

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

Contract: _____ **Project No.:** _____
Project Description: Harris Beach PLLC Engagement Letter

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>Legal Services Engagement Letter</u>			

Action Requested:

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

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>Kevin J. Stolt</i></u>	Date: <u>6/10/2020</u>
<input checked="" type="checkbox"/> Executive Engineer	<u><i>Leonard F. Kowalek</i></u>	Date: <u>6/10/2020</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>Karen A. Brenden</i></u>	Date: <u>06/10/2020</u>
<input checked="" type="checkbox"/> Legal	<u><i>Margaret A. Murphy</i></u>	Date: <u>06/10/2020</u>

APPROVED FOR BOARD RESOLUTION:

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

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



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

June 10, 2020

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
Peggy A. LaGree, Treasurer

Cc: Terrence D. McCracken, Secretary

From: Leonard F. Kowalski, Executive Engineer
Margaret A. Murphy, General Counsel

Subject: Harris Beach PLLC Legal Services

On January 16, 2020, the Erie County Water Authority (the “Authority”) retained the services of Harris Beach PLLC (“Harris Beach”) to resolve two outstanding matters involving issues relating to property and easement rights. By resolution, the Board of Commissioners authorized the Chair to execute an engagement letter with Harris Beach.

The Engineering Department has numerous construction projects in the planning stage, with some projects planned for construction later in the year. The Authority’s engineers and consulting engineers need a quick turnaround time on property and easement rights as they arise during the course of planning and construction. While the Authority employs two part-time attorneys to handle real estate matters, their time is limited as they handled real estate matters that are less time sensitive.

Several members of the Engineering Department have worked with Melanie Marotto, the Harris Beach partner handling Authority matters. Ms. Marotto has been an asset to the Engineering Department while working on the Van de Water redundancy project to resolve issues relating to the Authority’s easements at that location. She has extensive experience in handling property issues relating to construction and development. She has been extremely responsive and practical in handling this matter.

After consultation with the Legal Department, the Engineering Department recommends the scope of the engagement with Harris Beach be broadened, giving the Authority’s General Counsel authority to refer complex or time-sensitive real

estate matters relating to capital improvement projects to Ms. Marotto at Harris Beach.

The Engineering and Legal Departments have asked Ms. Marotto to review two cathodic protection system easement grants recorded in 2019. In those easements, the Authority is the grantor and Enbridge Energy is the grantee. These easements were drafted by Enbridge and approved by the Authority (Item No. 21, Minutes of April 18, 2019; Item No. 6, Minutes of May 28, 2019). Although these easements are recorded and run-with-the-land, there is a provision in each easement requiring the Authority's approval before Enbridge transfers the easement to another party. Enbridge is currently involved in an asset transfer sale with another company. Both Ms. Marotto and Ms. Murphy view the restrictive provision in the easements as requiring only notice to be given to the Authority and not that the Authority has the power to withhold its approval.

Harris Beach has an on-going legal relationship with Enbridge, although the current sale is being handled by another local law firm. Enbridge has agreed to waive any conflict with Harris Beach, and now Ms. Marotto requests the Authority to sign and email a consent waiver, a copy of which is attached with this memorandum.

The Legal Department has determined this is a waivable conflict since both interests of Enbridge and the Authority are united and not in conflict. Upon the execution of the waiver, Ms. Marotto will be able to deliver the necessary documents to the closing attorneys. Such documents will be signed by the Authority's General Counsel.

A resolution is on the Board's agenda today to enter into a new engagement letter with Harris Beach to include these additional services related to capital improvement projects, to authorize the Chair to execute the waiver of conflict letter, and to authorize the General Counsel to execute any and all necessary documents for the closing as stated above.

