



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

CC: Terrence D. McCracken, Secretary to the Authority
Joyce A. Tomaka, Chief Financial Officer
Charles E. Eaton, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer

From: Mark S. Carney, General Counsel

Date: July 21, 2025

Subject: Town of Elma Bulk Sales Agreement

On January 16, 2018, the Erie County Water Authority (the “Authority”) put the Town of Elma (the “Town”) on notice that the Authority intended to renegotiate or terminate its Bulk Sales Agreement with the Town. Subsequently, on July 22, 2021, the Authority commenced litigation against the Town related to the sale of water in the Town. During the course of litigation, the parties negotiated acceptable terms to a new Bulk Sales Agreement and a settlement of all claims related to the litigation. On July 17, 2025, the Town’s Board authorized the Town Supervisor to execute the new Bulk Sales Agreement with the Authority, along with a Settlement Agreement.

The Legal Department now recommends that the Authority execute the Settlement Agreement with Release and the new Bulk Sales Agreement with the Town to be effective on July 23, 2025 for a ten-year period and successive ten-year periods thereafter unless a notice of intent to terminate or renegotiate is properly served pursuant to the terms of the Agreement.

MSC:kag

**ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Board Meeting Documents**

Document Name: _____ **Project No.:** _____

Description: _____

Item Description:

Choose one:

Other: _____

Action Requested:

Choose one:

Other: _____

Approvals Required:

APPROVED AS TO CONTENT:

Chief Financial Officer _____ Date: 07/21/2025

Chief Operating Officer _____ Date: 07/21/2025

Claims Rep. – Risk Manager _____ Date: _____

Comptroller _____ Date: _____

Director of Administration _____ Date: _____

Director of Distribution _____ Date: _____

Director of Human Resources _____ Date: _____

Director of IT _____ Date: _____

Director of Production _____ Date: _____

Director of Water Quality _____ Date: _____

Executive Engineer _____ Date: 7/21/2025

General Counsel (Legal) _____ Date: 7/21/2025

Other: _____ Date: _____

APPROVED FOR BOARD RESOLUTION:

Secretary to the Authority _____ Date: 07/21/2025

Remarks: _____

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE : COMMERCIAL DIVISION

ERIE COUNTY WATER AUTHORITY,
295 Main Street, Room 350
Buffalo, New York 14203

Plaintiff,

Index No. 81000/2021

-v-

Assigned Justice:
Hon. Deborah A. Chimes

TOWN OF ELMA
1600 Bowen Road
Elma, New York 14059

Defendant.

SETTLEMENT AGREEMENT AND RELEASES

This Settlement Agreement and Releases (herein “Agreement”) is made effective as of the date it is fully executed (“Effective Date”), by and between the ERIE COUNTY WATER AUTHORITY (herein the “Authority”), a public benefit corporation with offices at 295 Main Street, Room 350, Buffalo, New York 14203, and the TOWN OF ELMA (herein the “Town”), a municipal corporation with offices at 1600 Bowen Road, Town of Elma, New York 14059. The Authority and Town are each also referred to as “Party” or collectively as “Parties” herein.

WHEREAS, the Authority is empowered by its enabling statute, Article 5, Title 3, of the New York Public Authorities Law, to operate and manage the Erie County Water Authority District, which district includes the Town, among other jurisdictions not at issue here,

WHEREAS, in accordance with the Authority’s enabling statute, the Authority’s Tariff, adopted annually by the Authority’s Board of Commissioners, sets the Authority’s rates, fees, and charges,

WHEREAS, from on or about February 4, 1999 through February 3, 2019, the Authority’s sale and delivery of potable water to the Town was governed by the terms of a Bulk

Sales Agreement entered into by the Parties in 1999 (the “1999 BSA”), as supplemented by the terms of the Authority’s Tariff, as amended from time to time,

WHEREAS, at all relevant times, the Town has managed and maintained its own water infrastructure system (the “Town Water System”),

WHEREAS, at all relevant times, after water is delivered to the Town Water System by way of the Authority’s 36-inch transmission main located on Transit Road, the Town Water System is utilized to transport the delivered water to the Town’s residents, as well as to a small subsection of residents in the northern portion of the Town of Aurora and, specifically, those residents located in Aurora Water Districts 1N, 1-E1, 12, 14, 17 and 235 (the “Aurora Customers”),

WHEREAS, prior to July 1, 2019, with the Authority’s agreement, the Town resold water it purchased from the Authority to the Aurora Customers; however, effective July 1, 2019, although the means by which the Aurora Customers received their water remained the same (through the Authority’s water infrastructure and, then, through the Town Water System), the Authority began selling water directly to the Aurora Customers,

WHEREAS, subsequent to July 1, 2019, to determine the balance owed by the Town for its monthly water consumption, the volume of water delivered to the Aurora Customers through the Town Water System in a given month (as recorded on four subtraction meters located at the connection points between the Town and the Town of Aurora water districts that serve the Aurora Customers), is subtracted from the total amount of water delivered to the Town that same month (as calculated on four intake meters at the point of delivery to the Town on Transit Road),

WHEREAS, subsequent to July 1, 2019, the Town began unilaterally invoicing the Authority monthly for what the Town alleged to be its costs incurred in delivering water to the Aurora Customers by way of the Town Water System (the “Town Invoices”), and also began to

unilaterally deduct the amount of the Town Invoice in a given month, from the Town's payment on the Authority's monthly water invoice to the Town (the "Authority Invoices"), and thus began "short-paying" its Authority Invoices (the "Short Payments"),

