

**AGREEMENT**

**Between**

**THE TOWN OF LANCASTER**

**And**

**ERIE COUNTY WATER AUTHORITY**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **TOWN OF LANCASTER**, 21 Central Avenue, Lancaster, New York 14086 hereinafter referred to as “Town”, and the **ERIE COUNTY WATER AUTHORITY**, a public benefit corporation, having its offices and principal place of business at 295 Main Street, Room 350, Buffalo, New York 14203, hereinafter referred to as the “Authority.”

**WHEREAS**, with the Authority’s encouragement, the Town has initiated plans to undertake the replacement of the Pavement Road water main running between Walden Avenue and Genesee Street, in the Town of Lancaster, including restoration and reconstruction; and

**WHEREAS**, the Authority owns a portion of the Pavement Road water main between Walden Avenue and Middlebury Lane, which extends about 2,745 linear feet and intends to replace this portion of water main; and

**WHEREAS**, the Town and the Authority desire to enter into a cooperative agreement to coordinate and facilitate the water main project of the Pavement Road water main replacement between Walden Avenue and Genesee Street in order to achieve cost containment and efficiency;

**NOW, THEREFORE**, the Parties agree as follows:

**1. PUBLIC BIDDING**

In accordance with the General Municipal Law §103, the Town will be responsible for soliciting sealed bids from responsible, responsive contractors for the replacement of the Pavement Road water mains and for the reconstruction and restoration of Pavement Road, between Walden Avenue and Genesee Street.

The Town will prepare plans and specifications for the water main project and for the reconstruction and restoration of Pavement Road. Prior to advertising for bids, the Town will submit its plans and specification to the Authority’s Executive Engineer for his review. The Town will accept any changes recommended by the Authority relative to the replacement and installation of the water mains.

Once the Authority’s Executive Engineer or his designee has approved the Town’s plans

and specifications, the Town will prepare the bid notices and documents and advertise for bids. Within the bid notice and/or related bids documents, and at any pre-bid meeting, the Town will advise any prospective bidders of the following specific requirements relating to the water main project: (1) the successful bidder will obtain additional insured status for the Town and the Authority on the bidder's commercial general liability and umbrella policies, (2) the successful bidder provide to the Town a 100% performance/warranty bond to remain in effect for two year period following the final payment from the Town, (3) the successful bidder will name the Town and the Authority as dual obligees on the performance/warranty bond, and (4) the successful bidder will be responsible for providing the Town and the Authority with survey measurements of the water main location as installed .

**2. AUTHORITY'S APPROVAL OF COST:**

Subsequent to the bidding process in which the Town shall determine the lowest responsible bid, the Town shall refer to the Authority for its review and approval the cost pertaining to the Authority's portion of the project identified as Alternate Number 1 as defined in the bid specifications.

The Authority will review the cost of the Alternate Number 1 related portion of the lowest responsible bid and determine in its sole judgment whether such cost is acceptable to the Authority, prior to the Town awarding the project in accordance with the plans and specifications. The Authority will provide written approval of the Authority's portion of the cost within fourteen (14) days after notification by the Town.

**3. WATER MAIN PROJECT**

During construction, the Town will perform resident inspection services and will immediately notify the Authority's Executive Engineer or his designated project engineer of any unanticipated problems or costs associated with the replacement and installation of the 2,745 linear feet of water main line between Walden Avenue and Middlebury Lane, owned by the Authority. Pursuant to Public Authorities Law § 1069, the Authority's Board of Commissioners authorizes its Executive Engineer to reimburse the Town for any change order relating to water main line owned by the Authority in an amount not to exceed fifteen per centum (15%) of the cost reviewed and approved by the Authority at the time the bid was awarded.

