

**MINUTES of the ANNUAL MEETING of the ERIE COUNTY WATER AUTHORITY held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 30<sup>th</sup> day of April, 2013.**

**PRESENT: Francis G. Warthling, Commissioner  
Earl L. Jann, Jr., Commissioner  
Christopher J. O'Brien, Commissioner  
Robert A. Mendez, Executive Director  
Matthew J. Baudo, Secretary to the Authority/Personnel Director  
Robert J. Lichtenthal, Jr., Deputy Director  
Wesley C. Dust, Executive Engineer  
Karen A. Prendergast, Comptroller  
Edward A. Betz, Associate Attorney  
Steven V. D'Amico, Budget and Financial Analyst  
Paul H. Riester, Director of Administration  
Daniel J. NeMoyer, Director of Human Resources  
Susan L. Rinaldo, Cash Manager  
Anthony Alessi, Claims Representative/Risk Manager**

**ATTENDEES: Brian Gould**

**CALL TO ORDER**

**PLEDGE TO THE FLAG**

**I. - ROLL CALL**

**ITEM 1- NOMINATION OF TEMPORARY SECRETARY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and carried to appoint Mr. Matthew J. Baudo Temporary Secretary for the Annual Meeting.

**ITEM 2- NOMINATION OF TEMPORARY CHAIRMAN**

Motion by Mr. Francis W. Warthling seconded by Mr. Christopher J. O'Brien and carried to appoint Mr. Earl L. Jann, Jr. Temporary Chairman for the Annual Meeting.

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**ITEM 3- NOMINATION OF CHAIRMAN**

Nominations were opened for the office of Chairman.

Motion by Mr. Earl L. Jann, Jr. seconded by Mr. Christopher J. O'Brien and carried to nominate Mr. Francis G. Warthling as Chairman of the Erie County Water Authority for the ensuing year.

Motion by Mr. Earl L. Jann, Jr. seconded by Mr. Christopher J. O'Brien and carried to move that nominations be closed.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

Motion carried to elect Francis G. Warthling as Chairman.

At this point, Mr. Jann turned the meeting over to the newly elected Chairman.

**ITEM 4 - NOMINATION OF VICE CHAIRMAN**

Nominations were opened for the office of Vice Chairman.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Francis G. Warthling and carried to nominate Mr. Earl L. Jann, Jr. as Vice Chairman of the Erie County Water Authority for the ensuing year.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Francis G. Warthling and carried to move that nominations be closed.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

Motion carried to elect Earl L. Jann, Jr. as Vice Chairman.

**ITEM 5 - NOMINATION OF TREASURER**

Nominations were opened for the office of Treasurer.

Motion by Mr. Earl L. Jann, Jr. seconded by Mr. Francis G. Warthling and carried to nominate Mr. Christopher J. O'Brien as Treasurer of the Erie County Water Authority for the ensuing year.

Motion by Mr. Earl L. Jann, Jr. seconded by Mr. Francis G. Warthling and carried to move that nominations be closed.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

Motion carried to elect Mr. Christopher J. O'Brien as Treasurer.

**ITEM 6 - NOMINATION OF ASSISTANT TREASURER**

Nominations were opened for the office of Assistant Treasurer.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried to nominate Mr. Edward A. Betz as Assistant Treasurer of the Erie County Water Authority for the ensuing year.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried to move that nominations be closed.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

Motion carried to elect Edward A. Betz as Assistant Treasurer.

**ITEM 7 - RENEWAL OF COMMERCIAL CRIME POLICY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried that the Erie County Water Authority ratify the continuation of Public Employee Dishonesty coverage in the amount of \$250,000 for the scheduled positions of Treasurer and Bill Collector and \$500,000 for all other employees.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 8 - NOMINATION OF SECRETARY**

Nominations were opened for the office of Secretary.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried to nominate Mr. Matthew J. Baudo as Secretary to the Erie County Water Authority for the ensuing year.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried to move that nominations be closed.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

Motion carried to elect Matthew J. Baudo as Secretary to the Erie County Water Authority.

**ITEM 9 – NOMINATION OF ASSISTANT SECRETARY**

Nominations are open for the office of Assistant Secretary.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried to nominate Mr. Robert J. Lichtenthal, Jr. as Assistant Secretary to the Erie County Water Authority for the ensuing year.

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and carried to move that nominations be closed.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

Motion carried to elect Robert J. Lichtenthal, Jr. as Assistant Secretary to the Authority.

**ITEM 10 - AUTHORIZATION TO DESIGNATE DEPOSITORIES FOR FUNDS**

Motion by Mr. Francis G. Warthling seconded by Mr. Earl L. Jann, Jr., and carried that the Erie County Water Authority designate the financial institutions listed below as depositories for funds collected by Mr. Christopher J. O'Brien Treasurer:

- Manufacturers & Traders Trust Company
- Bank of America
- Key Bank of New York
- JP Morgan Chase Bank, N.A.
- First Niagara Bank
- RBS Citizens, NA (D/B/A Citizens)
- UBS Financials Services, Inc.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
 Noes: None

**ITEM 11 - AUTHORIZATION TO APPROVE THE FOLLOWING  
 TO EXECUTE ERIE COUNTY WATER AUTHORITY CHECKS ON  
 BEHALF OF THE ERIE COUNTY WATER AUTHORITY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr., and  
 carried to authorize the following to execute Erie County Water Authority checks on behalf of  
 the Authority:

Executive Director  
 Secretary to the Authority  
 Treasurer  
 Assistant Treasurer

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
 Noes: None

**ITEM 12 - AUTHORIZATION TO APPROVE THE FOLLOWING TO MAKE WIRE  
 TRANSFERS ON BEHALF OF THE ERIE COUNTY WATER  
 AUTHORITY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and  
 carried to authorize the following to make wire transfers on behalf of the Erie County Water  
 Authority:

