

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

Contract: LA-002 **Project No.:** 2020000178
Project Description: Approval of Use and Access Agreement between the Village of East Aurora and ECWA relating to the Castle Hill Pump Station

Item Description:


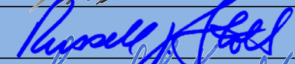
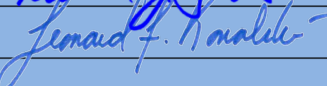
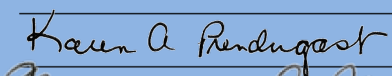

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|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> 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 checked="" type="checkbox"/> Other <u>Agreement granting Permanent and Temporary Easements</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>9/30/2020</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>9/30/2020</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>09/30/2020</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>09/30/2020</u>
<input checked="" type="checkbox"/> Legal		Date: <u>09/30/2020</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>09/30/2020</u>
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Remarks: _____

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




ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

To: Margaret Murphy, Esq., General Council

CC: Leonard F. Kowalski, P.E. Executive Engineer
Michael W. Wymer, P.E., Sr. Production Engineer
Clayton J. Johnson, Distribution Engineer
Melanie C. Marotto, Partner, Harris Beach LLP

From: Michael J. Quinn, P.E., Senior Distribution Engineer 

Date: September 1, 2020

Subject: Castle Hill Pump Station Replacement
Contract No. LA-002, Project No 2020000178

As you know, we are in the process of designing the replacement of the Castle Hill Pump Station located on Castle Hill Road in the Village of East Aurora (see Figure 1). The Town of Aurora transferred ownership of this underground pump station as part of its direct service agreement with the ECWA. Once the Town of Aurora transferred all the properties and facilities of the Town water system, including the transfer of deeds and the assignment of easements, ECWA Engineering Department discovered among the items listed on the bill of sales and assignment of easements was the underground Castle Hill Pump Station.

Prior to the transfer, ECWA had not inspected the underground pump station. Following the transfer, ECWA engineering and operations staff identified a number of shortcomings and made a number of interim improvements to allow for reasonably reliable operation of the system, yet it still falls short of ECWA's standards for pump stations of this size.

Currently in the general area of the pumping station, the ECWA provides water to roughly 200 primarily residential properties in a section of the Town of Aurora bounded on the east by Castle Hill Road, the north by East Main Street (NYS Rt. 20A), on the west by Cook Road and on the south by Lapham Road. Currently the entire water supply for this area comes through the pumping station making it a critical component of the system which must run continuously to supply water to the customers in the area.

Figure 1 provides an aerial view of the service area. As shown on Figure 2, the existing pumping station shares the site and interconnecting piping with the Castle Hill Water Storage Tank, owned by the Village of East Aurora. The supply for the pumping station and entire Castle Hill service area comes from the line that fills and drains the tank. As a bulk customer, the Village of East Aurora purchases bulk water from the ECWA to fill the Castle Hill Tank, which in turn supplies water to the Castle Hill Pump Station. The Village, however, is only charged for the water delivered to Village residents, and not for water supplied to Town residents. This arrangement has worked successfully for decades.

Regarding the existing station, it currently consists of an underground concrete structure housing three duty pumps and a larger fire pump. It is at this point unknown when the station was originally constructed but the Town completed various upgrades in 2000 and again in 2004. These upgrades included replacement of the pumps and other mechanical equipment but not the structure itself. Access to the mechanical equipment is made through a Bilco type hatch leading down to a below grade access door. This configuration alone makes it extremely difficult and at times unsafe to maintain the facility and to repair or replace equipment. Further, the atmosphere in the below grade structure has led to premature deterioration, failure and increased maintenance and replacement costs of electrical equipment and controls.

As stated briefly above, since assuming ownership of the facility, ECWA staff have completed a few improvements to ensure the reliability of the station including:

- Phased replacement of the existing duty pumps and motors;
- Various piping and valving modifications to improve the integrity of the piping;
- Installation of SCADA controls and monitoring equipment; and
- Installation of a temporary portable emergency generator.

While these inhouse projects have improved the operation and reliability of the station, they do not bring the station up to ECWA standards nor have they eliminated many of the more critical issues at the facility.