June 10, 2020

Chairman Jerome D. Schad
Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

RE: Engagement Letter for Legal Services Between Harris Beach PLLC and Erie County Water Authority

Dear Mr. Chairman:

This letter summarizes the proposed terms of Harris Beach PLLC's (the "Firm") representation of Erie County Water Authority, a New York public benefit corporation (the "Authority"), including the scope of services, and the agreed-upon fee and billing arrangements. Unless otherwise set forth herein, the Firm's representation will be limited to the Authority, its members, officers and employees and does not extend to any separate or differing interests or positions taken within or outside of the Authority.

Scope of Engagement. The Firm agrees to provide legal counsel to the Authority for the following matters (collectively, the "Matter"): (i) The transfer and acquisition of certain water district facilities and property located in the Town of Marilla within the County of Erie, and (ii) Issues relating to any easement or right of way agreements granted to the Authority for existing water lines and for the redundancy water line project serving the northern portion of Erie County, and (iii) Any other matter assigned by the Authority's General Counsel relating to acquiring lands, easements and rights-of-ways or other legal services related to the Authority's approved construction projects.

If the Authority desires legal counsel on an issue outside the scope of the Matter, the Firm may agree to provide such counsel, but only after executing a separate agreement with the Authority (which may be communicated by e-mail) that may include a separate fee and billing arrangement depending on the nature of the matter. Unless expressly included in the foregoing description of the Matter, the Matter does not include any appeals that may arise from the Matter. Please also note that the Firm does not engage in lobbying activities on behalf of any client.

The Firm will represent the Authority to the best of its ability, but does not guarantee any particular result. The Authority agrees that the Firm may disclose the fact of its representation of the Authority, including in materials that the Firm uses to describe its practices and expertise.

This Engagement Letter supersedes any prior Engagement Letter between the Firm and the Authority.

Firm Personnel: Principal Contact. Melanie C. Marotto, Esq. will be responsible for the supervision of the Matter, but the Authority is engaging the Firm as a whole and not any individual attorney. Ms. Marotto can be reached at (716) 200-5230 or via electronic mail at mmarotto@harrisbeach.com. As necessary or appropriate, the Firm will draw upon the talents and experience of other Firm attorneys, professionals, and staff in providing services relating to the Matter.

Fee Arrangement. The Firm's fee is based on the time spent by the attorneys and legal assistants who work on the Matter. Currently, our hourly rates generally range from \$390-\$510 for members and senior counsel, \$210-\$360 for associates and other attorneys, and \$100-\$225 for paralegals. Additionally, for some work or attorneys, the rate may be higher if highly-specialized matters are involved. The Firm is willing to offer the Authority the discounted blended hourly rate for partners and associates of \$285.00 per hour, and \$130.00 per hour for paralegals.

We will, at the Authority's request, provide fee estimates. However, such estimates are provided only for the Authority's information; they are not guarantees and are not binding on the Firm. Actual costs might be higher or lower than the estimated amount depending on a host of factors. Such factors for litigation and other matters may include, but are limited to: (1) the number and types of motions filed; (2) whether proceedings such as trials, hearings, or closings are delayed or postponed; (3) scope and extent of discovery or other forms of information gathering; (4) the amount of assistance the Authority is able to provide the Firm in areas such as collection of information, documents, and electronically stored information; and (5) expertise of Authority personnel.

In the event a dispute arises between the Authority and the Firm regarding fees, the Authority may have the right to arbitrate that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to the Authority upon request.

Other Charges. In addition to the Firm's fees for rendering professional services, the Authority shall be responsible for, and Firm invoices will include, separate charges for performing services such as photocopying, scanning, delivery charges, long distance telephone calls, facsimile transmissions, specialized computer applications, travel, and other expenses and services incurred incidentally to the performance of the Firm's legal services. The Authority shall also be responsible for payment of any expenses and disbursements incurred by the Firm on the Authority's behalf (*i.e.*, transcription fees, filing fees, expert witness fees, etc.), which will be billed to the Authority with the Firm's invoice. Based on the nature of the expense, the Firm may also request that the Authority pay or advance the fee directly to the person/entity requesting/charging the same. The Firm shall promptly notify the Authority of any significant expense that is incurred in connection with the Matter.