Cash Manager  
 Assistant Manager of Accounting Services

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
 Noes: None

**ITEM 13 - AUTHORIZATION TO APPROVE THE FOLLOWING APPROVE WIRE  
 TRANSFERS VIA BANK CALL BACKS ON BEHALF OF THE ERIE  
 COUNTY WATER AUTHORITY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and  
 carried to authorize the following to approve wire transfers via bank call backs on behalf of the  
 Erie County Water Authority:

Comptroller  
Business Office Manager  
Chief Account Clerk

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 14 - AUTHORIZATION TO APPROVE THE FOLLOWING TO MAKE  
AUTOMATED CLEARING HOUSE (ACH) TRANSFERS ON BEHALF  
OF THE ERIE COUNTY WATER AUTHORITY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and  
carried to authorize the following to make payroll direct deposit wire transfers on behalf of the  
Erie County Water Authority:

See attached list

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 15 - AUTHORIZATION TO APPROVE THE FOLLOWING TO VIEW ALL  
DEPOSITORY, COLLATERAL AND INVESTMENT ACTIVITY ON THE  
INTERNET ON BEHALF OF THE ERIE COUNTY WATER  
AUTHORITY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and  
carried to authorize the following to view all depository, collateral and investment activity on the  
Internet on behalf of the Erie County Water Authority:

Deputy Director  
Comptroller  
Cash Manager  
Assistant Manager of Accounting Services  
Business Office Manager  
Chief Account Clerk

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 16 - AUTHORIZATION TO APPROVE THE FOLLOWING TO EXECUTE ALL FEDERAL AND STATE TAX RETURNS, INCLUDING BUT NOT LIMITED TO W-2, AND 1099 FORMS ON BEHALF OF THE ERIE COUNTY WATER AUTHORITY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and carried to authorize the following to execute all Federal and State Tax Returns, including but not limited to W-2 and 1099 Forms on behalf of the Erie County Water Authority:

Comptroller  
Cash Manager  
Assistant Manager of Accounting Services

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 17 - AUTHORIZATION TO APPROVE THE ERIE COUNTY WATER AUTHORITY'S ANNUAL INVESTMENT REPORT WITH AUDIT AND THE ANNUAL INVESTMENT GUIDELINES**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and carried to approve the Annual Investment Report with attached Audit and the Investment Guidelines for the ensuing year or until such time as the Erie County Water Authority deems it necessary to amend said Guidelines.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 18 - AUTHORIZATION TO APPROVE THE ERIE COUNTY WATER AUTHORITY'S PURCHASING POLICY**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr.

**WHEREAS**, Heretofore and on the 29<sup>th</sup> day of April, 1999, by Resolution Item No. 26, the Erie County Water Authority ("Authority") adopted a Purchasing Guidelines Policies and Procedures Manual ("Manual"); and

**WHEREAS**, Heretofore and on the 5<sup>th</sup> day of July, 2005, by Resolution Item No. 20, the Authority adopted a revised Purchasing Guidelines Policies and Procedures Manual (“Manual”); and

**WHEREAS**, Heretofore and on the 21<sup>st</sup> day of May, 2009, by Resolution Item No. 16 the Authority adopted a subsequent revised Purchasing Guidelines Policies and Procedures Manual; and

**WHEREAS**, As a public benefit corporation, the Authority must conduct its operations in a manner that best serves the interests of its customers and the general public; and

**WHEREAS**, In an effort to stay current with changes and revisions to purchasing best practices, Paul H. Riester, Director of Administration, recommends amending the Authority’s Purchasing Guidelines Policies and Procedures; and

**WHEREAS**, Robert J. Lichtenthal, Jr., Deputy Director, concurs with said recommendation;

**NOW, THEREFORE, BE IT RESOLVED:**

That the Authority adopts the attached Purchasing Policy effective May 1, 2013 and that this duly adopted policy supersedes all previously adopted and amended Purchasing Guidelines Policies and Procedures.

Ayes: Three; Commrs. Warthling, Jann and O’Brien  
Noes: None

**ITEM 19 - AUTHORIZATION TO APPROVE THE DIRECTOR OF ADMINISTRATION TO AUTHORIZE AND EXECUTE PURCHASE ORDERS AFTER DEPARTMENTAL AND BOARD APPROVAL**

Motion by Mr. Christopher J. O’Brien seconded by Mr. Earl L. Jann, Jr. and carried to approve the Director of Administration to authorize and execute purchase orders after departmental and Board approval.

Ayes: Three; Commrs. Warthling, Jann and O’Brien  
Noes: None



**ITEM 20 - AUTHORIZATION TO APPROVE THE DIRECTOR OF ADMINISTRATION TO AUTHORIZE AND EXECUTE ASSOCIATED PURCHASING AGREEMENTS, WARRANTEES AND MAINTENANCE AGREEMENTS ON DEPARTMENTAL AND BOARD APPROVED PURCHASE ORDERS NOT TO EXCEED AN AGGREGATE OF \$20,000 PER CALENDAR YEAR PER VENDOR**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and carried to approve the Director of Administration to authorize and execute associated purchasing agreements, warrantees and maintenance agreements on departmental and Board approved purchase orders not to exceed an aggregate of \$20,000 per calendar year per vendor.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 21 - AUTHORIZATION TO APPOINT A LABOR-MANAGEMENT HEALTHCARE COALITION REPRESENTATIVE**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr.

**WHEREAS**, Heretofore on the 25<sup>th</sup> day of March, 2004 the Board of Commissioners of the Erie County Water Authority approved the entry into a Labor-Management Healthcare Fund Membership Agreement with the Labor-Management Healthcare Fund (the "Fund") to obtain group insurance coverage to fund benefits for a program sponsored by the Labor-Management Healthcare Coalition, Inc. covering the Authority's eligible employees and retirees under the terms and conditions set forth in said agreement; and

**WHEREAS**, The agreement establishes the right of the Authority to designate one person to represent the Authority's management on the Board of Directors of the LMHC; and

**WHEREAS**, The Board of Commissioners has selected and hereby appoints Karen A. Prendergast, Comptroller as said representative effective immediately;

**NOW, THEREFORE BE IT RESOLVED:**

That Karen A. Prendergast, Comptroller be the Authority's representative for the Labor-Management Healthcare Coalition, Inc. for the ensuing year.

