds of said sale shall be paid, applied and distributed as follows:

(i) first to the payment of the costs of the sale;

(ii) second to the payment of all stranded costs;

(iii) third to the payment of all other debts, costs, expenses or liabilities of the Joint Water System then existing;

(iv) fourth to the establishment of any payment reserves which, in the exercise of prudent business judgment, should be established to cover the future payment of contingent or

unliquidated liabilities of the Joint Water System then existing;

(v) to the parties in proportion to the average annual Use Unit Ratio for the number of years that this Agreement was in effect prior to its expiration or termination (e.g., if the Agreement is terminated by mutual agreement after five (5) years and the Use Unit Ratios existing on the last day of each year of the Agreement were 300/200, 350/225, 375/230, 380/260 and 400/280, then the average annual Use Unit Ratio would be $1805/1195 \div 5/5 = 361/239$; and the net sale proceeds would be distributed 60.17 percent to the village with 361 Average Annual Use Units and 39.83 percent to the village with 239 Average Annual Use Units.)

(d) In the event that the parties are unable, within two hundred and forty (240) days of the expiration or termination of this Agreement, to find a purchaser for the Joint Water System assets as a going concern, then said assets shall be disposed of as follows:

(i) the Easton Property shall be distributed to Schuylerville and the Victory Property shall be distributed to Victory;

(ii) all other real property, together with the improvements and fixtures thereon, shall be marketed and sold separately to the highest bidders; provided, however, that the Village which originally contributed the property to the Joint Water System shall have a right of first refusal with respect to any bona fide purchase offer which is received;

(iii) all above ground, movable equipment and machinery, and all inventories of parts, tools and supplies shall be sold to the highest bidders;

(iv) all pipes and other appurtenances, whether above or below the ground, shall be distributed in kind, AS IS and WHERE IS, to the Village in which the same are located;

(v) all proceeds realized from such sale of Joint Water System assets shall be paid, applied and distributed in the manner provided in Section 7.2(c) of this Agreement.

Section 7.3: Stranded Costs. Any Stranded Costs existing on the date of expiration or termination of this Agreement which are not paid from the proceeds of the sale of Joint Water

System assets, shall be paid by the Villages in accordance with the payment terms of the applicable debt instruments, notwithstanding the expiration or termination of this Agreement, with each Village paying a proportionate share of said Costs Unit Ratio based upon the Average Annual Use.

SECTION 8.0

RESOLUTION OF DISPUTES

Section 8.1: Resolution of Disputes. All controversies, claims or disputes arising out of or relating to the interpretation, implementation, performance or operation of this Agreement, including any claimed violation or breach of the terms of said Agreement, shall be settled in accordance with the following procedure:

Section 8.1-1: Initial Meeting. A meeting (the "Initial Meeting") shall promptly be held at which both parties are present or represented by individuals with full decision making authority regarding the matter(s) in dispute.

Section 8.1-2: Mediation. If, within five (5) business days following the Initial Meeting, the parties have not resolved the dispute, the dispute shall be submitted to mediation directed by the Vermont Dispute Resolution Service, P.O. Box 507, Whimsey Farm, Arlington, Vermont 05250 (Telephone: (802) 375-0037) or to another mutually agreeable mediation service (the "Mediator"). Each party shall bear its proportionate share of the costs of the mediation, including the Mediator's fee.

Section 8.1-3: Obligation to Negotiate in Good Faith. The parties agree to negotiate in good faith in the Initial Meeting and in mediation conferences and use reasonable efforts to resolve the dispute without the need for litigation.

Section 8.1-4: Failure of Mediation. If, after a period of ten (10) days following the mediation conferences or any adjournment thereof, and despite the good faith efforts of the

parties to negotiate and attempt to resolve the dispute, the parties are unable to resolve the dispute, either party may initiate arbitration upon ten (10) days prior written notice to the other party, in accordance with the procedure which follows. The initiation of arbitration, however, shall not eliminate the obligation of the parties to continue to negotiate in good faith and attempt to resolve the dispute.

Section 8.2: Arbitration. The arbitration of any controversy, claim or dispute which is the subject of a failed mediation shall be accomplished in accordance with the following procedure:

Section 8.2-1: Demand. Either party may demand arbitration in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy and the relief sought.

Section 8.2-2: Response and Selection of Arbitrators. Within thirty (30) days after such demand, the other party shall name his or her arbitrator, or in default of such naming, such arbitrator shall be named forthwith by the Arbitration Committee of the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within fifteen (15) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Arbitration Committee of the American Arbitration Association.

Section 8.2-3: Costs and Expenses. Unless they agree otherwise or unless the arbitrators in the award assess such costs and expenses, or any part thereof, against any specified party or parties, the expenses of the individual arbitrators shall be borne by the appointing parties, and the expenses of the third arbitrator shall be shared equally by the parties.

Section 8.2-4: Time and Place of Hearing. The arbitration hearing shall be held at Schuylerville, New York on thirty (30) days notice to the parties.