WHEREAS, on July 22, 2021, the Authority commenced the above-captioned action ("Action") against the Town by the filing of a Summons and Motion for Summary Judgment in Lieu of Complaint (the "Motion"), and later filed a (Verified) Amended Complaint on April 12, 2022 (the "Complaint"), seeking damages as against the Town based upon an account stated claim, constituting the amounts the Authority alleged was due and owing on the Authority Invoices, plus late fees accrued on those amounts pursuant to the Tariff terms, as a result of the Short Payments,

WHEREAS, the Town opposed the Authority's Motion by its filing on September 22, 2021, and filed a Verified Answer With Counterclaims on May 2, 2022 in response to the Complaint, generally denying the Authority's allegations, asserting affirmative defenses to the Authority's claim for account stated, and asserting several counterclaims against the Authority, including several arising under New York State Constitution and New York Eminent Domain Procedure Law (the "Counterclaims"), seeking damages as against the Authority in light of the fact that, since July 1, 2019, the water sold by the Authority to the Aurora Customers travelled through the Town Water System, without the Town's consent and without compensation, and

WHEREAS, the Parties wish to settle their disputes and dismiss any and all claims and counterclaims between them that were, or could have been, brought in the Action, whether known or unknown, as well as any disputes based on or arising out of any matter, cause, act, or omission that occurred up through the Effective Date of this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sum and sufficiency of which are hereby acknowledged, the Parties

acknowledge that this Agreement constitutes a full and final settlement of the Action and Counterclaims and any statutory or other rights that either party may have against the other for reimbursement of costs, interest, expenses, expert witness fees, or attorneys' fees in connection with the Action, and, intending to be bound by the terms hereof, agree as follows:

1. Recitals Incorporated. The foregoing "WHEREAS" clauses are hereby incorporated by reference and form a part of this Agreement.

2. Settlement Payment.

a. In full satisfaction of all charges assessed against the Town's water account with the Authority, with the exception of all current regular water charges that have not become due as of the time this Agreement is executed, the Town shall pay to the Authority the sum of Two-Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) (herein the "Town Payment").

b. The Town Payment shall be made no later than seven (7) days after this Agreement is fully executed.

c. The Town Payment shall be made payable to: Erie County Water Authority (Attention: Jessica R. Brown, Comptroller), 295 Main Street, Room 350, Buffalo, New York 14203-2494.

d. For avoidance of doubt, the Town Payment does not relieve the Town, and the Town remains responsible for any current regular water charges billed to the Town on any Authority Invoice that have not yet become due as of the Effective Date.

3. Adjustment of Town's Account. Assuming that, through the Effective Date of this Agreement, the Town has continued to timely pay the portion of each Authority Invoice attributable to regular water charges (*i.e.*, as the Town has paid its Authority Invoices since in or about December 2021), then, within seven (7) days of the Authority's receipt of the Town

Payment, the Authority will manually adjust the Town's account balance to reflect only the Town's balance on any current regular water charges as set forth on the most recent Authority Invoice, and thus thereby eliminating any late fees assessed against the Town's account that were attributable, either directly or indirectly, to the Town's Short Payments. If the Effective Date falls at least twenty-one (21) days before the anticipated issuance date of the next successive Authority Invoice, such adjustment will be reflected on the *first* Authority Invoice issued subsequent to the Effective Date. If the Effective Date falls less than twenty-one (21) days before the anticipated issuance date of the next successive Authority Invoice, such adjustment will be reflected on the *second* Authority Invoice issued subsequent to the Effective Date.

4. Stipulation of Discontinuance. Simultaneous with the parties' execution of this Agreement, the parties' counsel will execute a Stipulation of Discontinuance in the form attached hereto as **Exhibit A**, which provides for discontinuance of the Action and Counterclaims, with prejudice, on the merits, without costs, and all rights to appeal waived. The Authority's counsel shall file the Stipulation of Discontinuance within seven (7) days after the Town Payment is received by the Authority.

5. New Bulk Sales Agreement. Simultaneous with the parties' execution of this Agreement, the parties will execute a Bulk Sales Agreement consistent with the terms and conditions set forth in the Authority's duly adopted Tariff, and specifically in the form attached hereto as **Exhibit B**. The Town understands that the parties' new Bulk Sales Agreement provides that the Town "understands and agrees to allow and permit the Authority to use the facilities of the [Town water] district without the imposition of any rentals or other charges therefore and to transport water to areas located outside and beyond the limits of the district" (Tariff, § 2.11[G]). The Town further understands that, in the event that the Authority exercises its rights under the parties' new Bulk Sales Agreement to give notice of intent to renegotiate that

agreement, and the Town does not enter into a new agreement by the expiration date, then the conditions outlined in Section 2.11 (A)-(H) of the Tariff, as they may be amended from time to time, will apply for so long as the Authority continues to provide water to the Town and until the Authority and the Town enter into a new contract.

