



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
Mark S. Carney, General Counsel
Joyce A. Tomaka, Chief Financial Officer
Charles E. Eaton, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer

From: Katherine A. Gillette, Associate Attorney

Date: April 25, 2024

Subject: Town of Orchard Park Lease Management Agreement

On November 4, 2022, the Erie County Water Authority (the “Authority”) put the Town of Orchard Park (the “Town”) on notice that the Authority intended to renegotiate or terminate its Lease Management Agreement with the Town. Subsequently, the Legal Department forwarded proposed revisions to the Town which the Town found acceptable. On April 17, 2024, the Town’s Board authorized the Town Supervisor to execute the new Lease Management Agreement with the Authority.

The Legal Department reviewed the changes with the Engineering Department. The Legal and Engineering Department now recommend that the Authority execute the new Lease Management Agreement with the Town to be effective on April 29, 2024 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.

KAG

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

Contract: _____ **Project No.:** _____
Project Description: Authorization to enter into a Lease Management Agreement with the
Town of Orchard Park

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 type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input 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"/> Other (if Applicable) | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Operating Officer |  | Date: <u>4/25/2024</u> |
| <input checked="" type="checkbox"/> Executive Engineer |  | Date: <u>4/25/2024</u> |
| <input type="checkbox"/> Director of Administration | _____ | Date: _____ |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Financial Officer |  | Date: <u>4/25/2024</u> |
| <input checked="" type="checkbox"/> Legal |  | Date: <u>4/25/2024</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--|------------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: <u>4/25/2024</u> |
|--|--|------------------------|

Remarks: _____

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

LEASE MANAGEMENT AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2024, by and between the **ERIE COUNTY WATER AUTHORITY**, a public benefit corporation, having its office 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 ORCHARD PARK, ERIE COUNTY, NEW YORK**, a municipal corporation, having offices at 4295 South Buffalo Street, Orchard Park, New York 14127, acting as Water Commissioners for Water District Nos. 1, 2, 3, 3-1, 3-2, 3-3, 4, 4-1, 6, 6-1, 6-2, 6-3, 6-4, 6-5 7, 8, 8-1, 8-2, 8-3, 8-4, 9, 9-1, 9-2, 9-3, 9-4, 10, 11, 12, 13, 13-1, 14, 15, 17, 17-1, 17-2, 17-3, 18, 19, 19-1, 20, and 21 of the Town of Orchard Park, including all extensions thereof, also located in the County of Erie and State of New York, hereinafter referred to collectively as the “District” and described in attached Exhibit “A”.

WITNESSETH:

WHEREAS, the Authority was created to provide a safe and adequate supply of water to the residents of Erie County and has the capacity and expertise to operate and manage the District’s facilities; and

WHEREAS, in accordance with a lease management agreement, executed on September 2, 1998 between the Authority and the District, and as amended on December 5, 2002 and on November 6, 2003, the Authority has been providing water services to the domestic, commercial, industrial and agricultural water customers, using the water facilities owned by the Town of Orchard Park and leased to the Authority, or owned by the Authority, within the areas designated as the Town of Orchard Park Water District Nos. 1, 2, 3, 3-1, 3-2, 3-3, 4, 4-1, 6, 6-1, 6-2, 6-3, 6-

4, 6-5 7, 8, 8-1, 8-2, 8-3, 8-4, 9, 9-1, 9-2, 9-3, 9-4, 10, 11, 12, 13, 13-1, 14, 15, 17, 17-1, 17-2, 17-3, 18, 19, 19-1, 20, and 21; and

WHEREAS, the Authority has the capacity and expertise to continue to operate and manage the District's water facilities in the Town of Orchard Park Water District Nos. 1, 2, 3, 3-1, 3-2, 3-3, 4, 4-1, 6, 6-1, 6-2, 6-3, 6-4, 6-5 7, 8, 8-1, 8-2, 8-3, 8-4, 9, 9-1, 9-2, 9-3, 9-4, 10, 11, 12, 13, 13-1, 14, 15, 17, 17-1, 17-2, 17-3, 18, 19, 19-1, 20, and 21; and

WHEREAS, the parties find it mutually advantageous for the Authority to furnish a supply of water to the District and to operate and manage the District's facilities;

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

I. DEFINITIONS

1.1 The term "District" shall mean the Water District as described in attached Exhibit "A" of the Town of Orchard Park and any extensions thereof now or hereafter established in accordance with the provisions of law.