Section 8.2-5: Governing Rules. Except as otherwise provided in this Section 8, the

arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Section 8.2-6: Order of Proceedings. A hearing shall be opened by the filing of the oath of the arbitrators, where required; by the recording of the place, time and date of the hearing and the presence of the arbitrators, the parties, and counsel, if any; and by the receipt by the arbitrators of the statement of the claim or controversy and answer, if any. The arbitrators may, at the beginning of the hearing, ask for statements clarifying the issues involved. The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The respondent shall then present its defenses, proofs, and witness, who shall submit to questions or other examination. The arbitrators have discretion to vary this procedure, but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the arbitrators.

The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

The parties may, by written agreement, provide for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the American Arbitration Association shall specify a fair and equitable procedure.

Section 8.2-7: Evidence. The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. Arbitrators authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrators shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is

absent in default or waives the right to be present.

Any party intending to offer any documentary proof or proof by affidavit at the hearing must provide the other party with a copy at least ten (10) days in advance thereof. In addition, the parties shall exchange witness lists at least ten (10) days in advance of the hearing, setting forth the names, addresses and telephone numbers of the persons whom they intend to call as witnesses at the hearing, together with a brief statement of the substance of the testimony expected to be given by said witnesses.

Section 8.2-8: Attendance at Hearings. The arbitrators shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearings. The arbitrators shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrators to determine the propriety of the attendance of any other person.

Section 8.2-9: Form and Scope of Award; Authority of Arbitrators. The decision of the arbitrators shall be made in writing and signed. Said decision may award as relief to a party entitled thereto, any remedy which the Supreme Court of the State of New York would be authorized to award, at law or in equity, under Federal and New York State substantive and procedural law existing at the time. By way of illustration, but not of limitation, the award may grant compensatory damages, treble damages, exemplary damages, specific performance, injunctive and other equitable relief, and may also award costs, disbursements and attorneys' fees to the prevailing party.

Section 8.2-10: Effect of Award. An award rendered by a majority of the arbitrators appointed under and pursuant to this section shall be final and binding on all parties to the proceeding, and judgment on such award may be entered by either party in any federal or state court having jurisdiction thereof.

Section 8.2-11: Stenographic Record. Any party wishing a stenographic record shall make arrangements directly with the stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If such transcript is agreed by the parties to be, or determined by the arbitrators to be, the official record of the proceeding, it must be made available to the arbitrators and to the other party for inspection, at a time and place determined by the arbitrators.

Section 8.2-12: Arbitration as Bar to Suit. The parties stipulate that the provisions of this Section 8 shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

Section 8.2-13: Arbitrators' Lack of Authority to Modify Agreement. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement, or to make any decision contrary or inconsistent with applicable law or rules or regulations having the force of law.

SECTION 9.0

GENERAL PROVISIONS

Section 9.1: Governing Authority. This Agreement and all actions and operations performed pursuant to the terms hereof are subject to all Federal and New York State statutes, rules, regulations, mandates, directives and orders concerning the distribution of potable water including, but not limited to, the New York State Sanitary Code, Volume 10 of the New York Code of Rules and Regulations, now in effect or hereafter adopted. This Agreement and the actions and operations performed pursuant to its terms shall be modified from time to time as

required in order to conform at all times with all Federal and New York State requirements.

Section 9.2: Severability. If any provision of this Agreement or the application of any provision hereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby unless the invalid provision substantially impairs the benefits of the remaining portions of this Agreement.

Section 9.3: Entire Agreement. This Agreement supersedes all previous contracts and negotiations and constitutes the entire agreement between the parties. Neither party shall be entitled to any benefits other than those specified herein. No oral statements or prior written material not specifically incorporated herein shall be of any force or effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendment to become effective on the date stipulated in such amendment. Each part specifically acknowledges that in entering into and executing this Agreement, it has relied solely upon the representations and agreements herein contained, and upon no others. This Agreement supercedes the September 8, 1980 Cooperation Agreement between the parties.

Section 9.4: Amendment and Modification. This Agreement may be amended or modified only by written agreement of the parties hereto, executed with the same formality as this Agreement.

Section 9.5: Binding Effect; Benefits. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 9.6: Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the internal substantive laws, and not the choice of law rules, of the

state of New York. Any actions or judicial proceedings involving this Agreement may be brought only in the courts of the County of Saratoga, State of New York; and any arbitrations initiated with respect to this Agreement may be venued only in the County of Saratoga, State of New York.

Section 9.7: Assignment. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto.

Section 9.8: Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 9.9: Section Headings. The Section Headings in this Agreement are for convenience and ease of reference only, and shall not be deemed to alter or affect any provision hereof. Reference herein to numbered "Sections" or "Sub-Sections", refers to sections and sub-sections of this Agreement.

Section 9.10: Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery, if delivered in person, or on the third business day after mailing, if mailed by certified mail, return receipt requested: (a) to Victory at: Village of Victory, Attn.: Mayor, 23 Pine Street, P.O. Box 305, Victory Mills, New York 12884; and (b) to Schuylerville at: Village of Schuylerville, Attn: Mayor, 35 Spring Street, Schuylerville, New York 12871.

Section 9.11: Waiver. No delay or omission on the part of either party in exercising any right hereunder shall operate as a waiver of such right or any other right, and a waiver on any occasion shall not be construed as a bar to or waiver of any right on any future occasion.