6. Releases.

a. *Release of the Authority.* In exchange for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Town, for itself and its past, present, and future elected officials, board members, supervisors, officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons or entities acting by, under or in concert with the foregoing (individually and collectively, the "Town Releasors"), fully and completely release the Authority and its past, present, and future elected officials, board members, officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons or entities acting by, under or in concert with the foregoing (individually and collectively, the "Authority Releasees") from any and all liability, claims, demands, actions, causes of action, suits, grievances, debts, sums of money, controversies, agreements, promises, damages, costs, expenses, interest, attorneys' fees, and remedies of any type whatsoever, known or unknown, existing or contingent, suspected or unsuspected, asserted or unasserted, which against the Authority Releasees the Town Releasors had or might have had as of the date the Action was commenced, including any that actually formed the basis, and any which could have formed the basis, for a claim or counterclaim in the Action. The Town Releasors further covenant, to the maximum extent permitted by law, that they shall not at any time hereafter commence, maintain, prosecute, participate in, or permit to be filed by any other person on the Town's behalf, any action, charge, complaint, suit or proceeding

of any kind, based in law or equity, before any court, administrative body, or other tribunal (whether governmental, self-regulatory or otherwise) against the Authority Releasees, with respect to any claim or cause released pursuant to this paragraph.

b. *Release of the Town.* In exchange for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Authority, for itself and its past, present, and future elected officials, board members, officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons or entities acting by, under or in concert with the foregoing (individually and collectively, the "Authority Releasors"), fully and completely release the Town and its past, present, and future elected officials, board members, officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons or entities acting by, under or in concert with the foregoing (individually and collectively, the "Town Releasees") from any and all liability, claims, demands, actions, causes of action, suits, grievances, debts, sums of money, controversies, agreements, promises, damages, costs, expenses, interest, attorneys' fees, and remedies of any type whatsoever, known or unknown, existing or contingent, suspected or unsuspected, asserted or unasserted, which against the Town Releasees the Authority Releasors had or might have had as of the date the Action was commenced, including any that actually formed the basis, and any which could have formed the basis, for a claim or counterclaim in the Action. The Authority Releasors further covenant, to the maximum extent permitted by law, that they shall not at any time hereafter commence, maintain, prosecute, participate in, or permit to be filed by any other person on the Authority's behalf, any action, charge, complaint, suit or proceeding of any kind, based in law or equity, before any court, administrative body, or other

tribunal (whether governmental, self-regulatory or otherwise) against the Town Releasees, with respect to any claim or cause released pursuant to this paragraph.

c. For avoidance of doubt, nothing herein shall be construed as releasing or limiting the Parties' obligations under this Agreement.

d. For avoidance of doubt, the release in favor of the Town Releasees set forth in Paragraph 6(b) and Town Payment required under Paragraph 2(a) of this Agreement, do not release the Town from, and the Town remains responsible for, those regular water charges invoiced to the Town that have not yet become due, and any future regular water charges for water delivered to the Town, but not yet invoiced, as of the Effective Date of this Agreement.

7. No Admissions as to Liability. The Parties acknowledge and agree that this Agreement is a compromise of disputed claims and/or potential claims, and that neither this Agreement, nor any consideration provided pursuant to this Agreement, shall be taken or construed to be an admission or concession by any Party of any kind with respect to any fact, allegation of wrongdoing, liability, or fault, all such liability being expressly denied. Rather, the Parties have entered the Agreement to amicably compromise their differences, and to avoid the uncertainty, expense, and burden of further litigation.

8. Governing Law & Jurisdiction. This Agreement is governed by and shall be construed and enforced in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law. Any action or proceeding concerning this Agreement shall be brought only in state or federal courts located in the County of Erie, New York, and the Parties irrevocably consent to such courts as the exclusive venue/forum for any action or proceeding concerning this Agreement.

9. Successors and Assigns. This Agreement will inure to the benefit of and will be binding upon the successors and assigns of each Party hereto.

10. Representations & Capacity. The Parties each acknowledge, accept, warrant and represent that (i) they have been represented at all relevant times during the negotiation and execution of this Agreement by counsel of their choice, and that they have executed this Agreement with the consent and on the advice of such independent legal counsel, (ii) they and their counsel have determined through independent investigation and robust, arm's-length negotiation that the terms herein shall exclusively embody and govern their agreement, without reliance on any representation of any kind or character not expressly set forth herein, (iii) that they have executed the Agreement freely, voluntarily, and with full knowledge of its terms and conditions, and that the person signing below on its behalf are under no legal disability which would preclude him or her from executing the Agreement, and (iv) that they have the full right, power, and authority to enter into this Agreement and that the person signing below on its behalf is authorized to do so.

11. Entire Agreement. This Agreement contains the complete and entire agreement between the Parties and supersedes any and all prior agreements, arrangements, negotiations, understandings, statements, or representations between the Parties relating to any subject related to the Action and/or the claims that have or could have been brought therein. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist.

12. Modification. No modification, amendment, or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, will be binding upon any party hereto unless made in writing and signed by such party or by a duly authorized officer or agent of such party.

13. Partial Invalidity. If any provision of this Agreement is held to be illegal, void, or unenforceable, such provision shall be of no force or effect. However, the illegality or

unenforceability of such provision shall have no effect upon, and shall not impair the legality or enforceability of, any other provision of this Agreement; provided, however, that a legal and enforceable provision shall be substituted for such illegal and unenforceable provision in order to carry out, to the extent legal and enforceable, the intent and purpose of such illegal and unenforceable provision.

14. Expenses & Attorneys' Fees. The Parties shall bear their own attorneys' fees and any other legal costs or accounting expenses incurred in connection with the Action, the negotiation and preparation of this Agreement, and in connection with any action or proceeding seeking to enforce the terms or provisions of this Agreement.

15. Joint Preparation of Agreement/No Construction Against Drafter. This Agreement and the matters memorialized herein have been voluntarily and consensually negotiated at "arms-length" and, consequently, no rule of interpretation or construction which would result in an interpretation or construction in favor of or to the detriment of one party or another shall apply.

