



**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  
Margaret A. Murphy, General Counsel  
Karen A. Prendergast, Chief Financial Officer  
Russell J. Stoll, Chief Operating Officer  
Leonard F. Kowalski, Executive Engineer

From: Michael J. Quinn, Sr. Distribution Engineer

Date: May 5, 2021

Subject: Contract CH-012  
Water System Improvements  
Town of Cheektowaga  
ECWA Project No. 201900074

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On March 26, 2019, the Board of Commissioners (the “Board”) of the Erie County Water Authority (the “Authority”) awarded a professional consulting agreement to CHA Consulting, Inc. (“CHA”) for the design and construction of a new distribution waterline from 177 Cayuga Creek to the southeast corner of William Street and Cayuga Creek Road in the Town of Cheektowaga. ([Minutes, 3/26/19, Item 19](#)). The Engineering Department is submitting this staff report to the Board to give an update on the progress of the Project (CH-012, PN 201900074).

On December 12, 2019, the Board authorized the advertisement for construction bids for the Project. ([Minutes, 12/12/19, Item 9](#)). On May 21, 2020, the Board awarded a construction contract in the amount of \$2,414,300 to DJM Contracting, Inc. (“DJM”). ([Minutes, 5/21/20, Item 7](#)). The Authority issued a Notice to Proceed to DJM on June 4, 2020.

When the Notice to Proceed was issued, the Authority and CHA anticipate the project would be completed in 2020. However, due to unforeseen circumstances and events, the Authority still awaits an anticipated completion date for the Project.

Throughout the construction phase, CHA has documented and has kept the Engineering Department apprised of the work and the events and circumstances causing delay in the completion of the Project.

Some, but not all, of the events and circumstances leading to delays were not within DJM's control, including the following:

- At Interconnection No. 4, DJM and CHA discovered the joints on the existing 24-inch prestressed concrete cylinder pipe waterline were deteriorated and required repair or replacement. CHA and Authority Engineers had multiple discussions with the pipe manufacturer to determine the proper procedure to repair or rehabilitate the existing waterline, causing a work delay in completing the repairs.
- While excavating to install the proposed waterline in multiple locations, DJM encountered adverse and unforeseen soil conditions. The soil conditions combined with heavy rains further caused delays in the work schedule.
- After consulting with the Erie County Department of Public Works, CHA and the Authority decided milling and final paving should be delayed until the spring of 2021 to allow the trench to settle over the winter months.

While DJM may not be responsible for some construction delays, its inefficiencies contributed to additional delays, causing the Project not to be completed in 2020. The Engineering and Legal Departments are currently reviewing the documentation provided by CHA to determine whether DJM should be held responsible for costs associated with its inefficiencies.

Under the professional service agreement (CH-012), the Authority estimated residential inspection would not exceed more than 1500 hours and fees were capped at an amount not to exceed \$ 145,000. CHA is required under its agreement to perform daily residential inspections from the date of the Notice to Proceed until the completion of the Project. Under the statutory and common law, the Authority is legally responsible for the condition of any uncompleted worksite, which is the reason why residential inspection reports are kept and maintained by the Authority.

Shortly, CHA will not have sufficient funds within its agreement to cover residential inspections. The Engineering and Legal Departments wanted to bring this matter to the Board's attention. Once both departments have completed the review the additional costs caused by these delays and has determined whether any party may be held responsible for these costs, the Engineering and Legal Departments will provide that information to the Board in a future Staff Report along with recommendations.

At this point our goal is to negotiate a settlement with the contractor, including a contract extension as well as any applicable portion of the additional resident

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inspection fees, and to complete the Project. In addition, following completion of the work, an amendment will also be prepared for the additional consulting fees which must be paid by the Authority regardless of the outcome of the negotiations with the contractor.