



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
Russell Stoll, COO
Karen A. Prendergast, CFO
Mark S. Carney, Attorney

From: Jacqueline C. Mattina, Associate Attorney,
of counsel to
Mark S. Carney, General Counsel

Date: November 2, 2021

Subject: Ellicott Square Lease Modification

On November 26, 1990, the Erie County Water Authority (the "Authority") entered into a Lease and Lease Modification Agreements dated May 3, 1991, September 8, 1993, July 16, 1997, May 7, 2002, May 17, 2007, April 30, 2012, and April 6, 2017 (hereinafter referred to collectively as the "Lease") covering certain space and premises in the Ellicott Square Building. In anticipation of the Lease termination date of April 30, 2022, General Counsel has been negotiating new lease terms with the Landlord.

The Board has previously indicated it wishes to pursue the possibility of acquiring property for the purpose of erecting a building that will allow the Authority to combine all Authority staff at one location rather than the two present separate facilities of the Service Center and Ellicott Square Building. It is anticipated the entire process of procuring land, erecting a building, and relocating staff could take several years.

It is recommended that the Lease be extended for an additional five (5) years commencing May 2, 2022, and terminating April 30, 2027, with the Authority having the option to terminate the Lease without penalty, effective as of April 30, 2025, or April 30, 2026, upon providing six (6) months prior written notice. This will give the Authority the potential time needed to complete the entire relocation process while also providing an early termination of the lease without penalty to the Authority should the relocation process be completed earlier than anticipated. The Lease also provides for several improvements to the Leased Premises to be performed by the Landlord as outlined in Exhibit "B" of the Lease.

With the support of the Executive Staff, it is recommended to the Board to approve and authorize extending the Lease for the additional 5 years. A resolution modifying the Lease is on the November 10, 2021 Board meeting for your authorization.

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

Contract: _____ **Project No.:** _____
Project Description: Ellicott Square Lease Modification

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 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>Russell J. Stoll</u> | Date: <u>11/2/2021</u> |
| <input checked="" type="checkbox"/> Executive Engineer | <u>Lavonya F. Lester</u> | Date: <u>11/02/2021</u> |
| <input checked="" type="checkbox"/> Director of Administration | <u>for Lavonya Lester</u> | Date: <u>11/02/2021</u> |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Financial Officer | <u>Karen A. Bendigash</u> | Date: <u>11/02/2021</u> |
| <input checked="" type="checkbox"/> Legal | <u>[Signature]</u> | Date: <u>11-02-2021</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--------------------|----------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority | <u>[Signature]</u> | Date: <u>11/2/21</u> |
|--|--------------------|----------------------|

Remarks: _____

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

LEASE MODIFICATION AGREEMENT

This Seventh Amendment of Lease is made this ____ day of _____, 2021, by and between the Parties.

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a certain Lease dated November 26, 1990 and Lease Modification Agreements dated May 3, 1991, September 8, 1993, July 16, 1997, May 7, 2002, May 17, 2007, April 30, 2012 and April 6, 2017 (hereinafter referred to collectively as "Lease"), covering certain space and premises in the Ellicott Square Building located at 295 Main Street, Buffalo, New York; and

WHEREAS, Tenant leases from Landlord 16,247 net usable square foot of space in Suite 350 of the Ellicott Square Building (hereinafter "Leased Premises"); and

WHEREAS, the Lease will expire on April 30, 2022; and

WHEREAS, Tenant desires to extend the Lease Term, as authorized by the Erie County Water Authority Board of Commissioners, pursuant to a Resolution attached hereto and made apart hereof as Exhibit "A"; and

WHEREAS, Landlord and Tenant have agreed to modify and amend certain other provisions of the Lease.

NOW, THEREFORE, In consideration of the premises and of the mutual covenants contained therein, Landlord and Tenant agree as follows:

1. Defined Terms: Unless otherwise defined herein, each word or expression shall have the meaning given to it in the Lease.
2. Lease Term: Landlord and Tenant have agreed to extend the term of this Lease for an additional five (5) years, commencing May 1, 2022 and terminating April 30, 2027 (hereinafter referred to as "Lease Term"). Notwithstanding the Lease Term, Tenant shall have the right to terminate the Lease, without penalty, effective as of April 30, 2025 or April 30, 2026 upon providing Landlord with six (6) months prior written notice.
3. Base Rent: In addition to Additional Rent as agreed to by the parties and set forth in the Lease, Tenant shall pay a Base Rental Rate of \$15.15 per square foot, plus electric, during the Lease Term, totaling \$246,144.00 annually, payable \$20,512.00 per month. Said Base Rent is due and payable on the first day of each month of the Lease Term, without demand, offset or deduction.
4. Tax and Operating Expense Escalation Clause: Article 4.4 of the Lease is hereby amended as follows:

(a) Definitions: For the purposes of this Article, the following definitions shall apply:

(1) The term "Base Year" shall mean the first twelve months following the commencement of the Lease Term.

5. Landlord's Work: Landlord will complete certain improvements to the Leased Premises at Landlord's sole cost and expense as shown on Exhibit B attached hereto and made a part hereof. Landlord will use its best efforts to complete Landlord's Work within one hundred and twenty (120) days of full execution of this Lease Modification Agreement.
6. Ratification of Lease: Except as amended herein, the terms, covenants and conditions of the Lease are hereby ratified, confirmed, approved and declared to be in full force and effect and each of Landlord and Tenant represent to the other party that it has no knowledge of any event which, with the giving of notice, the passage of time or both would constitute default unto this Lease.
7. Ambiguity: In the event there is a conflict between the terms, covenants and conditions of this Lease Modification Agreement and the Lease, this Lease Modification Agreement shall govern.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement on the day and year first written above.

LANDLORD:

ELLCOTT GROUP, LLC

By: _____
William A. Paladino, Manager

TENANT:

ERIE COUNTY WATER AUTHORITY

By: _____

Title: _____

STATE OF NEW YORK)

ss:

COUNTY OF ERIE)

On the ____ day of _____, in the year 2021, the undersigned, a notary public in and for said state, personally appeared William A. Paladino, 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)

ss:

COUNTY OF ERIE)

On the ____ day of _____, in the year 2021, 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

EXHIBIT "A"

EXHIBIT "B"

LANDLORD'S WORK

Landlord has agreed to perform the following improvements to the Leased Premises.

1. Replace nonworking data lines in areas to be identified by Tenant.
2. Address windows along the Washington Street side open office area, repairing where necessary and providing new solar shades.
3. Remove and dispose of the built in shelving located in Tenant's designated library and patch walls as needed.
4. Replace existing red carpeting with building standard carpet tile. Tenant to select color.
5. Ensure HVAC is properly balanced throughout Leased Premises.
6. Patch and paint walls throughout Leased Premises. Tenant to select color.