1.2 The term "facilities of the District" shall mean the District's property and infrastructure employed in the transmission and distribution of water and any replacements thereof, together with any additions, betterments and improvements that may later be furnished, installed, or replaced on the District's behalf at the cost and expense of the District while any term of this agreement remains in effect.

1.3 The term "additions, betterments and improvements" shall include: (1) any property, facility or capital item that is not now in existence whether installed or furnished by either party; (2) the replacement of a full length or more of pipe; (3) the replacement of any other

capital item of property having a useful life of at least two years; or (4) the refurbishing of storage tanks and standpipes.

1.4 The terms “operate,” “maintain,” and “repair” shall include the provisions of labor and materials necessary to fix any existing facilities of the District. These terms exclude, however, the furnishing and installing of any capital item costing more than \$950.00 and having a useful life of two (2) or more years. The sum of \$950.00 shall be modified annually in an amount equal to the change in the Consumer Price Index on January 1 of each year of this Agreement. Furnishing or installing any such item shall be billed to the District based on actual installed cost. Replacements of one section of pipe less than a full length shall be deemed “repairs;” those involving a full length or more shall be deemed “improvements and betterments.”

1.5 The term “actual installed cost” shall include the cost of materials, supplies, paving, labor, services or other items consumed or employed in the construction and installation of any replacement or addition, betterment, improvement plus the Authority's most recent audited overhead rate to cover the administrative costs of construction workers and the purchase and storing of materials and supplies to be determined in the sole discretion of the Authority.

1.6 (A) The term “Tariff” means the Rules for the Sale of Water and the Collection of Rents and Charges duly adopted by the Authority and filed in the office of the Clerk of the County of Erie. This term shall also include any additions, revisions, changes, or modifications to said Tariff that may be adopted by the Authority.

(B) The Authority agrees to provide the Town with a copy of its Tariff and to promptly supply such Tariff amendments to the Town when adopted. Said documents shall be

sent to the Clerk of the Town of Orchard Park, at the Orchard Park Town Hall, 4295 South Buffalo Street, Orchard Park, New York, 14127.

1.7 The term “customer” shall mean any person, including corporations or other entities residing in the District, receiving water through District facilities.

II. BASIS OF THE AGREEMENT

2.1 The parties agree this Agreement supersedes and replaces the Lease Management Agreement executed by the parties on September 2, 1998, and the amendments thereto.

2.2 Subject to the terms of this Agreement, the Authority shall operate, maintain and repair all of the facilities of the District. The Authority shall have the exclusive right to furnish, for sale, a supply of water to customers of the District.

2.3 The District shall not permit its facilities to be used for the sale of water by any other purveyor and shall obtain its sole supply of water from the Authority so long as this Agreement remains in effect.

2.4 The facilities of the District shall remain the property of the District. Any indebtedness incurred by the District previously or hereafter shall be solely the obligation of the District.

III. CHARGES FOR THE SUPPLY OF WATER

3.1 On and after the effective date of this agreement, the Authority upon receipt of a written application shall furnish a supply of water to those persons now being served by the District and to such residents and inhabitants thereof, who shall apply to the Authority for the service of water while any term of this agreement remains in effect. However, nothing herein contained shall obligate the Authority to make, provide or install any main extensions to or from the existing facilities of the District.

3.2 It is expressly understood and agreed that the furnishing of water and the performance of services by the Authority to the District and its customers shall be strictly in accordance with and governed in all respects by the Authority's Rules for the Sale of Water and the Collection of Rents and Charges as well as any amendments or changes thereof which may be duly promulgated and adopted.

