



CLIFTON PARK WATER AUTHORITY

BOARD MEETING MINUTES

SEPTEMBER 16, 2020

Due to COVID-19 the Clifton Park Water Authority board meeting was conducted via Zoom.

Those present were: Mr. Helmut Gerstenberger, Chairman; Mr. John Ryan, Vice Chairman; Mr. George Peterson, Treasurer; Mr. Peter Taubkin, Secretary; Mr. William Butler, Board Member; Mr. Donald Austin Jr., Administrator; Mr. James Trainor, Attorney; and Mr. Chad Kortz, CT Males Associates.

Mr. Gerstenberger called the meeting to order at 3:06pm.

PRIVILEGE OF THE FLOOR

OLD BUSINESS

PROJECT TO INCREASE CAPACITY FROM SCWA

Mr. Kortz expects to have signed contracts and a time schedule from William J. Keller & Sons, Inc. soon. They plan to have all site work completed this fall so the pump station can be set when it is delivered this winter. He anticipates the pump station will be ready by spring 2021.

Mr. Austin is working with the Environmental Facilities Corporation (EFC) to get the grant agreement in place. He sent them everything they requested at the end of August.

COMMUNITY SOLAR PROPOSAL – AMENDED PROPOSAL FROM NEXAMP

A motion was made by Mr. Ryan to approve the Community Solar Agreement with Nexamp; seconded by Mr. Peterson.

RESOLUTION #19, 2020 – APPROVE COMMUNITY SOLAR AGREEMENT WITH NEXAMP

WHEREAS, the Clifton Park Water Authority (CPWA) has been presented with an opportunity to participate in a community solar program with Nexamp, which will provide significant savings on the CPWA's electricity costs, and

WHEREAS, Nexamp has provided the CPWA with an agreement; a draft copy of which accompanies this resolution, now therefore be it

RESOLVED, that the CPWA Board of Directors hereby approves the community solar subscription agreement with Nexamp, as attached, and authorizes the CPWA Administrator to execute the agreement and any other documents or instruments necessary to facilitate this agreement.

Roll Call Vote:

Mr. Gerstenberger - Aye
Mr. Ryan - Aye
Mr. Peterson - Aye
Mr. Taubkin - Aye
Mr. Butler - Aye

KNOLLTOP WATER STORAGE TANK REFURBISHMENT

Mr. Austin reported that the contracts have been signed and the work is scheduled to start soon. Mr. Kortz estimated completion of this project by the end of November.

SCWA PURCHASE AGREEMENT RENEWAL

Mr. Trainor explained that there are some major changes to the agreement from 10 years ago. He has compared it to Halfmoon's agreement with the SCWA and he has spoken to Wilton Water and Sewer's attorney and incorporated helpful comments regarding their agreement. He suggested leveling the playing field in terms of who has what liability and who is going to indemnify who and for what and also determine whether the billing will be on an annual average or a quarterly average. Mr. Austin, Mr. Gerstenberger, and Mr. Trainor will meet next week to write a response letter to SCWA and will forward to the Board for review.

PROJECT TO INVESTIGATE CAPACITY IMPROVEMENTS IN PRESERVE

Mr. Kortz missed last month's meeting but will follow up with his associate and get back to Mr. Austin with an update.

VERIZON REQUEST FOR INSTALLATION OF TELECOMMUNICATIONS TOWER AT BOYACK WTP

Mr. Ryan recused himself from this discussion.

The Verizon representative stated that the maximum lease amount that they could agree to, because of the cost of erecting a tower at this location, would be \$1,500.00 per month with a 2% annual escalator. This is significantly lower than the leases from our other cellular contracts. Mr. Austin asked the Board if they think it is worthwhile to let them erect a 160 feet tower at this site for \$1,500.00 per month. The Board was not comfortable with excepting less rent than the other carriers and the tower height is 100 feet taller than the water tower at the site. They would like to see a visual representation of the tower and what it will look like from other vantage points around the tower to get a better idea what the visual impact will be before they make any decisions. Mr. Trainor did some research after last month's meeting and he believes this project would require a Planning Board application for a special use permit and site plan review by the applicant. He is unsure if the CPWA is exempt by virtue of the enabling legislation.

The Verizon representative explained to Mr. Austin that they have not had a positive experience negotiating contracts with Bench Strength Partners (BSP). Mr. Austin noted that the contract with BSP will be ending at the end of this year and there is no automatic renewal in the contract. They also were not successful in negotiating a new contract with Sprint when they requested modifications to the tower.