16. Headings. The headings used in this Agreement are for convenience only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

17. Counterparts; Facsimiles; Digital. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one agreement. Evidence of execution of this Agreement may be exchanged by facsimiles or digital means, such as .pdf provided by electronic mail, and such signature will be binding as though it were original.

[SIGNATURE PAGES FOLLOW]

ERIE COUNTY WATER AUTHORITY

By: _____
JEROME D. SCHAD,
Chair of the Erie County Water Authority
Board of Commissioners

Dated: _____, 2025

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

On the ____ day of _____, 2025, before me personally appeared **Jerome D. Schad**, Chair of the Board of Commissioners of the Erie County Water Authority, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Settlement Agreement and Releases, who being by me duly sworn did depose and say that was authorized by the Erie County Water Authority to execute said instrument, and that he did execute same on behalf of the Erie County Water Authority, in his official capacity, for the purposes and consideration therein expressed on its behalf.

Notary Public

TOWN OF ELMA

By: Wayne A. Clark
WAYNE CLARK, Town Supervisor

Dated: July 17, 2025

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

On the 17 day of JULY, 2025, before me personally appeared **Wayne Clark** Supervisor of the Town of Elma, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Settlement Agreement and Releases, who being by me duly sworn did depose and say that was authorized by the Town of Elma to execute said instrument, and that he did execute same on behalf of the Town of Elma, in his official capacity, for the purposes and consideration therein expressed on its behalf.

Kerry A. Maluski
Notary Public

EXHIBIT A

[Stipulation of Discontinuance]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE : COMMERCIAL DIVISION

ERIE COUNTY WATER AUTHORITY,

Plaintiff,

-v-

TOWN OF ELMA

Defendant.

STIPULATION OF
DISCONTINUANCE
PURSUANT TO CPLR 3217(a)(2)

Index No. 81000/2021

Assigned Justice:
Hon. Deborah A. Chimes

PLEASE TAKE NOTICE that whereas no party served herein is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, it is hereby stipulated and agreed, by and between all parties, by and through their respective attorneys of record, that the above-entitled action, including any counterclaims, be, and the same hereby is, discontinued pursuant to CPLR 3217(a)(2), with prejudice and on the merits, with all rights to appeal waived, and with each party to bear their own attorneys' fees and costs incurred in connection therewith.

Dated: Buffalo, New York
_____, 2025

**HARRIS BEACH
MURTHA CULLINA PLLC**

By: _____
Allison Fiut, Esq.
James Nonkes, Esq.
726 Exchange Street, Suite 900
Buffalo, New York 14210
Telephone: (716) 200-5050
Attorneys for Plaintiff Erie County Water Authority

BOND, SCHOENECK & KING PLLC

By: _____
Bradley Hoppe, Esq.
Katherine McGraw, Esq.
Avant Building, Suite 900
200 Delaware Avenue
Buffalo, New York 14202-2101
Telephone: (716) 416-7000
Attorneys for Defendant Town of Elma

EXHIBIT B

[Bulk Sales Agreement]

**TOWN OF ELMA
BULK SALES AGREEMENT**

AGREEMENT made this ____ day of _____, 2025, by and between **ERIE COUNTY WATER AUTHORITY**, a public benefit corporation, having its offices and principal place of business at 295 Main Street, Room 350, Buffalo, New York 14203, hereinafter referred to as the “Authority,” and the **TOWN BOARD OF THE TOWN OF ELMA**, a municipal corporation formed under the laws of the State of New York and acting as Water Commissioner on behalf of the duly constituted Water Districts of the Town of Elma, having its offices and principal place of business at 1600 Bowen Road, Elma, New York 14059.

RECITALS

WHEREAS, since 1963, the Town has constructed, owned, maintained, and operated a municipal water system supplying water to residents and inhabitants within and outside of its territorial limits, and

WHEREAS, the Town has no independent source of water supply and has been supplied with a constant supply of water through connections and interconnections with the facilities of the Authority since 1963, and

WHEREAS, upon compliance with the rules and regulations prescribed by the Authority’s Tariff and the payment of service charges and deposits, if any, applicable to the service requested, the Authority would agree to continue furnishing and providing water services to the Town,

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties agree as follows:

ARTICLE 1: REQUEST FOR SERVICE

1.01 The recital paragraphs are incorporated as substantive terms and conditions of the Agreement and as representing the parties’ intent.

1.02 The Town requests an adequate supply of potable water be supplied by the Authority through four interconnections, measured by intake meters at each connection, with Authority personnel having unlimited access to these points of connections and meters.

1.03 Activation of the point(s) of connection described in section 1.02 is a joint determination by both the Town and the Authority requiring approval by both parties.

1.04 The Town will ensure that its mains, storage tanks, pumping stations, cross-connection control program, and other facilities for the distribution of water within its territorial limits and service area are and will continue to be able to provide an adequate and safe supply of water at the proper pressures for domestic, commercial, and industrial use as well as for public and private fire protection and that the resale of water to residents and inhabitants outside of its

territorial limits will not impair the supply or pressure of water to residents and inhabitants within its territorial limits.

ARTICLE 2: BASIS OF SERVICE

2.01 Both parties understand and agree the water supplied by the Authority under this Agreement will be distributed by the Town through the Town's water facilities and infrastructure to the residents and inhabitants within the territorial limits of the township, or, consistent with the provisions of applicable law and subject to the written approval of the Authority (evidenced by a resolution duly adopted by the Authority's Board of Commissioners), to such areas outside of the township.