The current pump station is extremely difficult to maintain, and has poor access, poor ventilation, less than optimal safety considerations, and a deteriorated electrical equipment as well as inefficient pumping. In addition, since taking ownership, the facility has flooded leading to unplanned shutdowns and costly emergency repairs. Finally, the configuration of the facility does not currently nor can it ever meet regulatory clearance requirements around electrical and other equipment. Many of these concerns can be attributed to the underground location of the facility.

The current pump station must be replaced with a more conventional custom pumping station with the piping and valves located in a basement area and the pumps and all electrical equipment and controls located in a heated and ventilated first floor area to conform to ECWA and Industry Standards. A new pump station would allow easy access to maintain and repair equipment installed within properly ventilated spaces to maximize the useful life of such equipment.

On June 18, 2020, the ECWA entered a contract with LaBella Associates to design the new pumping station. The first phase of the project will include the development of an engineering report and preliminary design which will determine the size, configuration and location of the new station.

PLEASE NOTE: The existing station must be kept operational during construction of the new station, one of the first tasks will be to identify the best location for the new facility. Some of the criteria that will be used to evaluate potential sites include, access to existing site piping and electrical services, facility access for staff and vehicles and site drainage and topography. In addition, the site is shared with the Castle Hill Tank so future access by Village staff will also be

critical as will site aesthetics due to the proximity of the site to the adjacent residential neighborhoods. Note that typically, ECWA facilities are designed to fit in with the local surroundings and the new station will be no exception. Finally, depending on the location of new station, removal of existing vegetation and trees will be limited to only what is necessary, and if necessary, new landscaping will be provided.

The current project schedule sets a target date for the completion of a preliminary design by the fall of 2020. The final design is anticipated to be completed by early 2021, with the new station scheduled for completion and fully operational by the end of 2021.

MJQ:jmf
Attachments



WATER FACILITIES IN THE VICINITY OF CASTLE HILL STATION

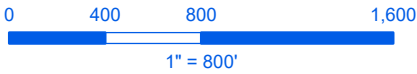
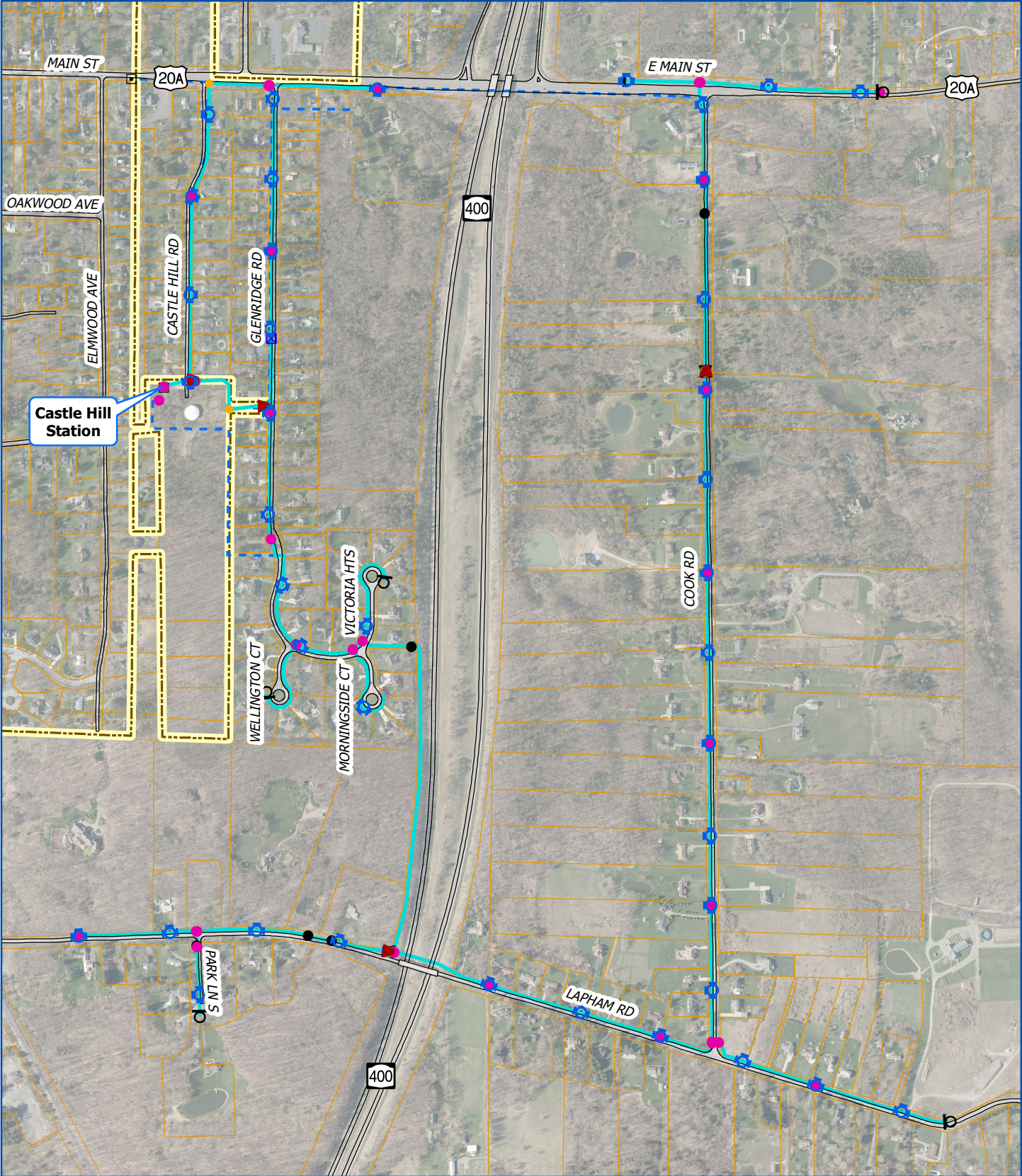