NEW BUSINESS

2021 CPWA BUDGET

Mr. Austin presented the Board with the preliminary budget for 2021. He asked the Board to review it for approval at next month's meeting.

OTHER BUSINESS

- The Town of Clifton Park is looking to set up water filling stations at different locations in the town and are looking to see if the CPWA would be willing to purchase/donate a water bottle filling station. The unit is \$600.00 and town employees would install it. The Board agreed to purchase a water filling station.

APPROVE MINUTES OF AUGUST 19, 2020 MEETING

A **motion** was made by Mr. Gerstenberger to approve the minutes of August 19, 2020; seconded by Mr. Taubkin. The **motion** carried 5-0.

A **motion** was made by Mr. Gerstenberger to adjourn the meeting at 4:00pm; seconded by Mr. Ryan. The **motion** carried 5-0.

Respectfully submitted,

Sheri Collins

Recording Secretary

Cc: CPWA Board of Directors
Trainor Law PLLC

Community Distributed Generation Disclosure Form		
Customer Information	Customer Name: _____ Company: Clifton Park Water Authority Email: _____ Phone: _____ Utility Provider: _____	Utility Account: See Schedule A Billing Address: 661 Clifton Park Ctr Rd Clifton Park, NY 12065 Service Address (if different): See Schedule A
Distribution Utility		
Overview	This document describes your community solar subscription. In the event that the terms in this statement conflict with terms appearing elsewhere in your contract, the terms in this statement are controlling. Read this document and the contract carefully so that you fully understand this agreement.	
Price, Fees, and Charges	Cost to Enroll: \$0 Discount: 12% Each billing period, the price charged by Nexamp (the "Price") will equal the value of the bill credits allocated to your Utility Account, less your Discount. The Price of your subscription will be determined by the value of bill credits allocated to your Utility Account, but your Discount is fixed for the full term of your subscription.	
Project Location and Customer Allocation	Project Location: National Grid Customer Allocation ("Subscription Size"): Project Size: 6,000 kW DC See Schedule A Anticipated Project Operation Date: October 2020 If a Project with an earlier anticipated Project Operation Date becomes available, we may assign you to that Project and notify you in advance.	
Length of Agreement and Renewal	Subscription Type: Pay-as-you-Go Subscription Term: Up to 20 years. If you need to cancel your subscription for any reason, you may do so at any time by following the guidelines below (under "Early Termination").	
Early Termination	You may terminate your subscription, with no penalty, by providing Nexamp prior written notice of cancellation at least 120 days prior to the end of the current term. Nexamp may terminate your subscription for failure to make timely payment or other violations under the contract. All amounts due and payable to Nexamp will survive any Early Termination.	
Estimated Benefits	Your Utility Provider will distribute bill credits for the energy generated by your Subscription Size. Your savings will be equivalent to the value of bill credits multiplied by your Discount. Estimated Annual Energy for your Subscription Size: See Schedule A Bill Credit Type: Monetary Credits	
Guarantees	The energy generated by the Project will vary each month. This contract does not guarantee a minimum level of system performance or production of energy. Your Price will always reflect the Discount, but this contract does not guarantee savings on a monthly basis.	
Data Sharing and Privacy Policy	Your subscription authorizes Nexamp to request and receive historical electricity consumption information from your Utility Provider, which will not be shared with third parties. Our privacy policy can be found online: https://www.nexamp.com/privacy-policy	
Right to Cancel Without Penalty	You have the right to terminate the contract without penalty within three business days after signing the contract by notifying Provider at 1-800-945-5124 or solarize@nexamp.com .	
Customer Rights	If you have inquiries or complaints that the Provider is unable to resolve, you have the right to call the Department of Public Service Helpline at 1-800-342-3377. You may file a complaint on the Helpline or by following the instructions at http://www.dps.ny.gov/complaints.html .	
Other Important Terms	Your Subscription Size may be adjusted, as needed, to better reflect your annual electricity consumption expectations.	
Preparer Name and Contact Information	Contact: Nexamp Community Solar Team Email: support@nexamp.com	Phone: 1-800-945-5124 Address: 101 Summer St, 2 nd Floor, Boston, MA 02110

Community Solar Three Year Subscription Agreement

Parties* to this Agreement:

Provider:**Nexamp, Inc.**

Contact: Nexamp Community Solar Team

Email: support@nexamp.com

101 Summer St, 2nd Floor

Boston, MA 02110

Customer:

Company Name: Clifton Park Water Authority

Contact Name: _____

Email: _____

Phone: _____

Mailing Address:

661 Clifton Part Ctr Rd

Clifton Park, NY 12065

Solar Project: The "Project" is a community solar project located within the following utility territory:

Meter Address (if different from Mailing Address)
See Schedule A

Utility: National Grid

Utility Account number ("Account"): See Schedule A

"Project Operation Date" is anticipated to be (or was): October 2020

"Service Classification": See Schedule A
"Discount": Twelve percent (12%)

"Subscription Size": See Schedule A

If the Project is not currently operational, we will notify you of the actual Project Operation Date which will be the date on which the Utility grants permission to operate the Project.

