

**REQUEST FOR ACCESS and AGREEMENT FOR USE OF DATA**

AGREEMENT made this \_\_\_\_\_ day of March 2019 (the “Effective Date”), by and between:

**ERIE COUNTY WATER AUTHORITY**  
295 Main Street, Room 350  
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

**TOWN OF TONAWANDA**  
2919 Delaware Avenue, #14  
Buffalo, New York 14217

hereinafter referred to as the “Town.”

**WHEREAS**, the Authority owns and operates a Global Positioning System (“GPS”) Survey Base Station (hereinafter referred to as the “Station”) situated on the roof of its building located at 3030 Union Road, Cheektowaga, New York 14227; and

**WHEREAS**, the Station captures the locations of Authority assets, such as valves and hydrants, with a high degree of accuracy and provides data to GPS field survey equipment; and

**WHEREAS**, the Town utilizes certain GPS field survey equipment and wishes to access the data captured by the Authority’s Station to more accurately locate its facilities; and

**WHEREAS**, the Authority and the Town both need to accurately locate facilities used for the safe delivery of water and in the spirit of cooperation, would like to share resources to locate such facilities; and

**WHEREAS**, the parties desire to set forth herein the terms and conditions under which Town access to the Authority’s Station will be furnished;

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

**1. DISCLAIMER OF ACCURACY AND WARRANTIES:**

The Town agrees to accept the Station and any data generated from it “as is” and the Town expressly acknowledges that there is no warranty with respect to access or use of the Station or to any data generated by the Town’s access to or use of the Station. The Town agrees to the Authority’s express disclaimer with respect to any representation or warranty as to the completeness or accurateness of any data or information generated by the Town’s access to or use of the Station and also expressly disclaims any representation or warranty as to the Station’s availability at any given time and to the suitability of any data or information for the intended purpose of the Town.

**2. MONITORING AND USE OF TOWN ACCESS INFORMATION:**

The Town agrees that the Authority may monitor the Town’s access to the Station and consents to such monitoring, as well as any record keeping and recording of such activity. The Town further agrees to the Authority’s use of such information for Authority purposes.

**3. COST OF USE OF STATION:**

The Town will reimburse the Authority for all costs associated with any required reconfigurations of the Station for the Town’s use of the Station in accordance with this Agreement.

**4. ASSIGNMENT:**

The Town shall not assign or transfer its interest in the Agreement without the written consent of the Authority.

**5. AMENDMENTS:**

No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.

**6. RIGHT TO TERMINATE:**

The Authority reserves the right to terminate or modify access to the Station by the Town for any reason including but not limited to where the Town’s actions alter, damage or destroy the Authority’s or another’s computer system, network, software, program, documentation, or data contained therein or where there is an attempt to do so; where the service is used to conduct or attempt to conduct any business or activity or solicit the performance of any activity that is prohibited by law; or where the Town or any of its representatives hold themselves out to be representatives of the Authority.

**7. INDEMNIFICATION:**

The Town shall indemnify the Authority against any and all claims arising from the Town's access to the Station herein and shall defend and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees based upon or arising out of or relating in any way to the use of data or information generated by access to or use of the Station or by access to or use of the data by the Town in reference to any claim however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence).

**8. NEW YORK LAW AND JURISDICTION:**

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Town and the Authority shall be governed, interpreted and decided by a Court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

**9. ENTIRE AGREEMENT:**

This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby.

**10. SEVERABILITY:**

If any provision of this Agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.

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

**ERIE COUNTY WATER AUTHORITY**

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

**TOWN OF TONAWANDA**

By \_\_\_\_\_  
Joseph H. Emminger, Supervisor

**STATE OF NEW YORK )**  
**COUNTY OF ERIE ) ss:**

On the \_\_\_\_\_ day of March, 2019, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chairman of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

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

**STATE OF NEW YORK )**  
**COUNTY OF ERIE ) ss:**

On the \_\_\_\_\_ day of March, 2019, before me personally came Joseph Emminger, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is the Supervisor of the Town of Tonawanda described in the above instrument, and he signed his name thereto by the authorization of the Tonawanda Town Board pursuant to a duly enacted resolution.

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