Should the Authority ever issue a litigation hold to the Firm for a matter unrelated to the Firm (*e.g.*, due to a subpoena or litigation/threatened litigation in which the Firm is not a party or potential party), the Authority shall reimburse the Firm for its reasonable costs expended in complying with such litigation hold.

Billing Cycle and Retainer. The Firm generally requires its clients to deposit a retainer for legal services against which the Firm bills and collects fees and disbursements. The Firm has waived the requirement for an initial retainer with respect to this Matter but reserves the right to require

June 10, 2020

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one if deemed appropriate in the future. Fees for legal services and other charges are billed monthly and are payable within 60 days of the Authority's receipt of the Firm's invoice.

Should the Authority's account remain unpaid after 60 days, a late-payment fee of 0.75% per month, or 9.00% per annum, will be added to the amount due. If the Authority's account becomes delinquent by more than 90 days, the Firm will contact the Authority about making arrangements to bring the account current. It is our hope that, by addressing payment issues promptly, we can avoid any misunderstanding. However, as a condition to the Firm's continued representation of the Authority, the Authority must remain current in the Authority's payments to the Firm for services and expenses. Should a delinquency continue, and satisfactory payment terms not be arranged, the Firm reserves the right to withdraw from its representation of the Authority and pursue collection of the amount owed. In such an event, the Authority shall be responsible for the cost of collecting the debt, including court costs, filing fees, and reasonable attorneys' fees incurred by the Firm for the collection. In the event the Firm pursues a collection action against the Authority and the Authority prevails before a court of competent jurisdiction, the Firm should be responsible for the cost of litigating the matter, including court costs, filing fees, and reasonable attorneys' fees and expenses incurred by the Authority.

If the Authority ever overpays an invoice, the Authority agrees that the Firm may apply such overpayment to any outstanding fees and expenses or to the Authority's next bill, with notice to the Authority as to how the Firm applied the overpayment. If there are no outstanding fees or expenses and no work in progress, the Firm shall refund the overpayment to the Authority.

Termination of Engagement. Either party may terminate the engagement described herein at any time for any reason by providing the other party written notice, subject, on the Firm's part, to the rules of professional conduct. No such termination, however, will relieve the Authority of the obligation to pay the legal fees owed to the Firm for services performed and other charges owed to the Firm through the date of termination. After the Firm's completion of legal services to the Authority, changes may occur in applicable laws or regulations that could have an impact upon the Authority's future rights and liabilities. Unless the Authority engages the Firm after completion of the Matter to provide additional advice on issues relating specifically to the Matter, the Firm has no continuing obligation to advise the Authority with respect to future legal developments, whether relating to the Matter or otherwise.

Conclusion of Representation; Disposition of Documents. Unless previously terminated, the Firm's representation of the Authority with respect to the Matter will conclude when the Firm sends the Authority the last invoice for services rendered in the Matter. Following such conclusion, any otherwise nonpublic information Authority has supplied to the Firm that is retained by the Firm will be kept confidential in accordance with applicable rules of professional conduct. At the Authority's request, the Firm will return Authority's papers and property promptly after receipt of payment for any outstanding fees and costs. If the Authority does not make such a request within 90 days following the conclusion of the engagement set forth herein, the Authority agrees and understands that any materials left with the Firm after the engagement ends may be retained or destroyed at the Firm's discretion.

Please note that "materials" include paper files and information in other storage media, including, but not limited to, voicemail, e-mail, and other electronic files, printer files, copier files, video files, and other formats. The Firm reserves the right to make, at its expense, copies of all documents generated or received by the Firm in the course of its representation. The Firm will retain its files pertaining to the Matter. These Firm files include, for example, Firm administrative records; internal lawyers' work product, such as drafts, notes, and internal memoranda; and legal and factual research, including memos and investigative reports prepared

by or for the internal use of lawyers. The Firm will retain all remaining documents for a certain period of time, but reserves the right for various reasons, including the minimization of unnecessary storage expenses, to destroy or otherwise dispose of them within a reasonable time after the conclusion of the engagement set forth herein.