We may, per the terms of this Agreement, adjust your Subscription Size to better reflect your expected annual electricity consumption and will notify you of any such adjustment.

* Under this Agreement, Nexamp may be referred to as "Provider", "us", "we", or "our" and Customer may be referred to as "you" or "your".

Executing this Community Solar Subscription Agreement and the Community Distributed Generation Disclosure Form (collectively, the "Agreement"), allows Nexamp to direct your Utility to allocate monetary credits from a Nexamp project to your electric Utility bill. The dollar amount of the credit you receive will be based on your Subscription Size as a portion of the Project's electricity output (the "Credit"). In exchange for receiving this Credit on your Utility bill, you will pay us the Credit value less your Discount (the "Price"). For example, if your Subscription Size results in a Credit of \$100, you would receive a credit on your Utility bill of \$100 and you would owe Nexamp only \$90, which is a 10% savings to you.

In a given billing period, if your Subscription Size results in a Credit in excess of your Utility costs, such excess Credits will roll over to be applied towards future Utility costs; and, if your allocated Credit is less than your monthly electricity bill, you will owe the balance to the Utility.

In consideration of the mutual premises, representations, warranties, covenants and conditions herein, the Parties agree as follows.

1. **Term:** The term of this Agreement begins on the date you execute this Agreement (the "Effective Date") and will continue, unless terminated earlier pursuant to the terms herein, through the date upon which the transactions for the final Credit delivery 3 years from the Project Operation Date are complete (the "Term"). Under this agreement, we will act as the "Sponsor" or "CDG Host", and you will act as the "Community Solar Subscriber" or "CDG Satellite." This contract will automatically renew for another 3 year term unless either Party provides written notice of cancellation at least 120 days prior to the end of the current Term. provided however, such renewal may in all events only extend through the 25th anniversary of the Project Operation Date.
2. **Early Termination:** This Agreement may be terminated prior to the end of the Term (the "Early Termination Date") by:
 - a. You pursuant to Sections 8 or 9 of this Agreement;
 - b. Nexamp, upon notice to you (i) at any time prior to the actual Project Operation Date, if we determine that developing the Project no longer feasible, (ii) if community solar is no longer available for the Project, (iii) upon three (3) months prior written notice; (iv) upon your default of this Agreement.

Upon early termination under this Section 2, each Party shall perform all obligations due to the other Party that arose prior to the Early Termination Date (including any transactions for the final Credit delivery) after which, the Parties shall have no further obligations hereunder, except those which survive this Agreement's expiration or termination. You understand that, should excess Credits remain to be applied to your Utility Account at such a time when you terminate this Agreement, you may forfeit the entirety of such excess Credit as required by operation of Utility policies and applicable law.

3. **Sale and Purchase; Payment:**
 - a. We will invoice you for the Price each Utility billing period, and you agree to pay the invoices within 30 days of the invoice date.
 - b. You will automatically be enrolled in our autopay electronic billing program and are responsible for providing your payment information via our customer portal which can be accessed at cs.nexamp.com. At any time and without penalty to you, you may opt out of our autopay program via our portal or request to receive a paper invoice by sending a written notice to us.
4. **Delivery; Change of Account; Acknowledgments:**
 - a. To deliver the Credit to you, we will deliver the Project's electricity to the Utility at the Project meter as the electricity is produced, from the actual Project Operation Date through the Term.
 - b. You understand:
 - i. that the Credit delivered to you in any particular billing period will be reflected on your Account statement according to the Utility's billing cycle.
 - ii. that the Utility will meter and record the Project's electricity production and will apply the Credit to your Utility Account according to our direction;
 - iii. the Utility will be solely responsible for calculating the value of the Credit applied to your Utility bill in accordance with applicable Utility tariffs and applicable law.
 - c. You may change your Utility Account for Credit delivery by written notice to us, provided that your new account is in the same Utility territory as the existing Account or is otherwise approved by us. Our acceptance of the change is contingent on Utility's approval of the change. The last bill for the former account and first bill for the new account will depend on the Utility's tariffs and procedures for disenrolling and enrolling subscriptions.