2.02 In accordance with this Agreement, the Town is authorized to resell water to residents and inhabitants to the addresses set forth on the attached spreadsheet (Schedule A), such addresses being located within the following areas ("Out of District Service Areas"): (1) within the Town of Marilla Water District #1; (2) within the Hemstreet Road Mobile Home Park Area in the town of Marilla, (3) on Town Line Road in the Town of Marilla, (4) on Transit Road in the Town of West Seneca; (5) on Porterville Road in the Town of Aurora; (6) on N. Davis Street in the Town of Aurora; (7) on Buffalo Road in the Town of Aurora; and (8) on Reiter Road in the Town of Aurora. These Out of District Service Areas are shown on the attached map of the Elma Water Department Service Area, dated 2025 (Schedule B). The Town's Water Districts and the Out of District Service Areas are collectively referred to herein as the "Town Service Areas."

2.03 The parties agree there are no existing Authority-owned mains within the Town at the time of execution of this Agreement. The Town, however, understands and agrees it will not sell or supply water to properties located within its territorial limits or service area, which abut, face, or are numbered on a street where Authority-owned mains exist and for which the Authority could provide water services by direct connection to residents or inhabitants of such a street, in accordance with the terms and conditions of the Authority's Tariff, with the exception of any addresses set forth on Schedule A hereto that meet the foregoing criteria.

2.04 The parties understand and agree that expansion of the Town's Service Area, as described sections 2.01 and 2.02, the addition or expansion of the Town's water storage capacity, or any additional interconnection between the Town's and Authority's facilities and infrastructure would require a modification of this Agreement, requiring the approval of the governing body of each party and the execution of an Addendum to this Agreement. The Authority agrees that it will not unreasonably withhold its consent to any request made by the Town pursuant to this paragraph.

2.05

- A. The Town and the Authority are recognized, for purposes of this Agreement, to be separate, independent water purveyors under federal, state, and local laws, each having separate and individual responsibility for supplying and distributing potable water that meets or exceeds the water quality standards established by federal, state, and local regulatory agencies empowered to enforce safe drinking water standards under federal, state, and local laws and regulations.

- B. The Authority's responsibility for water quality ends at the point that water passes through an intake meter and, from that point on, the Town is independently responsible for the quality of water passing through its facilities and infrastructure, with its responsibility for water quality ending at the point that water passes through a subtraction meter, connecting to the Authority's facilities and infrastructure.
- C. Both parties agree to make available to each other, upon request, copies of any reports rendered to federal, state, or county regulatory agencies in connection with the operation of an independent water system.
- D. Without assuming the regulatory duties and responsibilities of the other party in the operation of its separate and independent public water system, the Authority and the Town will coordinate present and future statutory and regulatory compliance efforts with each other and will join in a mutual compliance effort where such activity is mutually advantageous.

2.06 The Town understands and agrees the Authority, under the terms of its Tariff, does not permit its mains or services to be connected to any service pipe or piping connected to a well or any source of water supply not approved by the New York State and the Erie County Departments of Health or meeting the standards established by the Authority in accordance with regulations adopted by federal, state, and county agencies empowered to regulate public water purveyors.

2.07 The Town shall install, maintain, improve, repair, or replace, at the Town's expense, an appropriate meter vault, necessary piping, fittings, valves, and pipe couplings to effectuate the permanent interconnections at its Transit Road Pump Station in accordance with applicable federal, state, and county health and safety laws and regulations, the failure of which may be treated by the Authority as a material breach of this Agreement.

2.08 The Authority has furnished and will maintain, at its sole cost and expense, a meter and meter coupling at each point of connection to record the volume of water being supplied and billed to the Town ("Intake Meters").

- A. The Town and the Authority must mutually agree to the size of the meter and coupling to be installed at the point of connection.
- B. The Town understands and agrees the meter size will determine the rates and other charges, which may be collected by the Authority pursuant to the provision set forth in the Authority's Tariff.
- C. Both parties agree that the Authority will not be responsible for water pressure beyond the points of connection at the Transit Road Pump Station.

- D. The Town shall have the right, upon reasonable notice to the Authority and at the Town's sole cost and expense, to inspect and test each Intake Meter.
- E. By no later than ninety (90) days after execution of this BSA, the Authority, at its sole cost and expense, agrees to install any and all equipment: (1) as is necessary to allow the Authority to continuously monitor the Town's water usage through readings of the Intake Meters via cellular endpoint; and (2) as is necessary to attach a pressure sensor to an intake meter for the purpose of monitoring the pressure of water at said meter. The Town understands that the foregoing may require installation of equipment and components (including but not limited to a cellular endpoint) in and/or on to-be-determined locations inside the building where the Intake Meters are located. The Town agrees to accommodate the Authority's reasonable requests for access and assistance as may be necessary to complete the foregoing installations. The Authority agrees to provide access to the information regarding both water usage and pressure upon the Town's request.

2.09 The Authority has furnished and will maintain, at its sole cost and expense, a meter and meter coupling at each point at which water is delivered by the Town outside of the Town Services Areas for further distribution by the Authority ("Subtraction Meters").