Section 9.12: Interpretation. Victory and Schuylerville each acknowledge that they have had the opportunity to participate in the drafting of this Agreement and to receive the benefit and input of counsel in connection therewith. Accordingly, any rule or construction, interpretation or

otherwise to the effect that ambiguities contained in the Agreement shall be resolved against the drafting party shall not be invoked or relied upon in connection with the interpretation of this Agreement.

Section 9.13 Cooperation. Each of the parties hereto shall use its best efforts to take or cause to be taken, and to cooperate with the other party hereto, to the extent necessary, with respect to all actions, and to do, or cause to be done, consistent with applicable law, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

Section 9.14: Periodic Review. A periodic review of this Agreement shall be made every two (2) years, for the purpose of affording the Board of Trustees of Victory and Schuylerville an opportunity to discuss the advisability of making changes or revisions to any part of the Agreement by mutual consent of the parties. Such review shall take place at a meeting held in the month of October, at which there shall be in attendance the Chairperson of the Board of Water Management and the following persons from each Village: the Mayor, one Trustee, the Superintendent of Public Works, the Village Treasurer, the Village Engineer and the Village Attorney. An emergency review of the Agreement may also be undertaken at any time upon the call of the Mayor of Victory or the Mayor of Schuylerville, at any time that such official believes, in the exercise of his or her good judgment, that an emergency exists which necessitates a review of this Agreement.

Section 9.15: Authority to Execute. Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she is duly authorized to execute the Agreement on behalf of such party.

Section 9.16: Interpretation of Genders. Whenever used herein, the masculine gender shall include the feminine and the neuter genders and vice versa, as the context requires.

Section 9.17: Recovery of Litigation Costs. If any legal action or any arbitration or other

proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' and accountants' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled at law or in equity.

WHEREFORE, the parties to this Agreement have duly executed it as of the day and year first above written.

VILLAGE OF VICTORY

BY:


GEORGE SULLIVAN, Mayor

VILLAGE OF SCHUYLERVILLE

BY:


JOHN SHERMAN, Mayor

SCHEDULE "A"

JOINT WATER SYSTEM ASSETS & LIABILITIES

ASSET

LOCATION

- The land, buildings, fixtures, equipment and other property referred to and described in Section 1.13 of this Agreement
- The Ford 555E Backhoe loader referred to and described in the parties' Municipal Cooperation Agreement, dated June 3, 1997
- The existing inventories of equipment, parts and supplies kept and maintained by the parties' respective Departments of Public Works

LIABILITY

OBLIGOR

- Bond Anticipation Renewal Note #4, dated May 30, 2001, payable to Glens Falls National Bank and Trust Company having a principal balance of \$7,716.30

Village of Victory

- Rural Development Agency Loan # 91-01, having a principal balance of \$60,000.00

Village of Victory

SCHEDULE "B"

AGREED IMPROVEMENTS TO JOINT WATER SYSTEM

- Such improvements as are required to be made by the New York State Department of Health in order to comply with the terms of the Consent Order now in effect.
- Such improvements as are required to be made in order to restore the filtration, treatment and pump station located at the Victory Water Plant Property to good working order and condition.

To Mayor Sherman and Village Trustees
From Ed Bartholomew Jr. Village Attorney
Monday April 26, 2004

The following represents a brief overview regarding the process when addressing concerns, and issues within the budgetary process of the Water Management Board Agreement.

Overview:

The agreement is a 41 year agreement between the Villages of Schuylerville and Victory (page 25) and the key for successful implementation and resolution of concerns within the contract is communication with all parties on a regular basis.

Certain Provisions of the Agreement:

Water Board shall meet in January each year to prepare a budget for the joint water system
(section 4.2 page 14)

The Agreement provides for the Water Board to provide the Mayors of each villages with the budget on March 1 of each year (section 4.2 page 14)

Section 4.2 Outlines items to be contained within the budget

The agreement details what is Mandatory improvements(section 3.2 page 7) and Discretionary improvements(section 3.2 page 7)

The ultimate responsibility for establishing imposing and collecting water rates and rents shall rest with the Villages (Section 4.5 page 16)

Suggested Process for any present concerns on the proposed joint water budget:

- >Again communicating with all parties is necessary to resolve the differences of opinion and concerns.**
- >Confer with Water Management Board Members in advance of meeting outlining concerns and issues,**
- >Attend Water Bd Meeting and again voice concerns,**
- >If Board adopts budget "as is" without modification; the imposition of rates and rents is with the village boards jurisdiction .. Village can hold public hearing before adoption of rates,**
- >Regarding specific issues; disputes, claims, controversies these items are subject to mediation/arbitration as found in section 8 page 28 following an initial meeting with the Water Board,**
- >Periodic Review --every two years during the month of October--villages are required to confer and discuss the advisability of making changes/revisions.**
- >Also an emergency review of the agreement may be undertaken at any time upon the call of either Mayor who believes that in their exercise of his or her good judgment, that an emergency exists which necessitates a review of this agreement
(Section 9.14 page 35)...the present budget issues may necessitate this review as called for in this section**