Client Cooperation. The Authority agrees to cooperate fully with the Firm and to provide promptly all information known or available to Authority relevant to the Firm's representation of the Authority, as well as any updates or changes to the Authority's contact information. Such cooperation is essential, as the Firm will, of necessity, be relying on the completeness and accuracy of the information the Authority provides to the Firm when performing services on the Authority's behalf. Should the Authority not fully cooperate with the Firm, both the efficiency and economy of the Firm's representation of the Authority may suffer.

Communication with the Authority. Unless the Authority directs otherwise, the Firm will use unencrypted e-mail as the primary means of communication with the Authority, and the Authority shall inform the Firm of which e-mail address(es) the Firm should use for such communication. The Firm may also use cellular telephones (including smart phones) and facsimile machines to communicate with the Authority. Texting is not a preferred method of communication, but may be used on a limited basis to communicate non-sensitive information to the Authority. The Firm will take reasonable steps to protect the confidentiality of Firm-Client communications, but, unless applicable law provides otherwise, the Firm will not be responsible for disclosures of the Authority's confidential information occurring from the use of such communication technologies. The Authority agrees to notify the Firm if the Authority has any requests or requirements regarding the Firm's methods of communication with the Authority that differ from the foregoing.

Possible Conflicts. Conflicts of interest will be handled as required by applicable rules of professional conduct. Unless otherwise agreed, for the purpose of determining whether a conflict of interest exists, it is only the Authority that the Firm represents, and not any of its Affiliates. The Authority agrees not to give the Firm any confidential information regarding any Affiliate unless: (a) that Affiliate has separately engaged the Firm to perform services on that Affiliate's behalf; or (b) such information is essential to the engagement set forth herein. While the Firm recognizes that to act adversely to any Affiliate could jeopardize a long-term relationship with the Authority, which the Firm does not wish to do, for conflict of interest purposes the Firm reserves the right to represent another client with interests adverse to any Affiliate that is not itself a Firm client without obtaining any consent from the Authority or its Affiliates.

The Firm maintains a Risk Management Committee that acts as in-house counsel to its attorneys and will, on occasion, retain outside counsel when an attorney handling a client matter may have a concern on a matter of professional responsibility. To the extent the Firm is addressing its duties, obligations, or responsibilities to the Authority in those consultations, it is possible that a conflict of interest might be deemed to exist as between Firm lawyers or the Firm and the Authority. The Authority agrees that these consultations are protected from disclosure by the Firm's attorney-client privilege and that the Authority will not seek to discover or inquire into them. Of course, nothing in the foregoing shall diminish or otherwise affect the Firm's obligation to keep the Authority informed of material developments in the Firm's representation

of the Authority, including any conclusions arising out of such consultations to the extent that such developments affect the Authority's interests.

Please contact me directly with any questions regarding this engagement letter. Otherwise, if this proposal is acceptable, please so indicate by returning a countersigned copy of this engagement letter. Consistent with its policy, the Firm reserves the right to delay commencement of work on this Matter until the Authority has signed and returned this engagement letter to us.

We appreciate the opportunity to represent and look forward to working with you and the Erie County Water Authority in this Matter.

