




# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

January 13, 2022

To: Terrance D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer 

Subject: Borden Road Watermain Improvements – Cooperative Agreement  
ECWA Project No. 202100222

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Representatives from the Erie County Department of Public Works, Division of Highways, recently contacted the Engineering Department about a project they have scheduled for the Spring of 2022. They are planning a full rehabilitation of Borden Road from Strasmer Road north to Rowley Road (approximately 4,800 LF) in the Town of Cheektowaga and are inquiring if the Authority would be interested in replacing the waterlines in this area as part of this project. This project was originally intended to be completed in 2024 however the Erie County Division of Sewerage Management identified the need to also replace a failing sanitary sewer forcemain in the same corridor prompting the schedule change.

Within the project limits there is a 1,400 linear foot section of watermain on Borden from Como Park Boulevard to Zurbrick Road was installed in 1950 and has been prone to failure in the past, therefore, this would be an opportune time to replace it. By replacing the watermain as part of the road rehabilitation project, the Authority would not need to pay for any of the restoration costs. The benefits of the project are threefold. First, a section of pipe that is approaching 75 years old will be replaced, the replacement will be less costly than a standalone project and thirdly, three critical components of infrastructure, water main, sanitary sewer, and the road will be addressed in a single project with significantly less disruption to the public.

The County has a consultant onboard for the design work of the road and sewer rehabilitation, the Authority would need to pay for the design and installation of the waterline. In order to complete the project, the Engineering and Legal Departments have worked with the Erie County Division of Highways and the County Attorney to develop the attached cooperative agreement which outlines the engineering and construction cost share.

This concept was presented to the Board in September of 2022 and there were at that time no objections. As such, the Engineering Department is requesting Board approval of the cooperative agreement and execution by the Chairman.

Funds are available in the 2022 budget under Item 2590 Eng/Const Distribution Mains, 101188 Betterments.

MJQ:jmf  
cc: R.Stoll  
R.Kowalski  
S.Denzler  
HWEC-103-2101

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

**Contract:** \_\_\_\_\_ **Project No.:** 202100222  
**Project Description:** Borden Road Watermain Improvements – Cooperative Agreement

**Item Description:**



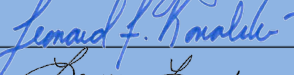




- |   |  |   |                                       |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement                 | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment          | <input type="checkbox"/> 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 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: 1/13/2022
<input checked="" type="checkbox"/> Chief Operating Officer		Date: 1/13/2022
<input checked="" type="checkbox"/> Executive Engineer		Date: 01/13/2022
<input checked="" type="checkbox"/> Director of Administration		Date: 01/13/2022
<input checked="" type="checkbox"/> Risk Manager		Date: 01/13/2022
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 01/13/2022
<input checked="" type="checkbox"/> Legal		Date: 1/13/2022

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority		Date: 1/13/22
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**Remarks:** \_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_

Inter-Agency Agreement  
WATERLINE BETTERMENT  
PROJECT NUMBER:

PROJECT NAME: Rehabilitation of Borden Road (C.R. 322)

LOCATION: Towns of West Seneca, Cheektowaga, and Village of Depew  
Erie County, New York

**This Inter-Agency Agreement** (“Agreement”), dated this 20<sup>th</sup> day of January, 2022, by and between the **County of Erie**, a New York State municipal corporation with its principal office for the transaction of business at 95 Franklin Street, Buffalo, New York 14202 (hereinafter referred to as “County”) and the **Erie County Water Authority**, having its principal office for the transaction of business at 295 Main Street, Room 350, Buffalo, New York 14203 (hereinafter referred to as “Authority”). The County and the Authority may be individually referred to hereafter as “Party”, or collectively as the “Parties”.

**WHEREAS**, pursuant to Section 119-O, Article 5-G of the General Municipal Law of the State of New York, in addition to any other general or special powers vested in municipal corporations and districts for the performance of their respective functions, powers or duties on an individual, cooperative, joint or contractual basis, municipal corporations and districts shall have the power to enter into, amend, cancel and terminate agreements for performances among themselves or one for the other of their respective functions, powers and duties on a corporative or contract basis or for the provision of a joint service; and

**WHEREAS**, the County is undertaking a highway project in order to rehabilitate Borden Road (C.R. 322) from Seneca Creek Road (C.R. 325) (beginning in the Town of West Seneca) to Broadway (NYS Rte. 130) (ending in the Village of Depew), (hereinafter referred to as the “Road Reconstruction Project”); and