**4. REIMBURSEMENT**

Upon completion of the construction project and pending final approval of the water main related work set forth in the contract, the Town shall submit to the Authority an accounting setting forth reimbursement of the actual installed cost and related items identified as Alternate Number 1 listed under the Authority portion of the project specifications and plans. The Authority shall reimburse the Town for the cost of the Authority's water main portion of the project as set forth in the project plans and specifications. Reimbursement by the Authority shall be the lesser of the actual cost of the Alternate Number 1 related portion of the project or an amount not to exceed the

amount approved by the Authority pursuant to Paragraphs 2 and 3 of this Agreement subject to any Authority approved amendments and modifications pursuant to Paragraph 8 herein.

In addition the Authority shall reimburse the Town for the cost of engineering and resident inspection services associated with the replacement and installation of the Authority's water main, which equates to 24% of the Town's total engineering and resident inspection costs or \$55,969.85.

Payment will be made within sixty (60) days from receipt of the invoice and approval.

During the period that a performance/warranty bond remains in effect, the Town agrees that it will reimburse the Authority for the cost of any repairs made to the Pavement Road water main between Walden Avenue and Genesee Street by the Authority. The Town will reimburse the Authority for its costs by either seeking recovery from the successful bidder/contractor or by filing a timely claim against the performance/warranty bond.

**5. INDEPENDENT STATUS**

Nothing contained in the Agreement shall be construed to render either the Authority or the Town 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 from the other, and fully responsible for its own actions.

**6. INSURANCE**

The contractor which is awarded the bid shall secure and maintain such insurance necessary to protect itself from claims under the Workmen's 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 contractor shall provide and maintain insurance certifying that is the Town and the Authority have insured status under the policy and requiring the insurer to notify the Town and the Authority of any changes in coverage, including but not limited to cancellation. The issuance of the insurance policy shall not release the contractor from any claims in excess of the insurance coverage.

**7. INDEMNIFICATION**

To the extent permitted by law, the Town agrees to indemnify the Authority against any and all claims arising from the independent actions of the Town, and shall defend and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgment or decrees based upon or arising out of damaged property or injury to person or other tortuous conduct caused or contributed, in whole or in part, by the Town or anyone under its direction or control or on its behalf in the course

of its performance under this Agreement.

To the extent permitted by law, the Authority agrees to indemnify the Town against any and all claims arising from the independent actions of the Authority, and shall defend and hold harmless the Town from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgment or decrees based upon or arising out of damaged property or injury to person or other tortuous conduct caused or contributed, in whole or in part, by the Authority or anyone under its direction or control or on its behalf in the course of its performance under this Agreement.

**8. AMENDMENTS AND MODIFICATIONS**

No modification, amendment or changes in the Alternate Number 1 portion of the construction project involving the Authority shall be valid unless the Authority is given prior written notice by the Town and the Authority gives the Town prior written approval of same.

**9. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties relating to its subject matter. All prior or contemporaneous contracts, understandings and statements are merged herein.

**10. APPROVAL**

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

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals as of the date above written.

**TOWN OF LANCASTER**

By \_\_\_\_\_  
Johanna M. Coleman, Supervisor

**ERIE COUNTY WATER AUTHORITY**

By \_\_\_\_\_  
Jerome D. Schad, Chairman

STATE OF YORK )  
COUNTY OF ERIE ) ss:

On the \_\_\_ day of \_\_\_\_\_, in the year 2018, before me personally came Johanna M. Coleman, to me known, who, being by me duly sworn, did depose and say that she resides in the Town of Lancaster, New York, that he is the Supervisor of the Town of Lancaster described in the above instrument, and she signed her name thereto by the authorization of the Lancaster Town Board pursuant to a duly enacted resolution.

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

STATE OF YORK )  
COUNTY OF ERIE ) ss:

On the \_\_\_ day of \_\_\_\_\_, in the year 2018, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in the Town of Amherst, New York, that he is the Chairman of the Board of Commissioners for the Erie County Water Authority described in the above instrument, and he signed his name thereto by the authorization of the Board of Commissioners for the Erie County Water Authority.

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