




ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM
May 11, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, PE, Senior. Distribution Engineer 

Subject: Contract W-030 – Transmission Main Replacement – Town of Amherst
The Station at Buffalo Easement
ECWA Project No. 201800074

The Erie County Water Authority (ECWA) is undertaking a transmission main replacement project in the Town of Amherst (W-030). A portion of the new main will be constructed on property owned by 1185 Sweet Home Road (NY) Owner, LLC. This property is occupied by the Station at Buffalo apartment complex. In order to construct the improvements as well as to operate and maintain the main following completion of the project, the ECWA must execute a new easement with the property owner.

Over the past few months, the ECWA Law and Engineering Departments with the assistance of Harris Beach have negotiated the terms of this Easement and collectively are recommending that the Board review and approve attached Easement and authorize the Chairman to execute same. There is no cost associated with this Easement. In addition to the easement document, approval and execution of the associated Real Estate Tax Return Form (Form T584.2) is also required in order to file the easement at the Erie County Clerk's Office.

Attached find three copies of the Easement and one copy of the T584.2 form for execution by the Chairman. Thank you and please feel free to contact William Wheeler or me if you have any questions.

MJQ:jmf
Attachments
cc: L.Kowalski
W.Wheeler
CONT-W-030-1801-X-10

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

Contract: W-030 **Project No.:** 201800074

Project Description: Transmission Main Replacement – Town of Amherst
The Station at Buffalo Easement

Item Description:

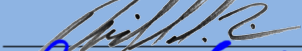
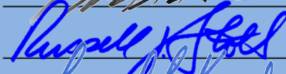
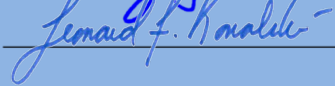
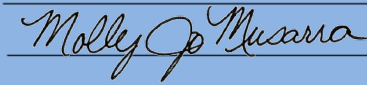

- | | | | |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT 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 checked="" type="checkbox"/> Other <u>Easement</u> | | | |

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 checked="" type="checkbox"/> Sr. Distribution Engineer |  | Date: <u>5/11/2023</u> |
| <input checked="" type="checkbox"/> Chief Operating Officer |  | Date: <u>5/12/2023</u> |
| <input checked="" type="checkbox"/> Executive Engineer |  | Date: <u>05/15/2023</u> |
| <input type="checkbox"/> Director of Administration | | Date: _____ |
| <input checked="" type="checkbox"/> Risk Manager |  | Date: <u>5/12/2023</u> |
| <input type="checkbox"/> Chief Financial Officer | | Date: _____ |
| <input checked="" type="checkbox"/> Legal |  | Date: <u>5/15/2023</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--|------------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: <u>5/15/2023</u> |
|--|--|------------------------|

Remarks: _____

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

PERMANENT EASEMENT

THIS PERMANENT EASEMENT AGREEMENT, (this “Easement”) made this _____ day of _____ 2023, by and between

1185 SWEET HOME ROAD (NY) OWNER, LLC
A Delaware limited liability company
315 Oconee Street
Athens Georgia 30601

hereinafter referred to as the Grantor, and

ERIE COUNTY WATER AUTHORITY
A New York public benefit corporation
295 Main Street
Buffalo, New York 14203

hereinafter referred to as the Grantee

WHEREAS, the Grantor is the owner in fee simple of premises located in the Town of Amherst, County of Erie and State of New York and more particularly described in a certain Deed duly recorded in the office of the Clerk of the County of Erie in Liber 11393 of Deeds at Page 5138 (the “Property”); and

WHEREAS, the Grantee desires to use and access a portion of the Property for the installation and operation of a water line and related equipment and facilities to transmit and distribute potable water to the residents of Erie County; and

WHEREAS, the Grantor(s) has agreed to grant a permanent easement to the Grantee for a portion of the Property of the Grantor and hereinafter described (the “Easement Premises”);

NOW, THEREFORE, in consideration of One (\$1.00) or more Dollars and other good and valuable consideration given by the Grantee to the Grantor(s), the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and correct and are incorporated into and made a part of this Easement.
2. **GRANTING OF PERMANENT EASEMENT**: The Grantor does hereby grant and release unto the Grantee, its successors and assigns, a perpetual, non-exclusive right-of-way and permanent easement, to construct, lay, re-lay, install, operate, maintain, repair, replace, reconstruct, change the size of or remove or replace at its sole cost and expense, a water main or mains both supply and distribution, and all appurtenances, all below grade, (collectively, the "Facilities") in, across, through and under the Easement Premises described in annexed Exhibit A, which Easement Premises shall be approximately 20 feet wide, the center line of which shall be the constructed and installed water line. Notwithstanding the non-exclusive nature of this Easement, there shall be no line, pipe or installation of a facility by someone other than Grantee installed or constructed with 10 feet of Grantee's Facility.
3. **EXERCISE OF RIGHTS**: The Grantee shall have the right to remove any vegetation, paving or landscaping installed by the Grantor on the Property or the Easement Premises for the purpose of gaining access to the Facilities. Upon completion of any construction, inspection, repair, maintenance or replacement, the Grantee shall be responsible for returning the disturbed premises within the Easement Premises or the Property, as applicable, back to its former existing grade restoring these areas as nearly as possible to their original condition, but shall not be responsible for the cost to restore or repair paving or landscaping constructed or planted subsequent to the installation or construction of the Facilities within the Easement Premises.
4. **ACCESS**: This easement conveys to the Grantee the right of reasonable pedestrian and vehicular ingress, egress and regress over the Property for the purpose of granting access to the Facilities and Easement Premises to access, construct, install, inspect, operate, repair, maintain, replace, or change the size of same.
5. **PROPERTY OF GRANTEE**: All mains, lines and appurtenances laid or to be laid by or for the Grantee, its successors and assigns, and/or its contractors, shall be and remain the property of the Grantee, its successors and assigns, forever.
6. **RESERVATION OF RIGHTS**: The Grantor will retain all rights not specifically conveyed by this Easement, except that the Grantor covenants not to construct any building, structure,