- A. The Town and the Authority must mutually agree to the size of the meter and coupling to be installed at the point of connection.
- B. Both parties agree that the Town will supply water up to the point of connection with the Subtraction Meters with a hydraulic grade line (HGL) at a pressure level reasonably equivalent to its adjacent users, with no reduction except in the case of an emergency. Both parties agree that the Town will not be responsible for water pressure beyond the points of connection of each Subtraction Meter.
- C. The Town shall have the right, upon reasonable notice to the Authority and at the Town's sole cost and expense, to inspect and test each Subtraction Meter. Any person who physically enters or accesses a Subtraction Meter pit for an inspection shall have undergone confined space training.

2.10 The Authority reserves the right at any time, upon reasonable notice to the Town, to shut off water in its mains to make repairs, extend mains, or for maintenance or operational purposes.

- A. The Town shall be responsible for notifying any and all appropriate agencies such as fire, police/sheriff or public works to whom notice should be given in the event of a shut-off.
- B. In the event of a shut-off, the parties agree that the Authority will not be liable for the following:

1. Shortages or deficiency in the Town water supply,
2. Problems associated with water pressure,
3. Bursting or breaking of Town water mains, service lines, valves, or other appurtenances, or
4. Damages resulting from the above.

2.11 The Authority must be able to protect its meter(s) and meter couplings from tampering and must have access to the meter(s) at all times. In addition, the Authority shall have the right, upon reasonable notice to the Town, to inspect all valves, piping, and appurtenances within the Transit Road Pump Station at all times to ensure that all water passes through an intake meter. Under no circumstances shall a valve be opened to allow flow to circumvent an intake meter.

2.12 The Authority may restrict, curtail, or prohibit the use of water for secondary purposes (e.g., lawn sprinkling, car washing, filling swimming pools, or other uses not related to health and safety) based on the following reasons: protection of public health, protection of public safety and welfare, conservation measures taken during periods of drought, or other public emergencies.

- A. The Town understands and agrees to use its best efforts to secure cooperation of Town customers to comply with the water restrictions imposed on all Authority water customers.
- B. In return, the Authority will use its best efforts to work with the Town during any period of water shortage to coordinate plans for the alleviation of such shortages.

2.13 The Authority and the Town understand and mutually agree that the terms and conditions of this Agreement may be subject to review, approval, or scrutiny by the New York State Department of Environmental Conservation and the Erie County Department of Health, as well as other federal, state, and local regulatory agencies empowered with oversight and enforcement of laws and regulations relating to public water systems.

2.14 The Authority and the Town understand and mutually agree that terms and conditions of this Agreement are subject to the terms of the Erie County Water Authority Tariff, as adopted and as amended from time to time by the Authority's Board of Commissioners. If a conflict should arise between the terms of this Agreement and the Tariff, the Tariff shall control.

- A. The Authority is required to provide a copy of its current Tariff on its website (<https://www.ecwa.org/>).

- B. The Secretary to the Authority will annually provide the Town Clerk with a copy of the Tariff and any amendments thereto.

2.15 The Town understands and agrees that, as a condition of this Agreement, the Town must allow and permit the Authority to use the facilities and infrastructure of the Town without the imposition of any rentals or other charges for the use of such facilities and infrastructure to transport water to areas located outside and beyond the territorial limits or service area of the Town.

2.16 The Authority and the Town understand and mutually agree that this Agreement conferring rights to the Town will automatically terminate if the Town sells, leases, assigns, or transfers its water system to another party, unless the Authority, by resolution, has given express written consent to the assignment of this Agreement to another party. If the Agreement terminates pursuant to this provision, the Tariff shall control.

2.17 If the Town provides the Authority with written notice to abandon any interconnection, the Town, at its own expense, will physically cut and cap the interconnection pipe in a manner approved by the Authority.

2.18 The Town understands and agrees to hold the Authority harmless for the consequences of the Town's intermittent or emergency use of any interconnection.

- A. The Town will indemnify the Authority for any claims against the Authority, arising from the use or subsequent shutdown or closing of the interconnections.
- B. The Town will also indemnify the Authority for any costs resulting from the possible contamination of the Authority's water system due to improper cross-connections, backflow, or other introduction of contaminated water through the interconnection with the Authority's water system, whether through inadvertence or negligence.

ARTICLE 3: WATER CHARGES & PAYMENT PROCEDURES

3.01 The Authority and the Town understand and agree all water delivered and sold to the Town shall be at the rates and charges set forth in subparagraph C of paragraph 13.01 of the Tariff or if amended in the future, such Tariff provisions relating to the delivery and sale of bulk water to Public Corporations and Special Improvement Districts pursuant to Service Classification No. 1.

3.02 The Authority will bill the Town monthly for each intake interconnection based on the reading of the Intake Meter at the rates, charges, late charges, and fees as set forth in the Tariff.

- A. The Authority will send all billing invoices, setting forth the readings, appropriate base system fees, and other charges set forth in the Tariff, to the Town Clerk's office.

- B. The Town agrees to pay all billing invoices within 30 days of receipt, or the Town will be subject to late charges and fees as provided in the Authority's Tariff.

3.03 The Town understands and agrees that the quantity of water registered on each Intake Meter recording the delivery of water to the Town less the quantity of water registered on each Subtraction Meter recording the delivery of water outside of the Town's territorial limits or service area will be considered the amount of water having been delivered to the Town.

- A. Unless the Town objects to billing invoice prior to the due date, the Town agrees to accept the reading as conclusive evidence of the volume of water delivered to the Town by the Authority, except in the following circumstances:

- 1. In cases where the meter ceased registering or registered inaccurately, as reasonably determined by the Authority, the Authority will determine the quantity of water consumed for billing purposes based on the average registration of the meter in a corresponding past period when that meter was in good working order.