Figure 1

August 26, 2020



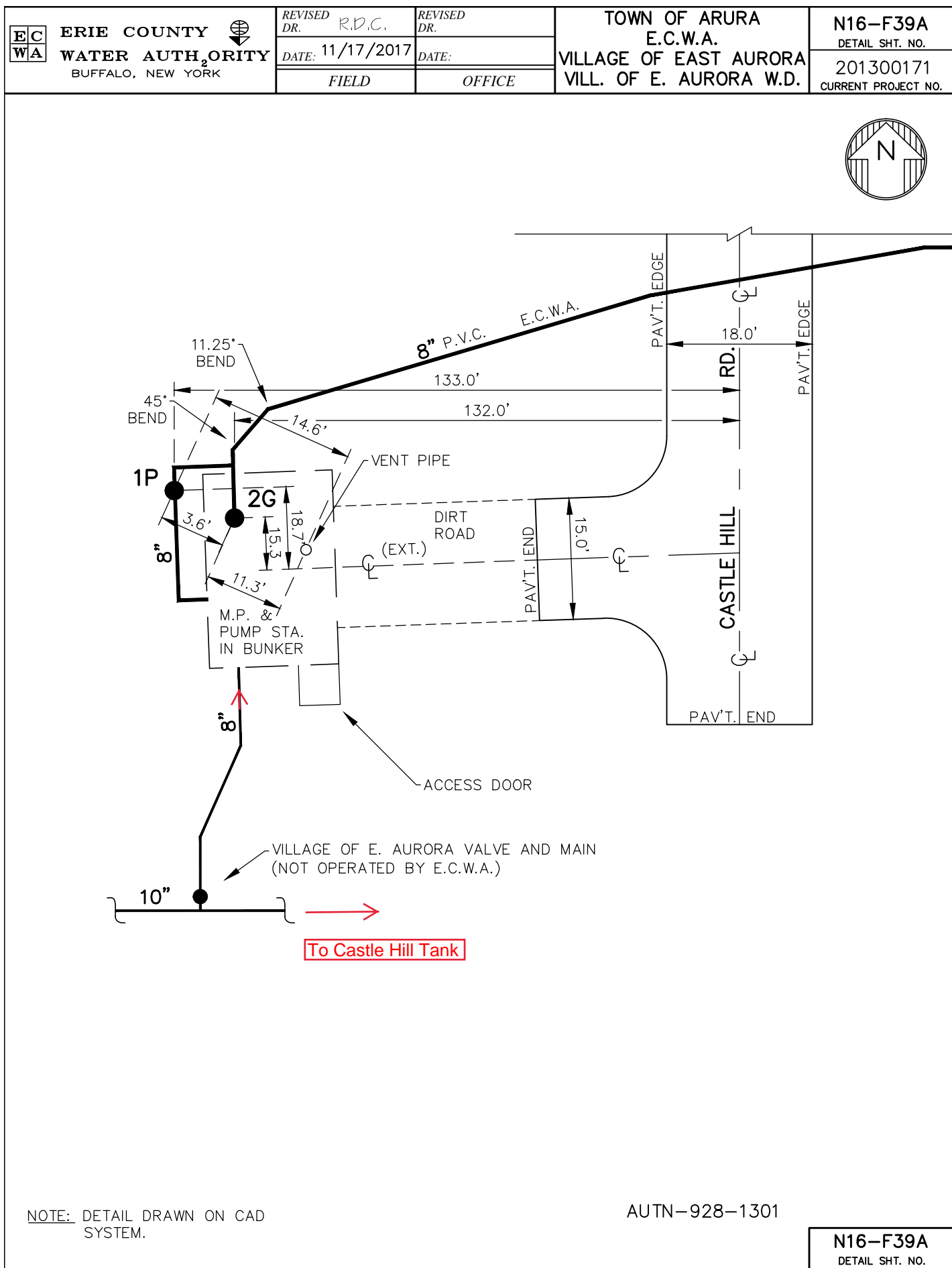


Figure 2

MASTER COPY

Record and Return to:

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT (this “**Agreement**”), dated as of this ____ day of _____, 2020 (the “**Effective Date**”), is by and between **VILLAGE OF EAST AURORA**, a municipal corporation whose place of business is 571 Main Street, East Aurora, New York 14052 (the “**Village**”), and **ERIE COUNTY WATER AUTHORITY**, a local public benefit corporation whose administrative offices are located at 295 Main Street, Room 350, Buffalo, New York 14203-2494 (the “**Authority**”). The Village and the Authority are collectively referred to herein as the “**Parties.**”

WITNESSETH:

WHEREAS, in 2019, the Town of Aurora (the “**Town**”) and the Authority executed a direct service agreement, (the “**DSA**”) transferring property and facilities owned by the Town’s Water Districts to the Authority.

WHEREAS, pursuant to the DSA, the Town transferred, by a Bill of Sale, an underground pump station commonly known as the Castle Hill Pump Station (the “**Pump Station**”) and per the DSA, was also required to assign an unrecorded easement between the Town and the Village for the **Pump Station**, located on property owned by the Village , as further described on attached Schedule A and depicted on attached Schedule B (the “**Village Property**”); and

WHEREAS, the Village Property is a portion of a larger parcel of land currently owned by Village, upon which a water tank is situated, as depicted on Schedule C attached hereto and made a part hereof (the “**Land**”); and

WHEREAS, despite taking ownership of the Pump Station, the Town has not provided the Authority with an executed copy of unrecorded easement; a copy of the unsigned, unrecorded easement is attached as Schedule D and made a part of this Agreement; and

WHEREAS, The Authority desires permanent legal access, granted by the Village, to the Pump Station in order to use, operate and maintain the Pump Station in a safe and efficient manner; and