Ayes: Three; Commrs. Warthling, Jann and O'Brien  
Noes: None

**ITEM 22 - COMMITTEES**

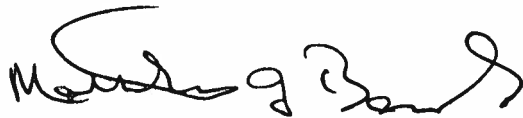
Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and carried to approve that the existing committees remain the same for the coming year and that the Chairman of the Erie County Water Authority will continue to be empowered to name new committees and assign members.

Ayes: Three; Comms. Warthling, Jann and O'Brien  
Noes: None

**ITEM 23 - ADJOURNMENT**

Motion by Mr. Christopher J. O'Brien seconded by Mr. Earl L. Jann, Jr. and carried to adjourn this annual organization meeting until the next organization meeting to be held on the first regularly scheduled board meeting after the 27<sup>th</sup> day of April, 2014.

Ayes: Three; Comms. Warthling, Jann and O'Brien  
Noes: None



**Matthew J. Baudo**  
Secretary to the Authority/Personnel Director

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**APPROVED STAFF FOR ACH TRANSFERS**

	<b>NYS Retirement</b>	<b>Payroll Direct Deposit</b>	<b>Payroll Withholding Taxes</b>	<b>Accounts Payable</b>
<b>Comptroller</b>	X	X	X	X
<b>Cash Manager</b>			X	X
<b>Asst. Mgr. of Accounting Services</b>	X	X	X	X
<b>Principal Clerk</b>	X	X		

**ATTACHMENT TO ITEM 17**

**ERIE COUNTY WATER AUTHORITY  
FEES  
2012<sup>300</sup>**

**M&T**

**Bond Fees**

Series 1990B	1,605.00	
Series 1992 Escrow (90B)	750.00	
Series 1998D	6,000.00	
Series 2003F	6,000.00	
Series 2007	4,500.00	
Series 2008	<u>3,000.00</u>	
		21,855.00

**Standard & Poor's**

Annual Rating Fee		3,000.00
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**Environmental Facilities Corp**

Admin Fee-Series 1998D	20,475.00	
Admin Fee-Series 2003F	<u>11,715.00</u>	
		32,190.00

**Public Financial Management, Inc (PFM)**

Arbitrage Calculation-Series 2007		<u>3,250.00</u>
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<b>Total Corporate &amp; Fiscal</b>		<b>57,045.00</b>
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**M&T Lockbox**

52,385.26

**M&T Custodian**

500.00

**2012 Bond Issuance Costs**

<b>Key Government Finance, Inc.</b>	<b>Commitment Fee</b>	25,000.00	
<b>Kutak Rock, LLP</b>	<b>Key's Counsel</b>	12,500.00	
<b>Damon &amp; Morey</b>	<b>Authority's Counsel</b>	15,267.18	
<b>PFM</b>	<b>Authority's Financial Advisor</b>	<u>27,500.00</u>	
	<b>Total Bond Issuance Costs</b>		<b>80,267.18</b>

**ERIE COUNTY**  
**WATER AUTHORITY**  
*Schedule of Investments and Schedule of*  
*Income from Investments*  
*December 31, 2012*

**INDEPENDENT AUDITORS' REPORT**

The Board of Commissioners  
Erie County Water Authority

We have audited the accompanying schedule of investments of Erie County Water Authority (the Authority), a business-type activity, as of December 31, 2012 and the related schedule of income from investments for the year then ended, and the related notes to the schedules.

**Management's Responsibility for the Schedules**

Management is responsible for the preparation and fair presentation of the schedules in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the schedules that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these schedules based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the schedules are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the schedules. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the schedules, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the schedules in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the schedules.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the schedule of investments and schedule of income from investments referred to above present fairly, in all material respects, the investments of the Authority as of December 31, 2012 and income from investments for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

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**Other Matter**

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We have audited, in accordance with auditing standards generally accepted in the United States of America, the financial statements of Erie County Water Authority as of and for the year ended December 31, 2012, and our report thereon dated March 26, 2013 expressed an unmodified opinion on those financial statements.

*Lumsden & McCormick, LLP*

March 26, 2013

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**ERIE COUNTY WATER AUTHORITY**  
**Schedule of Cash & Investments**  
**December 31, 2012**

	<b>Market Value</b>	<b>Amortized Cost</b>
<b>Working Funds</b>		
<b>Extension and Improvement Accounts:</b>		
NOW Accounts	\$ 866,715	\$ 866,715
Money Market Funds	24,239,623	24,239,623
	25,106,338	25,106,338
<b>Operating and Maintenance Accounts:</b>		
NOW Accounts	7,284,915	7,284,915
Money Market Funds	11,914,045	11,914,045
State and Local Government Series Treasury Bonds	549,983	549,983
Total Operating and Maintenance Accounts	19,748,943	19,748,943
<b>Customer Deposit Accounts:</b>		
NOW Accounts	46,485	46,485
Money Market Funds	748,698	748,698
Total Customer Deposit Accounts	795,183	795,183
Total Working Fund Investments	45,650,464	45,650,464
<b>Fiscal Agent Funds</b>		
<b>Debt Service Reserve Accounts:</b>		
Money Market Funds	52	52
State and Local Government Series Treasury Bonds	9,594,759	9,594,759
Total Debt Service Reserve Accounts	9,594,811	9,594,811
<b>Debt Service Accounts:</b>		
Money Market Funds	1,043,843	1,043,843
US Treasury Securities	1,311,911	1,311,853
Total Debt Service Accounts	2,355,754	2,355,696
Total Fiscal Agent Funds	11,950,565	11,950,507
Total	\$ 57,601,029	\$ 57,600,971

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**ERIE COUNTY WATER AUTHORITY**  
**Schedule of Income from Investments**  
**For the Year Ended December 31, 2012**

<b>Working Funds:</b>	
Extension and Improvement Accounts	\$ 39,984
Operating and Maintenance Accounts	40,668
Sick Pay Reserve Account	4,439
Customer Deposit Accounts	2,118
Total Working Funds	<u>87,209</u>
<b>Fiscal Agent Funds:</b>	
Debt Service Reserve Accounts	322,736
Debt Service Accounts	4,184
Total Fiscal Agent Funds	<u>326,920</u>
Net increase in the fair market value of investments	<u>58</u>
Total Income from Investments	<u>\$ 414,187</u>

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The accompanying notes are an integral part of these schedules.

