



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM
June 24, 2024

To: Terrence D. McCracken, Secretary to the Authority

From: Mark S. Carney, General Counsel

Subject: Hold Harmless Agreement
Wohlhueter Water Storage Tank
Town of Boston
ECWA Project No. 199300453

The Erie County Water Authority (ECWA) operates and maintains a water storage tank (Wohlhueter Tank) under a Lease Management Agreement with the Town of Boston. The tank property is owned by the Town of Boston and is subject to an easement granted to the Town by Paul and Crystal Black. The easement allows for ingress and egress by pedestrians and vehicles between the Wohlhueter Road and the Town Property and includes the non-exclusive right of the Town, its successors, agents, employees, contractors, invitees, and designees, including the ECWA, to install a driveway and related drainage facilities upon the Easement and to enter upon the Easement at any and all times for purposes of maintenance and repair of the tank and associated facilities and property. Recently the Blacks have installed a gate on the Easement area which at times blocks access to the tank property for emergency and routine maintenance. After a lengthy negotiation, the Blacks have agreed to indemnify and hold both the Town and the Authority harmless as to any damage and/or injuries which may be caused as result of the installation of said gate.

In conjunction with the Town of Boston, the ECWA Law Department has developed the attached Hold Harmless and Indemnity Agreement (Agreement) which has been executed by both the Blacks and the Town of Boston. The Law Department is recommending that the Board review and consider attached Agreement and authorize the Chairman to execute same. There is no cost associated with this Agreement.

Attached find three copies of the partially executed Agreement for execution by the Chairman. Thank you and please feel free to contact me if you have any questions.

MSC:MJQ:jmf
Attachment
cc: L.Kowalski
W.Wheeler
BOTN-326-9302-F

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** 199300453
Project Description: Hold Harmless Agreement, Wohlhueter Tank, Town of Boston.

Item Description:

- | | | | |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|---|--------------------|------------------|
| <input type="checkbox"/> Sr. Production Engineer | _____ | Date: _____ |
| <input type="checkbox"/> Chief Operating Officer | _____ | Date: _____ |
| <input type="checkbox"/> Executive Engineer | _____ | Date: _____ |
| <input type="checkbox"/> Director of Administration | _____ | Date: _____ |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input type="checkbox"/> Chief Financial Officer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Legal | <i>Mark Carney</i> | Date: 06/24/2024 |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--------------------|----------------|
| <input checked="" type="checkbox"/> Secretary to the Authority | <i>[Signature]</i> | Date: 7/8/2024 |
|--|--------------------|----------------|

Remarks: _____

Resolution Date: _____ **Item No:** _____

HOLD HARMLESS AND INDEMNITY AGREEMENT

This Agreement made and entered on this 14th day of ~~May~~^{June}, 2024, by and between Paul Black and Crystal Black, residing at 7737 Wohlhueter Road, Colden, New York ("Black"), the Town of Boston, New York, a municipal corporation with offices at 8500 Boston State Road, Boston, New York (the "Town"), and the Erie County Water Authority, a public benefit corporation, with offices located at 295 Main Street, Room 350, Buffalo, New York (the "Authority").

WHEREAS, Black is the owner of real property located in the Town of Boston, and more particularly described in a certain deed duly recorded in the office of the Clerk of the County of Erie in Liber of Deeds 11305 at page 5995 (the "Black Property"); and

WHEREAS, the Black Property is subject to an easement granted to the Town and more particularly described in an easement dated July 28, 2005 and duly recorded in the office of the Clerk of the County of Erie in Liber of Deeds 11098 at page 5995 (the "Easement"); and

WHEREAS, the Town of Boston is the owner of real property located in the Town of Boston, and more particularly described in a certain deed duly recorded in the office of the Clerk of the County of Erie in Liber of Deeds 10884 at page 8523 (the "Town Property"); and

WHEREAS, a water tower is located on the Town Property and the Authority operates and manages the water tower on behalf of the Town pursuant to a Lease Management Agreement entered by and between the Town and the Authority on October 8, 1998, as amended on April 21, 2005; and

WHEREAS, the Easement allows for ingress and egress by pedestrians and vehicles between the Wohlhueter Road and the Town Property (the "Easement Area"), and includes the non-exclusive right of the Town, its successors, agents, employees, contractors, invitees, and designees to install a driveway and related drainage facilities upon the Easement and to enter upon the Easement at any and all times for purposes of maintenance and repair; and

WHEREAS, the Easement further requires that there is open access to the Easement area and specifically states that "the Easement Area shall be kept open and free of obstructions at all times...so as to permit ... use [of] the Easement Area without interference;" and