equipment, mechanical or otherwise, on or upon the Easement Premises and not to change the grade, contour of said land as it now exists nor shall any excavating, mining or blasting be undertaken within the limits thereof without the consent, in writing of the Grantee.

7. **INDEMNIFICATION**: The Grantee, its successors and assigns agree to indemnify and hold Grantor, its successors and assigns, harmless from any claims, charges, damages, losses, liability, costs and expenses (including reasonable attorney's fees) for any injury to person or property arising out of Grantee's use or control of the Easement Premises, except such claims, damages, losses liability, costs and expenses that are due to the negligence and/or affirmative acts of the Grantor, its successors and assigns. The Grantor, its successors and assigns agree to indemnify and hold Grantee, its successors and assigns, harmless from any claims, charges, damages, losses, liability, costs and expenses (including reasonable attorney's fees) for any injury to person or property arising out of Grantor's use or control of the Property, except such claims, damages, losses liability, costs and expenses that are due to the negligence and/or affirmative acts of the Grantee, its successors and assigns.
8. **REPRESENTATIONS OF THE GRANTOR**: The Grantor covenants that the Property, including the Easement Premises is seized in fee simple and Grantor has the right to convey the same, the Grantee shall quietly enjoy the rights and easements, the Property is free and clear from encumbrances unless otherwise indicated or disclosed in the deed of record to Grantor, and will forever warrant the title to the said rights and easements, and will execute or procure any further necessary assurances of the title to said rights and easements.
9. **MISCELLANEOUS**.
 - (a) This Easement shall run with the land and shall bind and inure to the benefit of the Grantor and Grantee and their successors and assigns, and the rights granted hereby, may only be released, extinguished, amended, waived or modified by an instrument in recordable form, executed by the then current owner of the Property burdened by this Easement, and the holder of the Easement. Notwithstanding the foregoing, invalidation by any judgment or court order of any one or more provision contained herein shall in no way affect any other provisions hereof, and all such provisions not so affected shall thereafter remain in full force and effect.
 - (b) This Agreement may be executed in one or more counterparts, each of which in the

aggregate shall constitute one and the same instrument.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, excluding conflicts of law principles.

(d) Grantee shall record the Easement Agreement in the Office of the Erie County Clerk.

Signature pages to follow.

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

**1185 SWEET HOME ROAD (NY)
OWNER, LLC**

By:



Name: *W. Christopher Hart*
Title: *Authorized Signatory*
Grantor

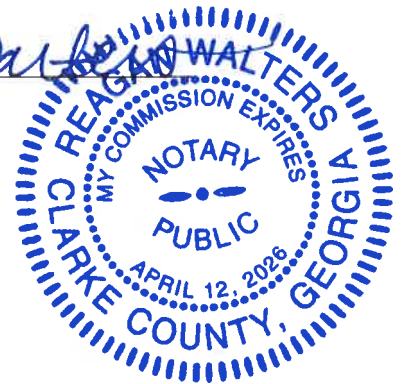
ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair
Grantee

Georgia
STATE OF ~~NEW YORK~~)
COUNTY OF ~~ERIE~~) ss:
Athens-Clarke

On the _____ day of April, in the year 2023, before me, the undersigned, a Notary Public in and for the State, personally appeared W. Christopher Hart, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Reagan Walters
Notary Public



STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year _____, before me, the undersigned, a Notary Public in and for the State, personally appeared **Jerome D. Schad**, Chairman of the Erie County Water Authority, 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 on behalf of which the individual acted, executed the instrument.

Notary Public



Recording Office Time Stamp

Real Estate Transfer Tax Return For Public Utility Companies' and Governmental Agencies' Easements and Licenses

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency)

Erie County Water Authority

Federal employer identification number
(if applicable) 16-6000337

Address of grantee

295 Main Street, Room 350, Buffalo, New York 14203-2494

Name and telephone number of person to contact
Michael Quinn (716) 685-8203

Name(s) of Grantor Of Easement or License	Address of Property	Consideration Given For Easement or License
1. 1185 Sweet Home Road (NY) Owner LLC	1185 Sweet Home Rd., Amherst, NY 14226	\$1.00
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.

Signature of Grantee

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above; that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

Jerome D. Schad

Name of grantee

Signature of partner, officer of corporation, governmental official, etc.

Chairman

Title