**ERIE COUNTY WATER AUTHORITY**  
**Notes to Schedules of Investments and of Income from Investments**  
**December 31, 2012**

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**1. ORGANIZATION AND FUNCTION OF THE AUTHORITY**

Erie County Water Authority (the Authority) is a public benefit corporation created in 1949 by the State of New York for the purpose of constructing, operating and maintaining a public water supply for certain parts of Erie County.

The Authority operates its business activities on a direct service basis where it owns the assets and is responsible for their operation, maintenance, improvement and replacement; on a leased managed service basis where the Authority is responsible for the operation and maintenance of the assets while the lessor is responsible for the improvement and replacement of assets; and on a bulk sales basis where the Authority contracts with the customer to provide water while the customer owns the assets and is responsible for their operation, maintenance, improvement and replacement as well as billings and customer collections.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Investments are made by the Authority in accordance with its Bond Resolutions and Investment Guidelines in the Official Statement, relating to the Series 1998D, Series 2003F, Series 2007, Series 2008 and Series 2012 Bonds. At December 31, 2012, the Authority had invested substantially all of its funds in the following:

<u>Security</u>	<u>Interest Rate</u>
US Government obligations	0.015%-4.81%
Cash equivalents (including money market funds)	.00%-.27%

Investments are carried at market value for those investments subject to market forces and at amortized cost for investments not subject to market forces. The amortized cost recorded is either original cost (government obligations and asset-based securities) or face value (money market funds). Any premium or discount resulting from the purchase of government securities is included in cost and amortized into income over the term of the security.

Income from investments is recorded on the accrual basis and includes realized gains and losses from sales of investments.

**INVESTMENT GUIDELINES**  
**FOR THE ERIE COUNTY WATER AUTHORITY**  
**PURSUANT TO ARTICLE 9, SECTION 2925**  
**OF THE PUBLIC AUTHORITIES LAW**

**I. SCOPE**

These investment guidelines apply to all moneys and other financial resources available for investment on its own behalf or on behalf of any other entity or individual.

These guidelines have been constructed pursuant to the laws detailed in Exhibit I.

**II. OBJECTIVES**

The primary objectives of the Authority's investment activities are, in priority order,

- ▶ to conform with all applicable federal, state and other legal requirements (legal);
- ▶ to adequately safeguard principal (safety);
- ▶ to provide sufficient liquidity to meet all operating requirements (liquidity); and
- ▶ to obtain a reasonable rate of return (yield).

**III. DELEGATION OF AUTHORITY**

The governing board's responsibility for administration of the investment program is delegated to the Deputy Director, who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a data base or records incorporating description and amounts of investments, transaction dates, and other relevant information and regulate the activities of subordinate employees.

**IV. PRUDENCE**

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the Erie County Water Authority to operate effectively.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

## **V. DIVERSIFICATION**

It is the policy of the Erie County Water Authority to diversify its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

## **VI. LIQUIDITY**

Per the current Board of Commissioners Guidelines, unrestricted cash will be maintained at 20% of the Authority's budgeted gross revenues. These funds will be invested in accordance with the Authority's Investment Guidelines.

The Authority will maintain operating cash of \$4 million, which will be available on a daily basis. These funds should be in the Authority's NOW accounts or money market accounts for easy access. If the Authority is aware of an event for which additional operating funds will be required, this amount can be adjusted.

The remaining unrestricted cash may be invested until it is needed for operating expenditures. A cash flow schedule should be reviewed to determine how long the funds may be invested. Depending on the economic environment, it may be advantageous to invest these funds on a short term basis. They can then be reinvested periodically until the funds are required.

## **VII. INTERNAL CONTROLS**

The Deputy Director is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly, and are managed in compliance with applicable laws and regulations.

**VIII. DESIGNATION OF DEPOSITORIES**

The banks and trust companies authorized for the deposit of monies are:

**Depository Name**

Manufacturers & Traders Trust Company  
Bank of America  
Key Bank of New York  
JP Morgan Chase Bank  
RBS Citizens, N.A. (dba Citizens)  
First Niagara Bank  
UBS Financial Services Inc.

**IX. COLLATERALIZING OF DEPOSITS**

In accordance with the provisions of General Municipal Law, §10, all deposits of the Erie County Water Authority, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured:

1. By a pledge of "eligible securities" with an aggregate "market value" as provided by GML §10, equal to the aggregate amount of deposits from the categories designated in Appendix A to the guidelines.
2. At the time investments are made collateral requirements are established to protect the underlying investments. The collateral is monitored daily until the extinguishment of the investments.
3. Current market values will be reviewed monthly.

**X. SAFEKEEPING AND COLLATERALIZATION**

Eligible securities used for collateralizing deposits shall be held by a third party, bank or trust company subject to written security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure the Authority's deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which will enable the Authority to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the Authority, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Erie County Water Authority or its custodial bank.

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The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for, the Authority, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the Authority a perfected interest in the securities.

Securities issued in the Authority's name, for example commercial paper, will also be held by the custodian. These securities may not be released without prior written approval of the Authority.