- d. You agree that you will not change your Service Classification unless you have requested in writing and received our approval.
5. **Title:**
 - a. As between the Parties, we will claim and receive any and all tax, environmental or other credits, grants, subsidies, renewable energy credits, carbon offset credits, rebates or other benefits related to the Project or its output, and any other benefits or profits of owning the Project (including any capital appreciation), both presently and in the future. You will NOT have the option to buy any equipment of the Project at any time during or at the end of the Term.
 - b. This Section shall survive Agreement termination.
6. **Assignment:**
 - a. We (including any successor or subsequent assignee) may assign, sell or transfer the Project and/or the rights and obligations under this Agreement to any person without your consent including making collateral assignments for security purposes, and you hereby consent to the assignment, sale, or transfer of the Project to any lender or financing party (including agents acting on their behalf) and the collateral assignment of our right, title and interest in and to this Agreement as security for any financing incurred by us or our affiliates.
 - b. You may not sell, transfer or assign this Agreement, either in whole or in part, or the Credits purchased under this Agreement, to anyone without our express written consent.
7. **Termination for Default.** You will be in default if you fail to make a monthly payment within 60 days of the invoice date, or if you breach, fail to perform or comply with any material covenant, representation or agreement herein set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from us. If you are in default, we may terminate this Agreement and disenroll your subscription. If we terminate this Agreement, you may be charged the Price for Credits through the date your subscription with Utility has been disenrolled , plus an administrative fee (not to exceed \$250) for reasonable and documented costs paid by us to collect the amount owed by you. In addition, we may sell Credits to persons other than you and recover from you any loss in revenues. This Section shall not otherwise limit a Party's remedies at law or equity.
8. **Entire Agreement; Modifications in Writing; Survival:** This Agreement contains the Parties' entire agreement, and there are no other agreements between the Parties regarding the Project or the Credit, either written or oral. We reserve the right to amend your Subscription Size to better reflect your expected annual electricity consumption or to designate a replacement Project from time to time with 90 days notice, provided however, that you have a right to terminate this Agreement without penalty within 90 days of our sending such changes by contacting us. Any modification of this Agreement requires the written approval of both Parties. Any delay or failure of a Party to enforce the obligations of the other Party under this Agreement shall not constitute a waiver of such obligations or a Party's right to enforce the same and shall not affect the validity of this Agreement. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved by arbitration and an arbitrator may reform the Agreement as the arbitrator deems just and equitable in order to restore to

the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

9. **Change in Law:** Notwithstanding anything else in this Agreement, if there is a change in law that materially affects our ability to perform obligations under this Agreement or that materially reduces the value of the Credits, we may amend this Agreement as necessary within our discretion on 90 days notice and providing all changes to this Agreement to you. You have a right to terminate without penalty within 90 days of our sending amendments under this provision by contacting us. For the purposes of this section, a change in law is a change federal, regional, state, or local statute, regulation, or guidance, or any decision or interpretation of an agency of such a government (including a court), including but not limited to decisions or interpretations of the New York State Public Service Commission
10. **Governing Law:** This Agreement is governed by the law of the State of New York without giving effect to the principles of conflict of laws that would require the application of any other law.
11. **Notices:** All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing or to the email address provided by you, shall be deemed delivered five business days after it was mailed (except notice provided by email shall be deemed delivered when sent), and shall be sent by any of the following methods: first class mail; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the Parties' addresses stated on page 1.
12. **Limitation of Liability and Warranty Disclaimer:** TO THE MAXIMUM EXTENT PERMITTED BY LAW
 - (A) EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY; AND
 - (B) EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ITS OBLIGATIONS OR THE PROJECT. PROVIDER DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.
13. **Indemnification:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY AND ITS SUCCESSORS AND ASSIGNEES, AND ITS AND THEIR EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS, FROM ANY AND ALL LOSSES, LIABILITIES, DAMAGES, CLAIMS, ACTIONS, COSTS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), PENALTIES, DEMANDS AND LIENS ASSERTED BY OR RESULTING FROM CLAIMS, ACTIONS, SUITS OR DEMANDS BY ANY THIRD PARTY, OF ANY KIND OR NATURE ARISING OUT OF, CONNECTED WITH, RELATING TO OR RESULTING FROM SUCH PARTY'S FAILURE TO COMPLY WITH ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