3.3 By entering into this Agreement, the District adopts as water rates to be paid by the consumers in the District the rates and charges for water as set forth in the Authority's Tariff, and the District further adopts the rules and regulations for the operation of the District and the use of water therein as set forth in the Authority's Tariff including amendments. The District further agrees to make its employees and officers responsible for assisting the Authority in the implementing of such rules and regulations including, but not limited to, assisting in the prosecution of those who take water without payment.

3.4 The District further agrees that upon notification by the Authority that any customer of the District is in arrears in the payment of water charges for thirty (30) days or longer, the District shall proceed to collect such unpaid charges together with the interest and penalties prescribed by the Authority's Tariff in the manner provided in Section 198, paragraph 3(d) of Town Law, as well as, any revisions and amendments thereto and, when so collected, shall pay the said unpaid charges together with such interest and penalties as prescribed by the Authority's Rules.

3.5 The District further agrees to pay the Authority the charges for Public Fire Protection as set forth in the Authority's Tariff. Rate increases shall not be levied in excess of cost. This rental applies to all existing hydrants within the District as of the date of this

Agreement unless otherwise mutually excluded by the parties and to such hydrants as may be installed while this Agreement remains in effect.

IV. DISTRICT'S DUTY TO PROVIDE FACILITIES

4.1 It is mutually understood and agreed that it is the sole obligation of the District to furnish and install at its own cost and expense such facilities within the District as are required to provide an adequate supply of water at proper pressure for domestic, commercial, industrial and agricultural use as well as for public and private fire protection within the District.

4.2 The District may at its own cost and expense make additions, betterments and improvements to the operating plant and property of the District in order to provide an adequate supply of water for residents and inhabitants of the District including those residents not now served with a public water supply, and for the purpose of providing adequate and proper fire protection in and for them.

4.3 The District shall require that all additions, betterments and improvements be designed and installed in accordance with the Authority's specifications with all construction or installation plans being submitted to the Authority for approval prior to commencing work on the addition, betterment, or improvement. Construction inspection on such projects is the responsibility of the District and said inspection shall meet the Authority's inspection standards. The Authority may also elect to inspect such construction and may require correction of work which does not conform to its standards.

4.4 Upon completion of construction of new facilities, the District shall supply to the Authority as-built drawings for its operation of said facilities. The as-built drawings shall contain a description and the dimensions of all pipes, valves, hydrants, and other appurtenances constructed in public areas of the water District. Drawings shall be delivered within 90 days of

the District's acceptance of the new facilities and shall be in a format acceptable to the Authority for purposes of the Authority's operation and management of such new or improved facilities.

V. AUTHORITY'S DUTY TO OPERATE, MAINTAIN AND REPAIR THE FACILITIES OF THE DISTRICT

5.1 Except as otherwise provided for in this Agreement, the Authority agrees to operate, maintain and repair all District facilities at its own expense. At the request of the District or under circumstances requiring the Authority to restore water service immediately, to domestic, industrial, and commercial customers of the District, including the direction of the New York State Department of Health, the Authority may undertake a capital project to design, construct, and install any addition, betterment or improvement. The Authority has sole discretion over the selection of laborers, contractors, subcontractors, materials, supplies, and other items relating to a such a capital project undertaken by the Authority.

5.2 Legal title to the replacements, additions, betterments and improvements described shall remain the property of the Authority until reimbursement has been made by the District. The District agrees to reimburse the Authority in the amount billed, without adjustment, on or before the close of the District's fiscal year in which such bill was rendered by the Authority. If not paid within sixty (60) days of the billing date, any unpaid balance shall be subject to 1% interest per month until paid in full.

If reimbursement is not made within said fiscal year, the District agrees to provide funds therefore in the District's budget for the following fiscal year and shall reimburse the Authority for all unpaid bills of any previous fiscal year within ninety (90) days after the commencement of the District's next fiscal year. If not paid within ninety (90) days after the commencement of the District's next fiscal year, any unpaid balance shall be subject to any

delinquency charges as set forth in the Tariff, in addition to being subject to 1% interest per month, until paid in full.