WHEREAS, the Authority further desires temporary non-exclusive access for itself and its contractors, agents, consultants, employees, and invitees (collectively, the “**Authority’s Users**”) on, over and under the Land for purposes of investigation, surveying, testing and inspection of the Land to assess the status, condition, capacity and location of the Pump Station and its lines located within the Village Property and within the Land and to explore, evaluate and construct future upgrades, additions and improvements to the Pump Station or replacement/relocation of the Pump Station to better serve the Authority’s customers.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. All recitals set forth above are hereby incorporated into the body of this Agreement as though separately and specifically set forth herein.
2. The Village hereby grants to the Authority and the Authority's Users, a non-exclusive license to access the Village Property and the Land in accordance with and pursuant to the terms of this paragraph ("***Access License***"). The Access License granted to the Authority and the Authority's Users shall terminate within two years, unless the Village extends the termination date, through resolution adopted by the Board of Trustees of the Village ("***Village Board***").
3. The Village hereby grants to the Authority and the Authority's Users, a permanent easement to access and utilize the Village Property for purposes of (a) access to the Pump Station, (b) repair and maintenance of the area surrounding the Pump Station, (c) repair and replacement of the access road on the Village Property servicing the Pump Station (d) upon consultation with the Village's DPW Superintendent, removal of vegetation and trees in accordance with best forestry practices to insure safe access and prevent damage to the Pump Station in accordance with and pursuant to the terms of this Agreement ("***Access Easement***")
4. The Authority shall not be permitted to interfere with, limit or prohibit the Village from the use of and access to the Land, provided such use and access by the Village does not unreasonably interfere with the Access License or Access Easement.
5. The Authority shall, at the Authority's sole cost and expense, repair any damage to the Village Property which occurs as a result of the Authority's exercise of its rights under this Agreement.
6. During the term of this Agreement, each party shall keep in effect general commercial liability insurance, including coverage for property damage, personal injury, death and contractual indemnity coverage, which covers acts occurring on, in or about the Land, in such amounts and coverages as may be reasonably requested. Unless otherwise agreed, such general commercial liability insurance shall: (i) afford minimum protection of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; (ii) name the other party as an additional insured; (iii) include express waivers of subrogation against the other party; and (iv) be effected under a valid and enforceable policy issued by an insurer licensed in the State of New York. In addition, each party shall keep in effect an umbrella policy with minimum protection of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate. Each party shall provide acceptable proof of coverage for New York Workers Compensation, including Employers Liability, and New York State Disability. Each party shall promptly provide the other, when reasonably requested, with certificates of insurance which validate compliance with the requirements of this paragraph.

7. To the greatest extent permitted by law, and except to the extent arising directly or indirectly by the negligence or willful misconduct of the Village, the Authority agrees to defend, indemnify and hold the Village and its successors and assigns harmless from and against any and all liabilities, damages, losses, reasonable expenses (including reasonable attorney's fees), causes of action, suits, claims and judgments arising from or made in connection with the exercise by Authority or Authority's Users of the rights and privileges granted by or pursuant to this Agreement;
8. To the greatest extent permitted by law, and except to the extent arising directly or indirectly by the negligence or willful misconduct of the Authority or the Authority's Users, the Village agrees to defend, indemnify and hold the Authority and the Authority's Users, and their respective successors and assigns, harmless from and against any and all liabilities, damages, losses, reasonable expenses (including reasonable attorney's fees) causes of action, suits, claims and judgments arising from or made in connection with this Agreement.
9. This Agreement and the license and easement granted hereunder shall never merge with the fee title, and shall continue to be in full force and effect, and except as set forth herein, shall not terminate, until the Authority acquires a recorded fee title interest in the Village Property or other portion of the Land, at which point it shall automatically terminate except for those provisions that specifically survive the termination hereof.
10. To the extent applicable, this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective tenants, subtenants, affiliates, licensees, agents, guests, invitees, successors and assigns, until such time as this Agreement is terminated as set forth herein. This Agreement grants to the Authority and the Authority's User a temporary license to use the Land during the term of and in accordance with the terms of this Agreement. This Agreement also grants a permanent easement to the Authority unless and until the Authority has acquired a fee interest in a portion of the Land, as may be required. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Land to the general public purpose whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes expressed herein.
11. Except as otherwise expressly set forth herein, this Agreement, and the rights granted herein, may only be released, extinguished, amended, waived or modified by an instrument in recordable form, executed by the then current owners of the Village Property and the Land which are either burdened by this Agreement, or which require the benefits of this Agreement. 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.
12. This Agreement may be executed in one or more counterparts, each of which in the aggregate shall constitute one and the same instrument.
13. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, excluding conflicts of law principles.

[The remainder of this page is intentionally left blank; signature page to follow]

[Signature Page to License Agreement]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

THE VILLAGE OF EAST AURORA

By: _____
Name: Peter Mercurio
Title: Mayor

ERIE COUNTY WATER AUTHORITY

By: _____
Name: Jerome D. Schad
Title: Chair

Acknowledgements to follow.

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

On the ____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

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

On the ____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared _____ 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/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Schedule A

**Legal Description of the Village Property on
which Pump Station is situate**

[to be inserted]

Schedule B

Depiction of the Village Property

[to be inserted]

Schedule C
Map of Land owned by Village

[to be inserted]

Schedule D

Unrecorded Easement