- 2. In cases where a reading cannot be obtained, despite the best efforts of the Authority, the Authority will estimate the quantity based on the average registration of the meter in a corresponding past period. When a reading is later obtained, the Town's billing invoice will be adjusted to reflect the actual consumption with full credit for minimum charges, if any, for the periods involved.

- 3. In cases where it has been determined that water was not passing through an intake meter and the volume of water has not been accurately registered, as reasonably determined by the Authority, the Authority will determine the quantity of water consumed for billing purposes based on the average registration of the meter in a corresponding past period when all water was passing through an intake meter. Under paragraph 2.11, the Authority will perform an inspection to determine what caused water not to pass through an intake meter and will coordinate with the Town to rectify the problem.

3.04 If a meter is found to be defective, the Authority agrees, at its sole cost and expense, to immediately replace the same with a meter which has been previously tested and found to be properly adjusted.

- A. If the Authority determines the meter, dial, or recording assembly has been tampered with by Town employees or agents, the Authority will either repair or replace the meter at the Town's expense.

ARTICLE 4: ADDITIONAL CONNECTIONS AND ALTERNATE EMERGENCY SUPPLY

4.01 If the Town requires an additional supply of water (i.e., a supply of water in addition to the quantities delivered through the metered connections described in section 1.02 of this Agreement), the Town shall, at its own cost and expense, install a meter pit and other facilities to house such meters, piping, appurtenances, and cross-connection control devices, as required by the Authority. The Authority will supply a meter and meter coupling to be installed by the Town with Authority approval.

4.02 If the Town desires to provide for an emergency alternative water supply, the Town agrees that an emergency plan must be submitted to the Authority for approval. If there is an interruption to the Town's regular water supply that necessitates the use of an emergency alternate supply, the Town will notify the Authority that it will implement the emergency plan. If a plan has not been approved in advance by the Authority, the Town agrees that the emergency alternate water supply may not be used or implemented.

4.03 If the Town desires to retain an emergency alternate water supply, the Town agrees that any connection must be maintained in a closed position at all times other than in an emergency situation. Upon termination of the emergency, the Town will promptly restore said connection to the normal closed condition.

4.04 If both parties determine that any of the aforementioned connections will be abandoned, said connection(s) will be physically separated by cutting and capping the pipe(s) in a manner approved by the Authority. In addition, a report showing the location and description of the methods used will be placed on file with the Authority prior to the commencement of service.

4.05 The Town does and will hold the Authority harmless for any and all consequences of the emergency use of these connections. The Town further agrees to indemnify the Authority for any and all claims against the Authority that arise from the use or subsequent shutdown of the aforementioned emergency connections. The Town further agrees to indemnify the Authority for any costs resulting from the possible contamination of its system due to the malfunction of a cross-connection, backflow device, or from other introduction of water from the aforesaid emergency connections into the Authority's system, whether through inadvertence or negligence.

ARTICLE 5: INDEMNIFICATION

5.01 To the fullest extent permitted by law, the Town agrees to indemnify and hold the Authority harmless from all third-party claims, liabilities, damages, and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors and employees may be subject to, arising out of the death or bodily injury to any person or incidental damages, the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Town, its employees, contractors, engineers, or anyone for whom the Town is legally liable.

5.02 To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Town, its officials, and employees harmless from all third-party claims, liabilities, damages, and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its contractors, engineers, or anyone for whom the Authority is legally liable.

ARTICLE 6: SOLE AND EXCLUSIVE SUPPLY

6.01 While this Agreement remains in effect, the Town agrees the Authority will have the sole and exclusive right to supply water to the Town.

ARTICLE 7: NOTICES

7.01 The Authority and the Town mutually agree to provide any notice required by the terms of this Agreement to be sent by certified mail to the following addresses:

TO: **Town of Elma**
Attn: Elma Town Clerk's Office
1600 Bowen Road
Elma, New York 14059

TO: **Erie County Water Authority**
Attn: Office of the Secretary to the Authority
295 Main Street, Room 350
Buffalo, New York 14203.

ARTICLE 8: WAIVER

8.01 The Authority and the Town understand and agree that a breach of the terms and conditions of this Agreement shall not be subject to waiver unless the non-breaching party expressly agrees in writing to waive such breach and the waiver is signed by a person holding the same title or position of the person originally signing this Agreement.

ARTICLE 9: AMENDMENTS AND MODIFICATIONS

9.01 No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Authority's Board of Commissioners and by a resolution of the Town Board and signed by all parties.

ARTICLE 10: NEW YORK LAW & JURISDICTION

10.01 Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Town and the Authority shall be governed, interpreted, and decided by a court of

competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

ARTICLE 11: ENTIRE AGREEMENT

11.01 This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements, or agreements other than those herein expressed. No subsequent agreement made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound by such agreement.

ARTICLE 12: SEVERABILITY

12.01 Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agree that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

ARTICLE 13: EFFECTIVE DATE AND TERM

13.01 The Town and the Authority mutually agree the effective date of this Agreement shall be the date the Authority's Board of Commissioners approves the resolution authorizing the execution of this Agreement, which post-date the resolution adopted by the Town Board authorizing the execution of this Agreement.

13.02 The Town and the Authority mutually agree the term of this Agreement shall be ten (10) years from the effective date of the Agreement.

