

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

**Contract:** \_\_\_\_\_ **Project No.:** 201800257  
**Project Description:** 6" Main Abandonment and easement termination along former public road Margaret Ave., in the Town of Amherst

**Item Description:**

Agreement     Professional Service Contract     Amendment     Change Order  
 BCD     NYSDOT Agreement     Contract Documents     Addendum  
 Recommendation for Award of Contract     Recommendation to Reject Bids  
 Request for Proposals  
 Other Main Abandonment & Easement Termination

**Action Requested:**

Board Authorization to Execute     Legal Approval  
 Board Authorization to Award     Execution by the Chairperson  
 Board Authorization to Advertise for Bids     Execution by the Secretary to the Authority  
 Board Authorization to Solicit Request for Proposals  
 Other \_\_\_\_\_

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

Department Head *Jeanette F. Kowalek* Date: 8-13-19  
 Risk Manager *[Signature]* Date: 08/14/2019  
 Director of Administration \_\_\_\_\_ Date: \_\_\_\_\_  
 Executive Engineer *Russell J. Stoll* Date: 8/13/19

**APPROVED AS TO FORM:**

Legal *Margaret A. Murphy* Date: 8/14/19

**APPROVED FOR BOARD RESOLUTION:**

Secretary to the Authority *[Signature]* Date: 8/14/19

**Remarks:** \_\_\_\_\_  
 \_\_\_\_\_

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



**ERIE COUNTY WATER AUTHORITY**  
**INTEROFFICE MEMORANDUM**

August 13, 2019

TO: Terrence D. McCracken, Secretary to the Authority

FROM: Adam Massaro, Distribution Engineer *AM*

SUBJECT: Easement termination and 6" main abandonment along former public road  
Margaret Ave., in the Town of Amherst  
ECWA PN: 201800257  
ECWA FN: AMTN-807-1801

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There is an existing 6" water main residing within an easement along former public road Margaret Ave., in ECWA Direct Service Area in the Town of Amherst. This portion of Margaret Ave. was abandoned by the Town of Amherst in 2014, thus creating the need for the easement to maintain the public water main.

Northtown Plaza is redeveloping the site and are intending to locate a new building within this easement area. The plaza has requested to terminate the easement and abandon the existing 6" public water main within it to allow for their site redevelopment. This public water main dead ends on the property and only serves the plaza, abandoning it will not create any adverse impact to the surrounding area. The plaza has also applied for two 8" combination services to serve the redevelopment.

The plaza owner has agreed to pay for the abandonment and there is no cost to the Authority.

ARM: lal  
cc: R.Stoll



**ERIE COUNTY WATER AUTHORITY  
INTEROFFICE MEMORANDUM**

July 8, 2019

To: Margaret Murphy, Counsel

From: David C. Mineo, Associate Attorney

Subject: Northtown Plaza Redevelopment  
Release of Easement recorded July 23, 1953 in Liber: 5366, Page 260.

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The Erie County Water Authority (the "Authority") holds an easement that was granted in 1953 between Falls Boulevard Shopping Center, Inc. and Western New York Water Company. The Easement is described in a document recorded at the Erie County Clerk's Office on July 23, 1953 in Liber: 5366, Page 260.

The easement is located on a private street, Margaret Avenue, located in Amherst and is part of the Northtown Plaza Redevelopment. Margaret Avenue starts at Eggert Road. The Town of Amherst abandoned the street by Resolution recorded March 7, 2014 in the Erie County Clerk's Office in Liber: 11261, Page 3972.

Currently the Authority has one water main in the easement area which is 6 inches and reduces to 4 inches. The water main starts at the south side of Eggert Road, crosses Eggert Road to a valve on the north side of Eggert Road, where the easement commences. The main then runs northerly and comes to a dead end toward the end of Margaret Lane.

Northtown Property Owner, LLC (the "Owner") has asked the Authority to Release the easement since they plan to construct two buildings which would be partially located over the easement area.

On March 20, 2019 the Owner submitted to the Authority a plan for water service to connect at two points to the watermain on Eggert Road leading directly to two hotboxes located on their site. The Easement is no longer needed to service the Northtown Plaza. The existing water main will be removed from the easement area at the Owner's own expense.

Instead of allowing the Owner to abandon the line at the northern right-of-way of Eggert Road, it would be best if we require them to pay for the removal of the tee and insertion of straight pipe on the south side of Eggert. This would

eliminate leaving the Authority with a dead crossing which would pose a future leak risk and is not allowed according to our standards.

Since the line crossing Eggert Road is in the Authority's right-of-way and is part of our facilities, the Owner would be required to pay for the work. The Authority would hire our own contractor to perform the construction. The Authority's Engineering Design team prepared a cost estimate \$8,900.00 for this work. The owner has not objected to paying this fee and will remit payment as a condition to obtaining the Release.

Executive Engineer Russell J. Stoll, P.E. has reviewed the Owner's request and agrees that the Easement is no longer needed by the Authority.

The Owner has requested that they do not pay the \$8,900.00 removal fee until they are ready to proceed with their new water service. The letter of understanding was drafted to deal with this.

## TERMINATION OF EASEMENT

**THIS AGREEMENT** made the \_\_\_ day of \_\_\_\_\_, 2019 by and between **ERIE COUNTY WATER AUTHORITY**, 295 Main Street, Room 350, Buffalo, NY 14203 (hereinafter referred to as “**ECWA**”), as successor-in-interest to Western New York Water Company, and **NORTHTOWN PROPERTY OWNER LLC**, 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467 (hereinafter referred to as “**Northtown Owner**”), as successor-in-interest to Falls Boulevard Shopping Center, Inc.