#### **XI. PERMITTED INVESTMENTS**

All investments of the Erie County Water Authority shall comply with:

1) The Authority's bond covenants contained in the following:

- Fourth General Water Revenue Bond Resolution dated July 9, 1992
  - First Supplemental Resolution dated July 9, 1992 (Series 1992)
  - 1998 Supplemental Resolution dated August 28, 1997, September 25, 1997 and February 5, 1998
  - Supplemental Resolution dated April 30, 1998 (Series 1998D)
  - 2003 Supplemental Resolution dated October 31, 2002 (Series 2003F)
  - 2007 Supplemental Resolution dated August 16, 2007 (Series 2007)
  - 2008 Supplemental Resolution dated June 19, 2008 (Series 2008)
- 2012 Water Revenue Bond Resolution dated May 29, 2012 (Series 2012)

2) Existing Statutory Law

3) Recommendations of the New York State Comptroller and other applicable government agencies

Per the above, the Erie County Water Authority authorizes the Deputy Director to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs as follows:

a) Moneys held in the Funds and Accounts in respect of the Series 1998D, 2003F, 2007, 2008 and 2012 bonds shall only be invested in the following obligations:

1) Direct obligations of, or obligations the principal of and interest on which are conditionally guaranteed by, the United States of America.

2) Obligations of any agency, subdivision, department division or instrumentality of the United States of America; or obligations fully guaranteed as to interest and principal by any agency, subdivision, department, division or instrumentality of the United States of America.

3) New Housing Authority Bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America or any agency thereof; or Project Notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America or any agency thereof;

4) Direct obligations of, or obligations guaranteed as to principal and interest by, any state or direct obligations of any agency or public authority thereof, provided such obligations are rated, at the time of purchase, in one of the two highest rating categories by at least two nationally recognized Bond Rating Agencies;

5) Bank time deposits evidenced by certificates of deposit and bankers' acceptances issued by any bank or trust company (which may include the Trustee with respect to any series of the Authority's bonds) which is a member of the Federal Deposit Insurance Corporation, provided that such time deposits and bankers' acceptance (a) do not exceed at any one time in the aggregate five percent (5%) of the total of the capital and surplus of such bank or trust company, or (b) are secured by obligations described in items (1), (2), or (3) above, which such obligations at all times have a market value (exclusive of accrued interest) at least equal to such time deposits so secured;

6) Repurchase agreements with any bank or trust company (which may include the Trustee with respect to any series of the Authority's bonds), which is a member of the Federal Deposit Insurance Corporation, which such agreements are secured by securities which are obligations described in items (1), (2) or (3) above provided that each such repurchase agreement (a) is in commercially reasonable form and is for a commercially reasonable period, and (b) results in transfer to the Trustee for the Authority's bonds or the Authority of legal title to, or the grant to the Trustee for the Authority's bonds or the Authority of a prior perfected security interest in, identified securities referred to in items (1), (2) or (3) above which are free and clear of any claims by third parties and are segregated in a custodial or trust account held by a third party (other than the repurchaser) as the agent solely of, or in trust solely for the benefit of, the Trustee for the Authority's bonds or the Authority; provided that such securities acquired pursuant to such repurchase agreements shall be valued at the lower of the then current market value of such securities or the repurchase price thereof set forth in the applicable repurchase agreement; and provided that such repurchase agreements comply with the restrictions specified in Section XIV of these guidelines.

7) Obligations consisting of notes, bonds and debentures which are direct obligations of a solvent corporation existing under the laws of the United States or any state thereof, provided that such investments shall be rated in the two highest rating categories established by at least two nationally recognized bond rating agencies;

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8) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's Investor Services, and which matures not more than 270 days after the date of purchase. However, funds held with respect to the 1998D Series may not be invested in commercial paper;

9) Certificates or other obligations that evidence ownership of the right to payments of principal of or interest on obligations of the United States of America or any state of the United States of America or any political subdivision thereof or any agency or instrumentality of the United States of America or any state or political subdivision, provided that such obligations shall be held in trust by a bank or trust company or a national banking association meeting the requirements for a Trustee under the Authority's Bond Resolutions, and provided further that, in the case of certificates or other obligations of a state or political subdivision, the payments of all principal of and interest on such certificates or such obligations shall be fully insured or unconditionally guaranteed by, or otherwise unconditionally payable pursuant to a credit support arrangement provided by, one or more financial institutions or insurance companies or associations which shall be rated in the highest rating category by Moody's Investors Service, Inc. and Standard & Poor's Corporation, or, in the case of an insurer providing municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bonds, such insurance policy shall result in such municipal bonds being rated in the highest rating category by Moody's Investors Service, Inc. and Standard & Poor's Corporation;

10) Investment agreements rated, or the issuer of which is rated, in one of the two highest rating categories by at least two nationally recognized rating agencies and if rated by Moody's Investors Service or Standard & Poor's Corporation such investment agreements or the long term unsecured debt obligations of the issuer thereof must be rated in one of the two highest rating categories by the respective agency rating such investment agreements; and

11) Bonds, notes or other evidences of indebtedness rated "AAA" by Standard and Poor's Corporation and "Aaa" by Moody's Investor Services issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) with remaining maturities not exceeding three years. However, funds held with respect to the 1998D Series may not be invested in bonds, notes or other evidences of indebtedness issued by FNMA or FHLMC;

12) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation;

13) Such other investments with respect to any Series of Bonds as shall be specified in the supplemental resolution pursuant to which such Series of Bonds was issued.

All investment obligations shall be payable or redeemable at the option of the Erie County Water Authority within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Erie County Water Authority within two years of the date of purchase.



## **XII. AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS**

The Erie County Water Authority shall maintain a list of financial institutions and dealers approved for investment purposes and establish appropriate limits to the amount of investments which can be made with each financial institution or dealer. All financial institutions with which the Authority conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the Erie County Water Authority. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The Deputy Director is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually.

If the Authority deems it advisable to retain an investment banker, broker, agent, dealer or other investment advisor or agent to transact business with the Authority, it shall establish criteria for said individuals or firms covering the quality, reliability, experience, capitalization, size and any other factors that at the time the Authority feels pertinent before qualifying said firm to transact business with the Authority.