**WHEREAS**, the Road Reconstruction Project is being performed in phases with the first phase beginning at the intersection of Borden and Strasmer Roads located in the Town of Cheektowaga to the intersection of Borden Road and Broadway located in the Village of Depew; and

**WHEREAS**, the Authority desires to improve the resiliency and efficiency of a portion of the water distribution system in a section of Borden Road approximately between Zurbrick Road and Como Park Boulevard (C.R. 523) by abandoning approximately 1,400 linear feet of obsolete cast iron 6” diameter waterline and installing a new ductile iron 8” waterline, including service transfers and interconnects, hydrant relocations or replacement as required, and revisions to the water distribution system within the Borden Road/Como Park Boulevard intersection (hereinafter collectively referred to as the “Betterment Project”); and

**WHEREAS**, the Road Reconstruction Project presents a unique and time limited opportunity to undertake the Betterment Project; and

**WHEREAS**, the Authority agrees to be responsible for the engineering and construction costs associated with and arising out of the Betterment Project, including construction phase inspection and administration engineering services; and

**WHEREAS**, the Authority will own and maintain the waterline and any and all appurtenances associated with the Betterment Project after completion of construction; and

**WHEREAS**, the County and the Authority desire to enter into a cooperative agreement to coordinate and facilitate the Road Reconstruction Project and the Betterment Project in order to achieve cost containment and efficiency and to minimize disruption in the underlying areas.

**NOW, THEREFORE** in consideration of the foregoing and of the mutual covenants and promises contained herein, the receipt and sufficiency of which the Parties mutually acknowledge, the Parties agree as follows:

**1. Recitals:**

The foregoing recitals are hereby incorporated into the terms of the underlying Agreement.

**2. Betterment Project Description:**

The Betterment Project shall be understood to include the abandonment of 6-inch cast iron waterline and the installation of new 8-inch diameter Ductile Iron Pipe (DIP) on the eastern side of Borden Road from the south side of the Borden Road/Como Park Boulevard intersection to the north side of the Borden Road/Zurbrick Road intersection. The Betterment Project includes the installation of new valves, hydrants, water service connections, and incidentals necessary to place the new watermain in service. The Betterment Project also includes various interconnections and abandonments to isolate and remove the existing waterline from active service.

**3. Schedule:**

The Road Reconstruction Project, including the Betterment Project, is scheduled to be bid no later than February 3, 2022 with construction scheduled to be completed by December 31, 2022. The Authority will manage its participation in the design, construction and administrative portions of the Betterment Project as needed to conform to this schedule.

**4. Scope of Work:**

The scope of work under this Agreement shall include both the design and construction of the Betterment Project. The Authority shall be responsible for all design and construction costs directly related to the Betterment Project. Design and construction phase engineering services will be provided by the County's Project Consultant, Bergmann Associates. The design will be in accordance with the Authority's standard details and specifications, copies of which will be provided by the Authority to the County's Project Consultant.

With regard to the Betterment Project, the Authority will review and approve applicable shop drawings prior to and during construction, attend construction related meetings when applicable

work is on the agenda, consult with the County's Project Consultant regarding matters pertaining to the Betterment Project, and review the installation of applicable work prior to final acceptance.

Without limiting the foregoing, the Authority will also be responsible for coordination of all system shutdowns required during construction and as required to complete the interconnections and abandonments. The Authority will develop a list of impacted properties and provide the list to the County and the County's construction contractor. The County's construction contractor will be required to make all related notifications. Upon project completion the Authority shall be responsible for ownership and maintenance of the waterline installed during the Betterment Project.

The County shall provide the Authority with one (1) complete set of as-built drawings in both print and pdf format upon completion of the project. *Plans to be stamped and sealed by a licensed Professional Engineer.*

## **5. Betterment Costs:**

The Authority shall be solely responsible for the design and construction costs of the Betterment Project, including any approved overruns. Estimated costs associated with the Betterment Project are as follows:

- The design cost of the Betterment Project is currently estimated at \$19,550 and shall not be exceeded without the prior written agreement of both the County and the Authority. The County will initially pay for the design of the Betterment and will invoice the Authority for reimbursement.
- The cost of engineering services and construction services for the construction phase of the Betterment Project shall be paid by the Authority directly to the County prior to construction of the Betterment Project. The cost of construction phase engineering services (i.e., administration and resident inspection) is estimated at \$15,000 and the cost of construction is estimated at \$813,500. Said amounts shall be considered not to exceed for the purpose of this Agreement and shall not be increased without the prior written agreement of both the County and the Authority.