5.3 Upon receipt of an application and deposit payment by a District customer, the Authority shall install service connections to District mains, curb boxes, meters, meter couplings, and like devices, all in accordance with the Authority's Tariff and standards. Curb boxes are to be located at a highway right-of-way line. The Authority should contact the Town Engineering Department for assistance in locating a right-of-way line, as necessary.

The meters mentioned in this section shall belong to the Authority and may be removed by the Authority at the termination of this Agreement.

5.4 Upon receipt of a certified copy of a resolution of the District's Board requesting the installation of additional hydrants and specifying the locations where the same are to be placed upon the mains of the District, the Authority shall, at its initial cost and expense but subject to reimbursement by the District of the actual installed cost as herein provided, place and install the hydrant(s) and hydrant connection(s) in accordance with Authority standards.

5.5 The District understands that the Authority shall accept only limited maintenance responsibility for mains strapped to bridges. The Authority's responsibility for maintenance to such mains shall be limited to the amount of average repair costs for all mains of that size in the preceding year. Any costs incurred in repairing mains strapped to a bridge over and above such average costs shall be the responsibility of the District.

The District recognizes that it is the Authority's intention at some later date to establish a Tariff rate for inspection of mains strapped to bridges and for maintenance of pressure relief valves and altitude valves. Any pressure relief valves, altitude relief valves, or mains

strapped to bridges installed or owned by the District shall be subject to such maintenance and inspection fees when and if established by the Tariff.

5.6 When requested by the District in writing, the Authority shall also furnish and install connections to and interconnections between the mains owned by the parties at such locations and in such manner as the parties shall hereafter mutually agree upon. Any such connections and interconnections made by the Authority during the term of this Agreement shall be severed and disconnected at the Authority's own cost and expense in such manner as the Authority shall determine at the termination thereof.

It is further agreed by the parties that upon termination of this agreement, the District shall reimburse the Authority for the actual cost paid or incurred by the Authority for unused materials and supplies obtained in conjunction with its performance of this agreement that cannot be utilized by the Authority in the maintenance and operation of its own water supply system. All materials so paid for by the District shall become the property of the District, and upon receipt of payment the Authority shall deliver such materials and supplies to the District.

5.7 The parties hereto agree, and each shall keep and maintain during the term of this agreement an inventory of each item of property furnished, installed and purchased by the party. The inventory shall show the actual cost and the date of installation thereof, together with the necessary and appropriate maps, blueprints and engineering records covering such installation in accordance with the Procedures and Specifications of the Authority and any changes, amendments and revisions thereto.

The Authority during the term of this Agreement will make its books, records and accounts available upon reasonable notice and during normal business hours for examination by

the District or its agent with respect to the actual installed costs of any property installed by the Authority and billed to the District.

VI. SERVICE OUTSIDE THE DISTRICT

6.1 Only with written consent of the Authority may the District permit a person or corporation owning real property contiguous to the boundaries of the District to purchase water supplied by the facilities of the District. Such consent will not be unreasonably withheld.

6.2 It is further mutually understood and agreed that the Authority may at its own cost and expense make other additions, betterments and improvements within the territorial limits of the District when economically feasible in order to provide an adequate supply of water at proper pressure:

- a. to future extensions of the District and to Water Districts that may hereafter be established by the Town, and
- b. to other areas within which the Authority is authorized and empowered to serve water.

The Authority will consult with the District prior to undertaking additions, betterments and improvements outside the District.

The District further agrees that such improvements may be installed at such location or locations as the Authority may determine and that the same may be connected and interconnected with the facilities of the District to the extent and in such manner as the Authority shall determine. Legal title to the additions, betterments and improvements installed by the Authority pursuant to this paragraph shall be and shall remain in the Authority.

6.3 It is further mutually understood and agreed that the District shall permit the Authority to use the facilities of the District without imposition of any rentals or other charges therefore to transport water to areas located out of and beyond the limits of the District.

