

EMPLOYMENT AGREEMENT

This AGREEMENT is made this ____ day of June, 2018 by and between the Board of Commissioners of the Erie County Water Authority ("the Board") and Robert J. Lichtenthal, Jr. ("the Deputy Director").

WHEREAS, the Board desires to continue the services of the Deputy Director in the capacity of Deputy Director of the Erie County Water Authority ("the Authority"), as that position is defined in the Authority's job descriptions and policies and at the direction of the Board, for the period of time provided herein; and

WHEREAS, the Board and the Deputy Director desire to confirm their understanding pursuant to which the Deputy Director will continue his employment as Deputy Director of the Authority;

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions contained herein, the parties agree as follows:

1. Term

The Board hereby employs the Deputy Director, and the Deputy Director agrees to continue to serve the Authority as Deputy Director for a term commencing June 28, 2018 and continuing until June 28, 2019. However, the term of this Agreement may otherwise be terminated earlier in accordance with Section 4 of this Agreement.

2. Duties as Deputy Director

2.1 Duties:

The Authority shall continue to employ the Deputy Director, with the Deputy Director's powers and duties in that capacity to be such as may be reasonably determined by the Authority from time to time and as usually pertains to such position. During the term of this Agreement, the Deputy Director shall devote his best efforts to the interests of the Authority and shall perform services on behalf of the Authority as may reasonably be determined by the Authority. The Deputy Director shall report to the Executive Director and, in the absence of an Executive Director, to the Board. The Deputy Director shall devote his full business, time and energy to the business of the Authority.

2.2 Professional Growth:

The Board encourages the continuing professional growth of the Deputy Director through his participation in the operations, programs and other activities conducted or sponsored by local, state and national associations and organizations and informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of the

Deputy Director to perform his professional responsibilities for the Authority. The Board shall reimburse the Deputy Director for reasonable expenses incurred in connection with such activities, including attendance fees, travel and subsistence in accordance with the policies, outlined in the Authority Policy Manual, as they now exist and as may be amended. The Deputy Director agrees that his attendance at any such conferences or other meetings for which he shall seek reimbursement of expenses is subject to the prior approval of the Board.

2.3 Personal Involvement:

The Deputy Director and the Board agree that the presence and involvement of the Deputy Director in community affairs is good for the Authority. To this end, the Deputy Director agrees to visit various Authority sites throughout the County on a regular basis; to attend functions at the different sites; and to make a reasonable effort to attend relevant community functions within local municipalities, the County and the State, all without additional pay or compensation.

3. **Compensation and Fringe Benefits:**

3.1 Salary:

As compensation for his services as Deputy Director, to be rendered pursuant to this Agreement, the Board shall pay and the Deputy Director agrees to accept the following:

Effective beginning June 28, 2018 through December 31, 2018, the Deputy Director shall receive compensation at a rate equivalent to an annual salary of \$200,100.00; and

Effective beginning January 1, 2019 through June 28, 2019, the Deputy Director shall receive compensation at a rate equivalent to an annual salary of \$206,103.00.

3.2 Vacation:

The Deputy Director shall continue to be entitled to take paid time off from work for vacation in accordance with the policies contained in the Authority Policy Manual, as now written and in effect as of February 6, 2017. The Deputy Director agrees to schedule his vacation time so as not to unnecessarily interfere with the operation of the Authority's property and services, and in return, the Authority agrees not to unreasonably deny the Deputy Director's requests for vacation time. The granting and use of vacation pay shall be conducted in accordance with the policies contained in the Authority Policy Manual, as now written and in effect as of February 6, 2017.

Policy No. 41.0 allows an employee to accumulate up to thirty (30) days of vacation credits, allowing the employee to carry-over those 30 days to a new calendar year. For purposes of this Agreement alone, the Deputy Director will be permitted to accumulate up to thirty-five (35) days of vacation credits that may be carried over to the 2019 calendar year.

3.3 Other Fringe Benefits:

In addition, the Deputy Director shall continue to be entitled to receive those fringe benefits set forth in the Authority Policy Manual, as now written and in effect as of February 6, 2017 for the duration of this contract.