Upon the County's receipt of the bids for the Road Reconstruction Project, the Authority will review the pricing for the alternate bid items associated with the Betterment Project. Within seven (7) business days of the bid opening, the Authority shall notify the County of the Authority's disposition regarding proceeding with the Betterment Project. The County shall only proceed with awarding the alternate bid items associated with the Betterment Project upon written authorization by the Authority's Executive Engineer.

Any additional costs authorized by both the County and the Authority related to the Betterment Project will be the sole responsibility of the Authority, including but not limited to overruns and/or unforeseen expenses. Any credits or overpayments by the Authority shall be refunded within 30 days of completion of construction.

## **6. Ownership and Maintenance upon Substantial Completion:**

Ownership and maintenance of the waterline and any and all appurtenances associated with the Betterment Project described herein will be the responsibility of the Authority upon completion of the Betterment Project and its acceptance by the Authority.

## **7. Insurance:**

The County's Project Consultant, Bergmann Associates, and the contractor which is awarded the bid for the Betterment Project shall secure and maintain such insurance necessary to protect itself, the County and the Authority from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or any person other than its employees; and from claims of damages because of injury to or destruction of property including loss of use resulting thereof in the amount as approved by the Parties. The County's Project Consultant and the contractor shall provide and maintain insurance certifying that the County and the Authority have additional insured status under the policy. The issuance of the insurance policy shall not release the County's Project Consultant or the contractor from any claims in excess of the insurance coverage.

## **8. Indemnification:**

During the design and construction phases of the Road Reconstruction Project including the Betterment Project, the County, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the Authority, its officers, directors, and employees and agents from and against any and all liability, damages, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the County or third parties under the direction or control of the County.

Upon substantial completion of the construction of the Road Reconstruction Project and Betterment Project, the Authority shall be responsible for the ownership, operation and maintenance of the waterline constructed during the Betterment Project. As such, the Authority, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the County and their members, officers, employees and agents from and against any and all liability, damages, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Authority or third parties under the direction or control of the Authority with respect to the Betterment Project.

## **9. Independent Status:**

Nothing contained in this Agreement shall be construed to render either the County or the Authority a partner, employee, or agent of the other, nor shall either Party have authority to bind the other in any matter, other than set forth in this Agreement. It is intended that each Party shall remain independent and separate for the other, and fully responsible for its own actions.

#### **10. Notice:**

All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:                      Commissioner of Public Works  
County of Erie  
95 Franklin Street, Room 1400  
Buffalo, New York 14202

With copy to:                      Erie County Attorney  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

To the Authority                      Erie County Water Authority  
295 Main Street  
Buffalo, New York 14203

With copy to:                      Erie County Water Authority  
Attn: General Counsel  
295 Main Street  
Buffalo, New York 14203

Or at any such other address or such other person as the Parties may designate.

#### **11. Severability:**

If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of the Agreement will not be affected by such finding, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **12. Governing Law:**

The Parties agree to abide by all applicable federal, state, and local laws and regulations. New York State courts of competent jurisdiction, with venue lying in Erie County, New York, shall have exclusive jurisdiction over any litigation with respect to any claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof.

#### **13. Entire Agreement:**

This Agreement shall constitute the sole and complete agreement and understanding of the Parties with respect to the rights granted herein and supersede all prior written or oral agreements and understandings with respect to the rights granted herein.

**14. Amendment:**

This Agreement shall not be changed, amended or altered in any way except in writing and executed by all Parties.

**15. Assignment:**

No Party shall assign this Agreement without prior written consent of all other Parties.

**16. Counterparts:**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall together constitute but one and the same instrument.

**17. Approval:**

This Agreement is subject to approval by the respective Parties in accordance with the authority granted to each Party.

**[END TEXT]**



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorized officers and/or agents as of the day and year first set forth above.

**COUNTY OF ERIE**

**ERIE COUNTY WATER AUTHORITY**

By: \_\_\_\_\_  
Name: Mark C. Poloncarz/Maria R. Whyte  
Title: County Executive/Deputy County Executive  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Jerome D. Schad  
Title: Chairman  
Date: \_\_\_\_\_

APPROVED AS TO CONTENT

By: \_\_\_\_\_  
Name: William E. Geary, Jr.  
Title: Commissioner of Public Works

APPROVED AS TO FORM

By: \_\_\_\_\_  
Name: Kristen M. Walder  
Title: Second Assistant County Attorney  
Document No.: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF NEW YORK     )  
COUNTY OF ERIE         ) SS:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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(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 upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

STATE OF NEW YORK     )  
COUNTY OF ERIE         ) SS:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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(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 upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public