It is further understood and agreed that such use of the facilities of the District by the Authority to serve out-of-district Authority customers will not reduce the supply of water so that it will be insufficient for the District or its inhabitants.

VII. RECOGNITION OF SYSTEM OBSOLESCENCE AND RESPONSIBILITY TO PLAN FOR REPLACEMENT

7.1 The District recognizes that mains, valves, hydrants, tanks, pumping stations and other appurtenances of a water system have fixed use lives and that prudent management requires planning for their regular replacement. While some elements of a water system may last as long as eighty (80) years, others require replacement after twenty (20) years or less. The District recognizes and commits itself to a reinvestment in its system which, when fixed over a period of sixty (60) years, shall amount to no less than the full original cost of the system.

7.2 The District further recognizes that Chapter 323, Legislative Session of the State of New York, 1989, granted to the governing Board of the Water Improvement District the right to establish capital reserve funds for the construction, betterment or acquisition of a water system. The District further recognizes that the net cost to the user over the life of a water system is substantially lower if capital reserves are accumulated and improvements are made on a pay-as-you-go basis.

7.3 The District recognizes that pursuant to this Agreement, the Authority has assumed many of the responsibilities of the Town's Water Department. As a result, the Authority needs a procedure for making capital proposals to the Water District and the Town of Orchard Park. It is, therefore, expressly agreed that the District shall as a part of its regular

capital budget process solicit from the Authority proposals at the same time and in the same manner that it does for its other departments and improvement districts. In conjunction with this arrangement, the District agrees that the Authority shall be afforded an opportunity to appear at such administrative and legislative hearings as the Town and Water District Board normally conduct and shall be afforded the opportunity to make presentations related to its capital proposals at such hearings and meetings.

7.4 The District recognizes that if the District fails to reinvest in its system pursuant to this Article, the Authority may need to undertake capital projects to design, construct, and install additions, betterments, or improvements within the District. If the Authority is required to undertake such a capital project, the District shall be subject to the reimbursement provisions contained in Article 5 of this Agreement.

VIII. RECOGNITION OF OBLIGATIONS IN THE EVENT OF REGULATORY ACTION

8.1 The parties acknowledge that both the District and the Authority may be subject to regulatory actions by various county, state and federal agencies and, as a result of such regulatory action changes in operating procedures and capital improvements may be required.

The District specifically recognizes its obligation to provide promptly the funds to cover the costs of any capital improvements in its system necessitated by local, state or federal regulatory action. The Authority agrees to make at its initial cost and expense such capital investments to meet these regulatory requirements as the District or a responsible public official may request, subject to reimbursement by the District in its next fiscal year. The Authority also recognizes its responsibility to make such operating changes as may be required by state, federal or county regulatory action.

8.2 From time to time the Authority shall suggest to its municipal customers proposals for local laws and ordinances for the protection, enhancement and management of the Town's water system. The District agrees to review and enact such proposals as the Town deems in the Town's best interest.

IX. EFFECTIVE DATE AND TERM

9.1 The term of this Agreement shall be for a period of ten (10) years from the date hereof and for successive ten-year periods thereafter unless a notice of intent to renegotiate or terminate said Agreement is given by one party to the other one year prior to the expiration of one of the ten-year periods. It is further agreed that the terms of this Agreement may be modified from time to time to such extent as the parties hereto may mutually agree upon in writing.

Upon failure of either party to renew this agreement, it is automatically extended from month to month in accordance with the terms of the Authority's Tariff until renewed.

X. ASSIGNMENT

10.1 The parties agree that this Agreement shall not be assigned or assumed without the express written consent of the both the District and the Authority.

IN WITNESS WHEREOF, the respective parties hereto set their hands and seals as of the Effective Date.

ERIE COUNTY WATER AUTHORITY

JEROME D. SCHAD, Chair

TOWN OF ORCHARD PARK



EUGENE MAJCHRZAK, Supervisor

EXHIBIT A
TOWN OF ORCHARD PARK
LEASE MANAGED
WATER SERVICE AREA MAP