3.4 Years of Service for Purposes of Vacation and other Fringe Benefits:

The Board and the Deputy Director agree that for purposes of calculating vacation time and other fringe benefits, as set forth in the Authority Policy Manual, the Deputy Director's years of service will be measured from the date he was first employed as the Deputy Director. The parties agree that date to be October 1, 2007. The Deputy Director is entitled to earn vacation time and other fringe benefits until June 28, 2019, in consideration for other benefits waived by the Deputy Director by entering into this Agreement, and such vacation time and other fringe benefits shall be treated as deferred compensation.

3.5 Miscellaneous Benefits:

The Board agrees the Deputy Director will continue to work from his current office in the Ellicott Square Building and to receive from the Authority a monthly parking pass at the expense of the Authority.

3.6 Professional Liability:

The Authority shall defend, hold harmless and indemnify the Deputy Director from any and all demands, claims, suits, actions and other legal proceedings brought against the Deputy Director either individually or in his official capacity as agent and employee of the Authority, provided the transaction giving rise to the matter arose while the Deputy Director was acting within the scope of his employment and excluding criminal litigation and only to the extent such liability coverage is within the authority of the Board to provide under state law. The Authority shall maintain the right to choose counsel to be paid by the Authority.

The Authority, however, shall have no obligation under this section of the Agreement, if it is determined that the Deputy Director acted beyond the scope of his authority.

The defense and indemnification obligation provided for herein is deemed to relate only to indemnification by the Authority and in no event shall individual members of the Board be deemed in any way liable or responsible for such indemnification.

4. Termination:

4.1 Voluntary Termination:

This Agreement shall be terminable:

By the expiration of its term, or earlier by mutual written consent, or by the Deputy Director with written notice to each member of the Board, personally served or sent, postage prepaid, by certified mail, return receipt requested, provided that the Board is given at least two (2) weeks' notice of the Deputy Director's intent to terminate the Agreement.

4.2 Disability of Deputy Director:

In the event of disability by illness or incapacity, the Board may terminate this Agreement by written notice to the Deputy Director at any time after the Deputy Director has exhausted any accumulated sick leave and such other leave as may be available and has been absent from his employment for whatever cause for an additional period of six (6) continuous months and is receiving benefits under the Authority's long-term disability insurance plan. The Authority agrees to continue to provide the Deputy Director with health insurance through the term of this Agreement.

All other obligations of the Authority shall cease upon such termination, unless otherwise required pursuant to the policies contained in the Authority Policy Manual, as now written as of February 6, 2017.

4.3 Involuntary Termination:

The Deputy Director may be subject to discharge for good and just cause, including without limitation, neglect of duty or breach of contract, provided that the Deputy Director shall be entitled to service of a written notice specifying the basis for discharge, and to a fair hearing before the Board on at least twenty (20) working days' notice. The Deputy Director shall have the right to be accompanied by legal counsel at such hearing, which shall be conducted by the Board in executive session. If, at the hearing, it is concluded that the Deputy Director's discharge was made without good and just cause, the Authority agrees to pay the costs of the Deputy Director's legal representation at such hearing.

If, at the hearing, the Board determines that the Deputy Director's discharge was for good and just cause, the Deputy Director reserves the right to appeal the Board's determination to arbitration within twenty (20) working days.

Such arbitration shall be conducted in accordance with the provisions of Section 5 of this Agreement.

5. Dispute Resolution:

Unless otherwise provided for in this Agreement, if the Deputy Director elects to appeal his involuntary termination, pursuant to paragraph 4.3 of this Agreement, to arbitration, such arbitration shall be conducted by a neutral Arbitrator in accordance with the rules of the American Arbitration Association. The Arbitrator shall have no power to add to, or subtract from or otherwise modify any of the terms of this Agreement. The Arbitrator's authority under this Agreement is limited to determining whether the Authority had good and just cause to terminate the Deputy Director, and if not, what remedies shall apply. The Arbitrator does not have authority to consider other issues unless mutually agreed to, and submitted, by the parties. The decision of the Arbitrator shall be final and binding on the parties, subject to any CPLR Article 75 proceeding, and the Arbitrator shall be requested to issue his or her decision within thirty (30) days after the hearing is concluded. If Arbitrator determines that the Authority did not have good and just cause to terminate the Deputy Director, the Authority shall pay the final costs of the proceeding, including the Deputy Director's legal fees and expenses. If, on the other hand, the Arbitrator determines the Authority had good and just cause to terminate the Deputy Director, the Deputy Director agrees to pay for the cost and expenses of the Arbitrator.