WHEREAS, Black has installed a gate on the Easement area in contravention of the terms of the Easement for the security and convenience of Black; and

WHEREAS, Black now agrees to indemnify and hold both the Town and the Authority harmless as to any damage and/or injuries which may be caused as result of the installation of said gate, inclusive of all claims, suits, causes of action, judgments or damages sustained by the Town or the Authority or any other person or persons for bodily injury or for injury to or loss of property resulting from, caused by or arising out of the conduct of owners, their agents, servants or invitees.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other further consideration, the parties agree as follows:

1. To the fullest extent permitted by law, Black, their heirs, successors, and assigns shall indemnify, defend, and hold harmless the Town and the Authority, their Board of Commissioners, directors, officers, employees, agents, contractors, invitees, designees, servants, and visitors to whom the Town or the Authority are legally responsible, from and against any and all liability, claims, fines, losses, actions, judgments, damages, costs, expenses, fees, including but not limited to attorney's fees, in connection with the Town's and the Authority's use, enjoyment, maintenance, and control of the Easement Area, caused by installation of the gate/fence.

2. To the fullest extent permitted by law, Black, their heirs, successors, and assigns shall and hereby indemnify, defend, and hold harmless the Town and the Authority, their Board of Commissioners, directors, officers, employees, agents, contractors, invitees, designees, servants, and visitors to whom the Town of Boston or ECWA are legally responsible, from and against any and all liability, claims, fines, losses, actions, judgments, damages, costs, expenses, fees, including but not limited to attorney's fees, in connection with bodily injury, death, or property damage arising from or out of any occurrence relating to, either directly or indirectly to, any acts or omissions of the Town or the Authority, their Board of Commissioners, directors, officers, employees, agents, contractors, invitees, and designees, caused by installation of the gate/fence.

3. Black agrees to pay for all expenses associated with and shall not seek reimbursement from the Town or the Authority for returning the Easement Area to its original condition, which includes but is not limited to any gate or fence repair and/or replacement needed or that will be needed on or for the Easement Area.

4. This Agreement shall be governed by the Law of the State of New York.

5. This Agreement shall not be changed, modified, or altered except in a written instrument signed by all parties.

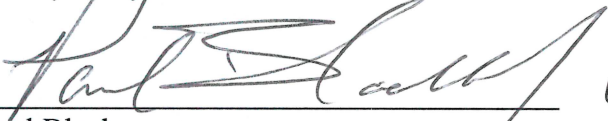
6. This Agreement shall inure to the benefit of and be enforceable against the parties hereto and their respective successors and assigns.

7. This Agreement constitutes the entire agreement between the parties relating to and within the subject matter and is intended to supersede any prior agreements between the parties with respect to the subject matter herein.

8. Any notice permitted or required to be given by terms of this agreement shall be in writing and shall be deemed to be sufficiently given only if delivered personally or mailed by certified mail, return receipt requested, to the addresses set forth above for the parties, or such other addresses as any party may here after designate by written notice to the other parties given in conformity with this section.

9. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the proper party thereunto as of the day and year first above written.

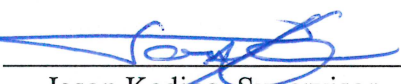


Paul Black 6/14/2024



Crystal Black 6/14/2024

TOWN OF BOSTON

By: 

Jason Keding, Supervisor 6/17/2024

ERIE COUNTY WATER AUTHORITY

By: _____
Jerome D. Schad, Chair

Acknowledgements to follow.

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 14th day of June, 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared PAUL BLACK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SANDRA L. QUINLAN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOVEMBER 23, 2027



Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 14th day of June, 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared CRYSTAL BLACK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SANDRA L. QUINLAN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOVEMBER 23, 2027



Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 17th day of June, 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared JASON KEDING, to me known, who being by me duly sworn did depose and say that he resides in Boston, New York, that he is the Supervisor of the Town of Boston, described in the above instrument, and he signed his name thereto by authorization of the Town Board of the Town of Boston pursuant to a duly enacted resolution.

KAREN M. MILLER
Notary Public, State of New York
Reg. No. 01MI6385215
Qualified in Erie County
Commission Expires 12-31-2026



Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared JEROME D. SCHAD, to me known, who being by me duly sworn did depose and say that he resides in Amherst, New York, that he is the Chairman of the Erie County Water Authority, the public benefit corporation described in the above instrument, and he signed his name thereto by authorization of the Board of Commissioners of the Erie County Water Authority pursuant to a duly enacted resolution.

Notary Public