The Authority must have discretion over all investment transactions and must be supplied with adequate documentation for each transaction. All agreements must comply with the Investment Advisor's Act of 1940 and applicable New York State and Federal laws. In addition, a separate agreement will be entered into with a third party custodian to hold all securities purchased by the investment advisor.

See Exhibit II for Authorized Financial Institutions and Dealers.

## **XIII. PURCHASE OF INVESTMENTS**

The Authority shall enter into a written contract covering each investment made by the Authority unless it shall determine by resolution that a written contract is not practical or that written contracts are not a regular business practice with respect to any specific investment or transaction.

The Deputy Director is authorized to contract for the purchase of investments:

1. Directly, including through a repurchase agreement, from an authorized trading partner.
2. By participation in a cooperative investment program with another authorized governmental entity pursuant to Section 1054 of the Public Authorities Law where the specific program has been authorized by the governing board.
3. By utilizing an ongoing investment program with an authorized trading partner pursuant to a contract authorized by the governing board.

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All investments in U.S. Government Securities shall be kept in "Book-Entry" form, and the securities may be retained by the banking institution involved. In such instances, the Authority shall have a duly executed agreement passing title to said securities to the Authority.

The written contract shall fully secure the Authority's financial interest in each investment except where these guidelines describe circumstances where the Authority's financial interest in any investment may be less than fully secured or collateralized.

Said contract shall recite the type and amount of collateral or insurance for each investment.

It shall establish a method of valuation of the collateral at not less than market value. The Deputy Director, or someone delegated to act in his behalf, shall monitor the valuation of the collateral security not less than once every six (6) months and keep a record setting forth the valuation of said collateral security.

All purchased obligations, unless registered or inscribed in the name of the Authority, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the Erie County Water Authority by the bank or trust company. Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law, §10.

The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for, the Authority, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities.

The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to provide the Authority a perfected interest in the securities.

#### **XIV. REPURCHASE AGREEMENTS**

Repurchase agreements are authorized subject to the following restrictions:

- ▶ All repurchase agreements must be entered into subject to a Master Repurchase Agreement.
- ▶ Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers.

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- ▶ Obligations shall be limited to obligations of the United States of America and obligations guaranteed by agencies of the United States of America.
- ▶ No substitution of securities will be allowed.
- ▶ The custodian shall be a party other than the trading partner. ▶ Maximum dollars to be invested with each bank or

**Trust**

Company is \$30 million except for proceeds received from a banking institution or state authority in relation to issuance of Authority bonds.

**XV. LOCKBOX**

1. A written contract must be entered into for lockbox services.
2. Customer water bill payments processed by a lockbox will be deposited into a Water System Revenue Account. This account will be collateralized in accordance with Section IX of these guidelines.

**XVI. ON-LINE BANKING SERVICE AGREEMENTS**

1. The customer water bill payments made on-line with a service organization acting on behalf of the paying bank will be electronically transferred into the Water System Revenue Account. In addition, customer deposits will be transferred into the Customer Deposit Account. These accounts will be collateralized in accordance with Section IX of these guidelines.
2. A written contract must be entered into for the transmission of customer payments made on-line.

**XVII. REPORTING**

1. The Deputy Director of the Authority shall report to the Authority's Board on the investments of the Authority not less than once each month.
2. The independent accounting firm retained by the Authority to perform the yearly audit of the Authority's books and records shall audit the investments of the Authority and make its report available to the members of the Authority at the time the members conduct the annual review and approval of these investment guidelines.

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3. The Deputy Director shall annually prepare for approval by resolution of the Authority an investment report which shall include these investment guidelines, any amendments to such guidelines since the last investment report, an explanation of these guidelines and amendments, the results of the annual independent audit of the schedule of investments, the investment income records of the Authority and a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer or advisor rendering investment associated services to the Authority since the last investment report. This investment report may be made a part of the Authority's annual report.

4. The Deputy Director shall submit the annual investment report to the Chief Fiscal Officer of the County of Erie and to the Authority Budget Office. Copies of this report shall be made available to the public upon reasonable request thereof.

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**APPENDIX A**  
**Schedule of Eligible Securities**  
**for Collateralization of Deposits**

- \_\_\_\_\_ (i) Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government sponsored corporation.
- \_\_\_\_\_ (ii) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.
- \_\_\_\_\_ (iii) Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the Market Value of the obligation that represents the amount of the insurance or guaranty.
- \_\_\_\_\_ (iv) Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of such State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public moneys.
- \_\_\_\_\_ (v) Currency of the United State of America which constitutes legal tender.

**EXHIBIT J**

The Erie County Water Authority Investment Guidelines have been constructed pursuant to the following laws:

General Municipal Law 10, 11 and 39  
Banking Law 107a  
Public Authorities Law 1055, 2824, 2890 and 2925  
New York Office of the State Comptroller's Investment Guidelines for  
Public Authorities (Advisory Only)  
New York Office of the State Comptroller's Financial Management Guide  
Erie County Water Authority Bond Covenants  
Investment Advisor's Act of 1940

**EXHIBIT II****Authorized Financial Institutions and Dealers:**

**Manufacturers & Traders Trust Company  
Bank of America  
Key Bank of New York  
JP Morgan Chase Bank  
Bank of New York  
RBS Citizens, N.A. (d/b/a Citizens)  
First Niagara Bank  
Public Financial Management  
PFM Asset Management, LLC  
New York State Environment Facilities Corporation  
Moody's Investors Service  
Standard & Poor's Rating Services  
Fitch Ratings  
United States Treasury  
UBS Financial Services Inc.**



**ERIE COUNTY WATER AUTHORITY**  
**PURCHASING POLICIES**

Revised 04/30/2013

04/30/13



**I POLICY**

**Mission Statement..... 1**  
**Code of Ethics..... 1**  
**Open Vendor Policy..... 2**  
**Freedom of Information..... 2**  
**Disadvantaged Business Opportunity..... 2**  
**Procurement Disclosure Policy..... 3**

322 **POLICY**

**Mission Statement**

The Erie County Water Authority purchases goods and services according to its enabling legislation and charter granted by the State of New York. The purpose of this Policy is to assist each department in the procurement process, while protecting the Erie County Water Authority and its rate payers by promoting fairness in contracting with the business community.