14. **Cooperation:** You agree to cooperate with us and the Utility as reasonably necessary to ensure this Agreement complies with community shared solar laws and regulations.
15. **Authorization to Receive Historical Consumption Information.** During the Term of this Agreement, you will need to provide your electric utility account information. This information is needed to determine the solar production required to offset your usage; we may under Section 8 of this Agreement propose a different subscription size during Term to reflect changes in your usage patterns.. You authorize Nexamp to request and review your historical electricity information from your local utility as long as you remain a customer under this Agreement. Your utility account information will not be shared with third parties. We reserve the right to update or adjust our utility data policy with notification if these changes impact you based on your contract or subscriber status. Our utility data policy can be found online at: <https://www.nexamp.com/privacy-policy>.
16. **Customer Status with Utility.** You hereby certify to us and permit us to confirm with the Utility that you are not already treated by the Utility as a net metered customer generator, a remote net metered host, or a CDG satellite account. You understand that your treatment under any of the foregoing will disqualify you from receiving Credits from us and shall permit us to immediately terminate this Agreement upon written notice.
17. **Customer's Rights:** You acknowledge that you are advised of your rights under New York's Home Energy Fair Practices Act (a summary of which can be found at http://www.dps.ny.gov/HEFPA_Brochure_12-08.pdf), and under the Uniform Business Practices for Distributed Energy Resources Suppliers (a summary of which can be found at <https://www.nysersda.ny.gov/-/media/A592A57FE72649FB88DD25E001CA803B.ashx>). You understand that if you have complaints about us or general questions, you may contact the Office of Consumer Services, New York State Public Service Commission, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350, 1-800-342-3377.
18. **Press Releases.** Neither Party shall issue any press release or make any public statement or announcement of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits without the express written consent of the other Party.
19. **Customer Representations and Covenants.**
 - a. You hereby represent and warrant to us that (a) you have read and understand the terms of this Agreement and have had the opportunity to ask questions of us and to seek the advice of an attorney, if desired, (b) you are duly organized, validly existing and in good standing under the laws of the state in which you are organized, (c) the execution of this agreement is duly authorized, and each person executing the Agreement on behalf of you has the full authority, right and power to do so and to fully bind you, and such execution, delivery and performance does not violate any applicable law, (d) this agreement is your valid obligation and is enforceable against you in accordance with its terms, (d) your name is associated with the Utility Account, and (e) all information provided by you, including Utility and banking information, is accurate, true and complete in all respects.
 - b. You shall provide to us on or prior to the Effective Date and annually thereafter through the Term of this Agreement, a copy of your most recent years financial statements and, if available, credit rating information.

Schedule A - Clifton Park Water Authority

Account Owner Name	Service Address	Rate Class	Account Number	kW Allocation (DC)	kWh Allocation
Town of Clifton Park Water Authority	36 Boyack Rd	SC3	18690-18101	30	36,522
Town of Clifton Park Water Authority	Riverview Rd	SC3	19090-18105	30	36,522
Town of Clifton Park Water Authority	Oakwood Blvd Pump	SC2D	10090-11108	30	36,522
Town of Clifton Park Water Authority	Lapp Rd Pump	SC2D	05690-16100	23.5	28,439
Town of Clifton Park Clifton Park Water Authority	661 Clifton Park Center Rd OFC	SC2D	19110-13003	18	21,597
	1463 Route 146	SC2D	76126-27001	30	36,522
Clifton Park Water Authority	171 Eastline Rd	SC2	36584-28000	7.5	9,252
Clifton Park Water Authority	Kinns Rd	SC2	94338-16113	12.5	14,927
Clifton Park Water Authority	00 Miller Rd, Water Tank	SC2D	59811-38000	18	21,673
Clifton Park Water Authority	Vischers Ferry Rd	SC2D	33938-20108	30	36,522
Clifton Park Water Authority	Blue Spruce Ln Pump	SC2D	37538-13109	30	36,522
Clifton Park Water Authority	3 Colina Ln Unit A	SC2D	32138-18111	25	30,356
Town of Clifton Park Water Authority	51 Castle Pines	SC2D	14938-20108	14.5	17,594
Clifton Park Water Authority	1 Woodstream Dr	SC3	19538-10119	30	36,522
Total				329.0	399,492

Customer

By: _____

Name: _____

Date: _____

Provider

By: _____

Name: Allan Telio

SVP of Community Solar

Date: _____