13.03 The Town and the Authority mutually agree that the Agreement is automatically renewed at the end of the original term for a subsequent ten-year period, unless one of the parties has served a notice on the other party to terminate, or otherwise renegotiate the terms of the Agreement. The party must serve the notice at least one-year prior to the date of renewal.

13.04 Pursuant to § 13.03 of this Article, once a party gives the one-year notice to renegotiate the terms of this Agreement, the Agreement will continue month-to-month until the parties have approved and signed a new Agreement, or when a party has given sufficient notice to terminate the Agreement. A party, who has given a one-year notice to renegotiate, may terminate the Agreement. If either party terminates the Agreement pursuant to this section, then the Tariff shall control.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have set their hands and seals.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2025, before me personally came 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 Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

Notary Public

TOWN OF ELMA

By Wayne A. Clark
Wayne A. Clark, Town Supervisor

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 17 day of JULY, in the year 2025, before me personally came Wayne Clark, to me known, who, being by me duly sworn, did depose and say that he resides in Alden, New York, that he is the Supervisor of the Town of Elma, the municipal corporation described in the above instrument; and that he signed his name thereto by order of the Town Board.

Kerry A. Galuski
Notary Public

KERRY A. GALUSKI
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01GA6223105
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES 6/7/26

SCHEDULE A

FINAL 6/25/25

Town of Elma Out of District Service Areas

BSA 2.02(1): Town of Marilla Water District #1 (Bullis & Greenwood Ter & Townline Rd)			
Address	Street	Town	Serviced By
11123	Bullis Rd	Marilla	ELMA
11124	Bullis Rd	Marilla	ELMA
11136	Bullis Rd	Marilla	ELMA
11149	Bullis Rd	Marilla	ELMA
11154	Bullis Rd	Marilla	ELMA
11166	Bullis Rd	Marilla	ELMA
11169	Bullis Rd	Marilla	ELMA
11174	Bullis Rd	Marilla	ELMA

BSA 2.02(2): Hemstreet Road Mobile Home Park in the Town of Marilla
Large mobile home area. SBL 157.00-10-1.1 & SBL 157.00-10-2.111

BSA 2.02(3): Townline Rd in the Town of Marilla (1447 Townline Rd north to Elma/Lancaster boundary)			
Address	Street	Town	Serviced By
36	Townline Rd	Marilla	ELMA
155	Townline Rd	Marilla	ELMA
187	Townline Rd	Marilla	ELMA
203	Townline Rd	Marilla	ELMA
219	Townline Rd	Marilla	ELMA
257	Townline Rd	Marilla	ELMA
301	Townline Rd	Marilla	ELMA
335	Townline Rd	Marilla	ELMA
366	Townline Rd	Lancaster	ELMA
533	Townline Rd	Marilla	ELMA
549	Townline Rd	Marilla	ELMA
967	Townline Rd	Marilla	ELMA
983	Townline Rd	Marilla	ELMA
991	Townline Rd	Marilla	ELMA
1007	Townline Rd	Marilla	ELMA
1041	Townline Rd	Marilla	ELMA
1225	Townline Rd	Marilla	ELMA
1407	Townline Rd	Marilla	ELMA
1411	Townline Rd	Marilla	ELMA
1427	Townline Rd	Marilla	ELMA
1437	Townline Rd	Marilla	ELMA
1447	Townline Rd	Marilla	ELMA

SCHEDULE A

FINAL 6/25/25

Town of Elma Out of District Service Areas

BSA 2.02(4): Transit Rd in the Town of West Seneca (Clinton St north to Elma/Lancaster municipal boundary)			
Address	Street	Town	Serviced By
3420	Transit Rd	West Seneca	ELMA
3470	Transit Rd	West Seneca	ELMA
3480	Transit Rd	West Seneca	ELMA

BSA 2.02(5): Porterville Road in Town of Aurora			
Address	Street	Town	Serviced By
872	Porterville	Aurora	ELMA
876	Porterville	Aurora	ELMA
880	Porterville	Aurora	ELMA
900	Porterville	Aurora	ELMA
910	Porterville	Aurora	ELMA
920	Porterville	Aurora	ELMA
960	Porterville	Aurora	ELMA
1000	Porterville	Aurora	ELMA
1004	Porterville	Aurora	ELMA
1010	Porterville	Aurora	ELMA
1030	Porterville	Aurora	ELMA
1040	Porterville	Aurora	ELMA
1080	Porterville	Aurora	ELMA
1280	Porterville	Aurora	ELMA
1300	Porterville	Aurora	ELMA
1320	Porterville	Aurora	ELMA
1400	Porterville	Aurora	ELMA
1450	Porterville	Aurora	ELMA
1500	Porterville	Aurora	ELMA
3605	Porterville	Aurora	ELMA

BSA 2.02(6):N. Davis Road			
Address	Street	Town	Serviced By
1716	N.Davis	Aurora	ELMA
1723	N.Davis	Aurora	ELMA
1738	N.Davis	Aurora	ELMA
1745	N.Davis	Aurora	ELMA
1775	N.Davis	Aurora	ELMA

SCHEDULE A
Town of Elma Out of District Service Areas

FINAL 6/25/25

BSA 2.02(7): Buffalo Road			
Address	Street	Town	Serviced By
598	Buffalo Rd	Aurora	ELMA
612	Buffalo Rd	Aurora	ELMA

BSA 2.02(8):Reiter Road			
Address	Street	Town	Serviced By
4080	Reiter Rd	Aurora	ELMA
4134	Reiter Rd	Aurora	ELMA

SCHEDULE B