The Authority maintains an Open Vendor Policy and welcomes any and all potential bidders. MBE/WBE/DBE must be certified by the State of New York and/or the County of Erie for acceptance. The Authority will consider all such business interests.

The Authority's Central Purchasing Office oversees a bidding process for informal purchases and supervises all purchasing. The Office of the Secretary to the Authority supervises all formally bid purchases.

The Authority welcomes purchases through contracts let by the County of Erie and State of New York Office of General Services.

The Guidelines are a deliberate effort to balance the need to preserve open and fair competition with the goal of allowing each department flexibility to procure in a manner which contributes to the fulfillment of their operational mission.

**CODE OF ETHICS**

The Erie County Water Authority has adopted a Code of Ethics Policy, which all buyers are responsible for being familiar with and must adhere to in the procurement process. The policy can be found at [ecwa.org](http://ecwa.org).

**Open Vendor Policy**

The Erie County Water Authority invites all vendors to bid in an open-competitive environment. A vendor may forward to the Central Purchasing Department, by way of U.S. mail, e-mail, internet, or fax, all relevant information pertaining to their enterprise. A new Vendor Application form is available on the ECWA website. A list of approved vendors is developed from this information. Requests for bids or quotes will be solicited off this list. Buyers select appropriate vendors from the Vendor List for bids and quotes. Vendors are required to meet our credit and insurance requirements. Certificates of Insurance are required to be current and approved by Risk Management.

**Freedom of Information**

The Erie County Water Authority maintains and adheres to all related Freedom of Information regulations. To ensure proper response, requests should be made in writing to the Secretary of the Authority. Telephone requests on results of informal purchases may be made to buyers. Response by this method is at the convenience of the Authority.

**Disadvantaged Business Opportunity**

It is the desire of the Erie County Water Authority to promote and assist participation by DBEs, MBEs and WBEs and facilitate a fair share of the awarding of contracts.

The Director of EEO shall maintain a list of all MBE, WBE and DBE entities certified to perform public work, supply items for purchase contracts or perform personal or professional services of a kind and nature which may be needed by the Authority.

Buyers will be responsible for referencing such list prior to the publication of a notice of procurement opportunity or informal solicitation to determine the availability of certified DBE, MBE and WBE entities.

## **PROCUREMENT DISCLOSURE POLICY**

### **Vendor and Employee Responsibility**

It is the responsibility of all Erie County Water Authority vendors and employees to understand the Policy and State statutes on Procurement Lobbying and recognize that during the Restricted Period, all contacts by vendors must be through the designated contact person or Procurement Officer exclusively.

### **Purpose**

As a public benefit corporation, the Erie County Water Authority (the "Authority") must conduct its operations in a manner that best serves the interests of its rate payers and the general public. The Authority expects all members, officers and employees to comply and cause the Authority to adhere to all the laws and regulations governing business transactions, including State Finance Law 139j and 139k (the "Statutes").

This Procurement Disclosure Policy is intended to assure the Authority's procurement process conforms to the requirements of the statutes.

### **Article 1 – Definitions**

#### **Article of Procurement**

A commodity, service, technology, public work, construction, revenue contract; the purchase, sale or lease of real property; or an acquisition or granting of other interest in real property that is the subject of a Governmental Procurement.

#### **Contact**

Any oral, written or electronic communication with a Governmental Entity under circumstances where a reasonable person would infer that the communication was intended to influence the Governmental Procurement.

#### **Governmental Entity**

Any department, board, bureau, commission, division, office, council, committee or officer of the public authority and/or public benefit corporation.

#### **Offerer**

The individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, that contacts a Governmental Entity about a Governmental Procurement during the Restricted Period of such a Governmental Procurement.

**Procurement Contract**

Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of Ten Thousand Dollars (\$10,000). Grants, Article 11b State Finance Law contracts (i.e. any contract providing for a payment under a program appropriation to a not-for-profit corporation), intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.

**Procurement Officer**

The authorized contact person for a Governmental Procurement.

**Procurement Record**

The procurement record is the collection of all documents related to a purchase. Documentation of contacts during the Restricted Period are attached to the Project File, and/or the Purchasing System.

**Proposal**

Any bid, quotation, offer, or response to the Authority's solicitation of submissions related to a procurement.

**Restricted Period**

The period of time commencing when by way of resolution the Board of Commissioners authorize to advertise and/or solicit a Request for Proposal, or bid and/or any other method of soliciting a response from Offerers, intending to result in a procurement contract, and ending with the contract awarded by the Board.

**Solicitation Materials**

Any written materials or invitations, electronic or otherwise.

**Article 2 – Ethics Officer**

The Ethics Board shall be the voting members of the Board of Commissioners. On an annual basis, the voting members of the Authority shall appoint a Chairperson of the Ethics Board. For the purpose of this Policy, that person shall be designated as the "Ethics Officer."

**Article 3 – Procurement Officers**

For each and every governmental solicitation subject to this Statute, the Executive Director and/or Director of Administration shall recommend for Board approval a "Procurement Officer", who shall be the designated contact person to whom Offerers shall make all contacts during the Restricted Period.

326 **Article 4 – Contacts by Offerers**

All contacts between an Offerer and the Authority during the Restricted Period for each procurement contract (annualized in excess of \$10,000) shall be made through the applicable Procurement Officer, unless one of the following exceptions applies:

- (a) Submission of written proposals in response to a Request for Proposal, Invitation for Bid, or any other method of soliciting a response from Offerers intending to result in a procurement contract.
- (b) Submission of written questions to a designated contact set forth in any solicitation materials.
- (c) Participation in a pre-bid conference set forth in solicitation materials.
- (d) Complaints made in writing addressed to any empowered legal authority, or addressed to the Authority's Board of Commissioners regarding the procurement process.
- (e) Contact by Offerers, who have been tentatively awarded and have been so notified, for the sole purpose of negotiating the contract.
- (f) Contact by an Offerer to designated Authority staff in which an Offerer requests the review of a procurement award.
- (g) Contact by an Offerer before the award with the Claims Representative/Risk Manager regarding insurance, and/or, with the Director of Equal Employment Opportunity regarding certifications, relative to meeting terms of the contract to insure that the contract obligations can be met.