Sincerely,

HARRIS BEACH PLLC



By: _____
Melanie C. Marotto

Agreed and Accepted
this ____ day of June, 2020

Erie County Water Authority

By: _____
Jerome D. Schad

Title: Chair of Board of Commissioners

HARRIS BEACH PLLC
ATTORNEYS AT LAW

June 9, 2020

LARKIN AT EXCHANGE
726 EXCHANGE STREET, SUITE 1000
BUFFALO, NEW YORK 14210
716.200.5050

MELANIE C. MAROTTO
MEMBER
DIRECT: 716.200.5230
FAX: 716.200.5201
MMAROTTO@HARRISBEACH.COM

Chairman Jerome D. Schad
Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

RE: Harris Beach PLLC Waiver

Dear Mr. Schad:

You have asked Harris Beach PLLC (the “Firm”) to represent Erie County Water Authority (“ECWA”) in connection with various easements and rights of way affecting facilities and real property in portions of Erie County, New York. The Firm also represents Enbridge Energy (“Enbridge”) in other matters, including some of their facilities and property. It has come to our attention that Enbridge has asked ECWA to consent to an assignment of a recorded easement previously granted by ECWA to Enbridge in 2019 in connection with a certain pipeline, and you have asked Melanie C. Marotto, Esq. of the Firm to review the recorded document and the proposed assignment. Enbridge has not asked the Firm to represent Enbridge in this particular matter.

Under the applicable rules of professional conduct, the Firm may not represent one current client adversely to another current client, unless both clients give their informed consent. This means that the Firm must explain to the ECWA and Enbridge the pros and cons of consenting and that we cannot proceed unless ECWA and Enbridge consent. However, given the nature of our representation, we do not foresee any difficulties in having this conflict of interest waived by the ECWA and Enbridge; however, we will need to obtain their consent prior to proceeding with your requested work, which we understand will not be an issue.

In order to protect confidential information that may be disclosed to our firm by ECWA, we are asking that ECWA and Enbridge agree that they will not seek or accept the disclosure of confidential information about the other party, or their related entities, from our firm. Further, we are asking both parties to agree that the disclosure of information to our firm by the other party, or their related entities, will not constitute, or be deemed to be, a waiver of any privilege, and that they will not assert or make any such contention at a later date. We are also asking that both parties consent and agree that our firm will have no obligation to disclose to them any information either obtained by our firm from the other client, or otherwise obtained or learned by our firm in the course of representing the other client.

In deciding whether or not to consent, you should consider how our representation of Enbridge as described above could or might affect ECWA. For example, clients that are asked to waive such conflicts typically should consider whether there is any material risk that “their” attorney will be less zealous or eager on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidences or secrets will be used adversely to them due to the conflict. In the present case, I personally do not believe that there is a material risk of either type due to the scope of the work that we have been asked to perform.

I recommend that you seek independent counsel to assist you in deciding whether or not to consent. The decision to consult with counsel is yours.

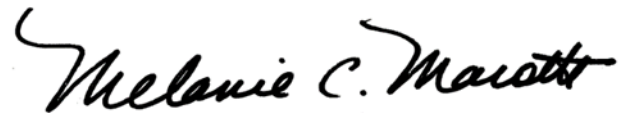
Should an actual conflict arise between ECWA and Enbridge in connection with the proposed easement assignment, we acknowledge and agree that our firm would not be able to represent either party in connection with such dispute. In the event that issues should arise during the course of our representation of the aforementioned entities in this instance which, in our judgment, would make it advisable or necessary that we discontinue our representation of you, we will notify you promptly so that you can make appropriate arrangements to obtain new legal counsel. Of course, you are free at any time to select new legal counsel if you believe it to be appropriate or in your best interest.

If ECWA is willing to consent after such review as you believe appropriate, please arrange for a duly authorized representative of ECWA to sign this letter in the space provided and return the letter to me for my files.

Thank you for your attention to this matter.

Very truly yours,

HARRIS BEACH PLLC

A handwritten signature in black ink that reads "Melanie C. Marotto". The signature is written in a cursive style with a large initial 'M'.

Melanie C. Marotto

Erie County Water Authority
June 9, 2020
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HARRIS BEACH PLLC
ATTORNEYS AT LAW

Accepted and Agreed to this ___ day of
June, 2020

JEROME D. SCHAD