6. Remedies for Breach:

6.1 Breach by the Authority Defined:

A breach of this Agreement shall include, but shall not be limited to the following:

- (a) The Deputy Director's involuntary discharge from employment without good and just cause; or
- (b) Material alteration of the Deputy Director's duties as outlined in Section 2.1.

6.2 Remedies:

In the event the Authority commits a breach of this Agreement, the Authority agrees to pay to the Deputy Director the following as and for damages for such breach:

- (a) All benefits to which other employees are entitled under Policy No. 12, as now written and in effect as of February 6, 2017.

(b) If at the time of the breach, the Deputy Director was eligible for retirement, the Deputy Director may elect to retire any time prior June 28, 2019 and will be entitled to, as deferred compensation, all benefits to which other employees are entitled under Policy No. 46.0, as now written and in effect as of February 6, 2017.

(c) Reasonable attorney's fees and expenses

7. Miscellaneous:

7.1 Payment of Benefits:

In the event any payments or other cash benefits become due and owing under this Agreement or under the Authority Policy Manual, as now written and in effect as of February 6, 2017, such payment shall be paid in quarterly installments in amounts to be calculated at the time of separation from service. The first payment is to be made within fifteen (15) days of separation from service and every ninety (90) days thereafter. In the event the Authority fails to make payment of said benefits within fifteen (15) days of termination of the Agreement and subsequently every ninety (90) days thereafter, the Deputy Director shall be entitled to statutory interest to be added to the amount due and owing.

In the event of the Deputy Director's death before all payments are made, payments are to be made to the Deputy Director's spouse and in the event of the spouse's death before all payments are made, then to the Deputy Director's remaining eligible heirs. All payments made in this manner are to be made as outlined in the preceding paragraph.

7.2 Confidentiality:

The Deputy Director agrees that upon the cessation of employment from the Authority he will keep and maintain all knowledge, information, technical and scientific data, policies, procedures, business strategies and other information obtained during his service with the authority completely confidential. The Deputy Director agrees that he shall not disparage, orally or in writing, the Authority, its Chair, Treasurer, Secretary, management, employees, agents, attorneys, successors and assigns, products or services. The Deputy Director understands that a breach of this section of the Agreement would be a material breach of this Agreement and would necessitate the application for injunctive relief in favor to the Authority from a court of competent jurisdiction. The Deputy Director understands and agrees that if he breaches this section of the Agreement, the Authority will be entitled under the terms of this section to seek reasonable attorney fees and expenses.

The Authority Chair, Vice Chair, Treasurer, Secretary, management, employees, agents, attorneys, its successors and assigns agree not to disparage, orally or in writing, the Deputy Director. The Authority, its successors or assigns understand that a breach of this section of the Agreement would be a material breach of this Agreement and would necessitate the application for injunctive relief in favor to the Deputy Director from a court of competent jurisdiction. The Authority, its successors or assigns understand and agree that if the Authority breaches this section of the Agreement, the Deputy Director will be entitled under the terms of this section to seek reasonable attorney fees and expenses.

7.3 Exclusive Agreement:

This shall be the sole and exclusive Agreement between the parties and shall terminate and cancel any and all agreements made between the parties hereto prior to the date of the execution hereof.

7.4 Applicable Law:

This Agreement is in every respect subject to all applicable laws and regulations of the State of New York, including without limitation the Public Authorities Law, which may be in effect from time to time during the term hereof.

7.5 Savings Clause:

In case any one or more of the provisions in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect (a) such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and (b) this Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, except that this subsection (b) shall not prohibit any modification allowed under Section 6 hereof. Failure to insist upon strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly authorized as the day and year first written above.

Dated: June __, 2018

ERIE COUNTY WATER AUTHORITY

DEPUTY DIRECTOR

By: _____

By: _____

Jerome D. Schad, Chair
Board of Commissioners

Robert J. Lichtenthal, Jr.