**Article 5 – Prohibited Offerer Activities**

In addition to utilizing the designated Procurement Officer for all contacts with the Authority, the following additional rules apply to the Offerer:

- (a) Offerer should not attempt to influence the Authority's procurement in a manner that would result in a violation of any State or Authority ethics or conflict of interest statute or policy.
- (b) Offerer is prohibited from contacting any member, officer, or employee of a governmental entity other than the Authority (see Law for exceptions) during the Restricted Period of a pending procurement.

**Article 6 – Procurement Record**

The procurement record is the entire document or documents related to a purchase.

**Article 7 – Required Disclosure**

The Authority shall incorporate into its Solicitation Materials a summary of the policy and prohibitions of the Statutes, as well as any and all rules, regulations and standard Authority Policies and Procedures for said RFP, quotations or bid.

**Article 8 – Requirements of the Authority Prior to Awarding Procurement Contracts**

The Authority will make the final determination of award in accordance with its existing procurement procedures and in compliance with its Code of Ethics Policy, Conflict of Interest Policy and State Finance Law provisions.

**Article 9 – Procedure for Alleged Violation of Inappropriate Contacts**

- (a) Any member, officer, or employee of the Authority who becomes aware that an Offerer may have violated this Policy or the Statutes shall immediately notify the Ethics Officer who shall immediately investigate.
- (b) If the Ethics Officer finds there is sufficient cause to believe the alleged violation has occurred, he/she shall provide the violating Offerer reasonable notice (in the form of a certified letter, return receipt requested) informing them of the allegations and providing them with the opportunity to be heard regarding said allegations.
- (c) Following the opportunity to be heard, if the Ethics Officer determines that the Offerer has knowingly and willfully violated this Policy, the aforementioned Statutes, or any other applicable procurement disclosure standards affecting members, officers, or employees of the Authority, the Offerer shall be subject to sanctions described in Article 10 hereof.
- (d) The Ethics Officer shall report violations to the ethics officer of the appropriate state agency responsible for reviewing or investigating such matters at the Authority and shall be designated as the person to receive similar communications.

## **Article 10 - Sanctions**

Upon a finding by the Ethics Officer that an Offerer has knowingly and willfully violated this Policy, the aforementioned Statutes, or any other applicable procurement disclosure standards affecting members, officers, or employees of the Authority, the Offerer shall be subject to the following sanctions, as well as any other penalty permitted by law:

- (a) The Offerer shall be deemed "non-responsible" and shall not be awarded the Procurement contract unless the following special circumstances exist:
  - i. The award to the offending Offerer is necessary to protect the public property or public health or safety; and/or
  - ii. The offending Offerer is the only source capable of supplying the required article of procurement within the necessary time frame.
  
- (b) In addition, the Ethics Officer shall notify the State Office of General Services of the finding of non-responsibility. A second finding of non-responsibility within a four-year period will render the Offerer and its subsidiaries ineligible to submit a proposal or to be awarded any Procurement Contract for a period of four (4) years from the date of the second finding of non-responsibility (unless a special circumstance as outlined in Section A of the State Finance Law).



## **Erie County Water Authority Report of Contact**

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### **Background**

New York State Finance Law §139-k (4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term "Contract" is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k (6) provides: Any communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

### **Instructions**

This form is for each Procurement Contract governed by State Finance Law §139-k. All recorded contacts shall be included in the procurement record for the Procurement Contract. This form was designed to collect information about initial and subsequent contacts on the specified procurement contract during the Restricted Period. However, a separate form must be completed for each person or organization that contacts the Authority about each Procurement Contract. Additional information and guidance on the "restricted period" and permissible contacts can be found in the guidelines issued by the Advisory Council on Procurement Lobbying, which can be found :<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Every Offerer and those designated, employed or retained by Offerers must be informed of the intention to record the contact. It is also the Authority's responsibility that information is provided to Offerers and others on the statutory Restricted Period, Designated Contacts and the Permitted Contacts.

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Erie County Water Authority Report of Contact Under State Finance Law §139-k (4)

Procurement Record Regarding the following

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_
Vendor No. \_\_\_\_\_ Budget Item No. \_\_\_\_\_
Master Purchase Order No. \_\_\_\_\_ Purchase Order No. \_\_\_\_\_

Designated project contact persons of record

\_\_\_\_\_
\_\_\_\_\_

(Name and Title)

Was the person making the Contact informed that the Contact would be documented? Yes No

I had contact with the below named individual(s) regarding the above identified procurement. The term "contact" is defined in State Finance Law §139-k (1) (c). In accordance with State Finance Law §139-k (4), the following information was obtained.

Name \_\_\_\_\_ Occupation \_\_\_\_\_
Company \_\_\_\_\_ Telephone No. \_\_\_\_\_
Address \_\_\_\_\_

Is the above named person or organization the "Offerer" in this governmental procurement? Yes No
If no, was the above named person or organization retained, employed or designated by the "Offerer" to:
- appear before the governmental entity about the governmental procurement? Yes No
- contact the governmental entity about the governmental procurement? Yes No

Contact List

Dates: \_\_\_\_\_ Summary of contact (e.g., email, letter, conversation) and topic of the communication
\_\_\_\_\_
\_\_\_\_\_

Use additional pages or copies of written communications as necessary. Also properly identify all attachments.

Designated Contact Person: \_\_\_\_\_ Date: \_\_\_\_\_
(Signature)

I:\FORMS\PURCHASING-FORMS\ReportofContactForm.doc