WITNESSETH:

WHEREAS, by that certain Easement dated June 30, 1953 and recorded July 23, 1953 in the Erie County Clerk’s Office in Liber 5366 of Deeds at Page 260 (the “**Easement**”), Falls Boulevard Shopping Center, Inc. (“**FBSCI**”) granted unto Western New York Water Company, a New York corporation (“**WNYWC**”), the right to lay, relay, operate, maintain and remove a water main or mains, both supply and distribution, and appurtenances, including domestic services and fire hydrants (collectively, the “**Water Main**”), in the former street known as Margaret Avenue (said Margaret Avenue having been abandoned by the Town of Amherst by Resolution 2014-246 recorded March 7, 2014 in the Erie County Clerk’s Office in Liber 11261, Page 3972); and

WHEREAS, the undersigned ECWA succeeded to all of the assets and properties of WNYWC in 1953 pursuant to a settlement in lieu of a pending condemnation and is the successor-in-interest to all of WNYWC’s right, title and interest in and to the Easement; and

WHEREAS, the lands affected by the Easement are situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 84, Township 12, Range 7 of the Holland Land Company Survey (so-called) and are currently owned by the undersigned Northtown Owner; and

WHEREAS, the former street known as Margaret Avenue is shown on a certain map entitled North Bailey Meadows #3 which is recorded at the Erie County Clerk’s Office as Map #1316.

WHEREAS, ECWA and Northtown Owner desire to terminate said Easement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. The Easement is hereby terminated as of the date of this instrument. The parties hereto agree to the recording of this instrument in the Erie County Clerk’s Office.
2. ECWA hereby grants, remises, releases and quitclaims unto Northtown Owner all of its right, title and interest, if any, in and to, all that tract or parcel of land to which said Easement pertained, together with the Water Main and any other improvements presently existing thereon or therein.

3. Northtown Owner hereby confirms and agrees that ECWA shall not have any further obligations for maintenance, repair or any other obligations under the Easement.

4. This Agreement shall be binding on the parties hereto, and upon their respective successors and assigns, and inure to the benefit of Northtown Owner and its successors and assigns.

*[Remainder of page intentionally blank]*

IN WITNESS THEREOF, the parties hereto have executed this instrument as of the date and year first above written.

**ERIE COUNTY WATER AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title:

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2019 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/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**NORTHTOWN PROPERTY OWNER LLC**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_ )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2019 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/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument as the free act and deed of Northtown Property Owner LLC.

\_\_\_\_\_  
Notary Public



**Northtown Property Owner LLC  
33 Boylston Street, Suite 3000  
Chestnut Hill, Massachusetts 02467**

July \_\_, 2019

Erie County Water Authority  
295 Main Street, Room 350  
Buffalo, New York 14203

Re: Termination of Easement

Ladies and Gentlemen:

Erie County Water Authority (“**ECWA**”), as successor-in-interest to Western New York Water Company, is the holder of that certain Easement dated June 30, 1953 and recorded July 23, 1953 in the Erie County Clerk’s Office in Liber 5366, Page 260 (the “**Easement**”), pursuant to which ECWA has the right to maintain water mains and appurtenances (collectively, the “**Water Main**”) in an area (the “**Easement Area**”) within the former street known as Margaret Avenue, all as more particularly set forth in the Easement.

The Easement Area is now located within the shopping center commonly known as Northtown Plaza (“**Northtown Plaza**”), which is owned by the undersigned Northtown Property Owner LLC (“**Northtown Owner**”).

ECWA no longer has a need for the Easement, and this letter agreement (this “**Agreement**”) sets forth our understanding and agreement with respect to the termination of the Easement and removal of the Water Main.

1. *Removal of Old Service Connection and Payment of Costs.* Northtown Owner shall be responsible for paying \$8,900 (the “**Removal Fee**”) to ECWA in order to offset the costs to ECWA of removing the service connection to the Water Main that is located adjacent to the Easement Area in Eggert Road (the “**Old Service Connection**”). ECWA agrees that Northtown Owner shall not be obligated to pay the Removal Fee until Northtown Owner requests that ECWA remove the service connection. If Northtown Owner makes such request after June 30, 2020, then the Removal Fee may be changed to reflect changes in costs to ECWA of removing the Old Service Connection and consistent with ECWA's then standard and customary charges for such work at similar properties. Northtown Owner shall also be responsible for paying ECWA’s standard and customary charges for any new water service connections requested by Northtown Owner to serve Northtown Plaza (the “**New Service Connections**”). ECWA shall comply with all applicable law, franchises and charters in connection with its removal of the Old Service Connection and the New Service Connections.

2. *Termination of Easement.* ECWA and Northtown Owner shall each execute and acknowledge a Termination of Easement (the “**Termination**”) in the form attached hereto as Exhibit A promptly upon payment of the Removal Fee by Northtown Owner to ECWA.

3. *Removal of Water Main and Indemnification by Northtown Owner.* Northtown Owner intends to remove the Water Main from the Easement Area in connection with performing site work for the anticipated redevelopment of a portion of Northtown Plaza. Northtown Owner agrees that it shall defend, indemnify and hold harmless ECWA from any and all loss, cost, damage and expense arising from damage to persons or property to the extent caused by the negligence or willful misconduct of Northtown Owner or any of its contractors in removing the Water Main from the Northtown Plaza property.

4. *Counterparts; Electronic Signatures.* This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

Sincerely,

Northtown Property Owner LLC

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed:

Erie County Water Authority

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A

Termination of Easement

[See Attached]