

# **ERIE COUNTY WATER AUTHORITY**

INTEROFFICE MEMORANDUM

May 13, 2024

To: Terrence D. McCracken, Secretary to the Authority

From: Adam R. Massaro, Distribution Engineer

Subject: Research Pkwy ECWA File No.: CLTN-736-2402 ECWA Project No.: 202400077

Legal has prepared an agreement for a Main Extension by Special Agreement between the Authority and 4280 Research Parkway LLC, (Owner) and Kulback's Inc., (Contractor), for a main extension along Research Pkwy., in the Town of Clarence. The proposed drawings were reviewed by the Engineering Department and approved by the Executive Engineer for the installation of 80 +/- LF of 8-inch PVC water main, 78 +/- LF of 8-inch PVC private fire protection service, and 10 +/- LF of 2-inch Type "K" copper for domestic service, along Research Pkwy., Town of Clarence.

Attached is a copy of the agreement for the Board to approve and the Chairman to execute.

ARM:jmf Attachment cc: L.Kowalski

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

Contract:  CLTN-736-2402  Project No.:  202400077    Project Description:  Install approx. 80 +/- LF of 8" PVC water main, 78 +/- LF OF 8" PVC private fire service, 10 +/- LF of 2" type "K" copper domestic service and all necessary material for the complete installation of Research Pkwy, Town of Clarence	
Item Description:    X  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	
Action Requested:  Image: Legal Approval    X  Board Authorization to Execute  Image: Legal Approval    Board Authorization to Award  X  Execution by the Chairman    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:    X  Sr. Distribution Engineer    X  Chief Operating Officer    X  Executive Engineer    Director of Administration    Risk Manager    X  Chief Financial Officer    Mark Carney    APPROVED FOR BOARD RESOLUTION:    X  Secretary to the Authority	Date: 5/13/2024 Date: 05/13/2024 Date: 5/13/2024 Date: Date: 05/13/2024 Date: 5/13/2024 Date: 5/13/2024 Date: 5/13/2024
Remarks:  EC 7411    Resolution Date:  Item No:	

### ERIE COUNTY WATER AUTHORITY MAIN EXTENSION SPECIAL AGREEMENT

The ERIE COUNTY WATER AUTHORITY, a public benefit corporation created and existing under the laws of the State of New York, with its principal office at 295 Main Street, Room 350, Buffalo, New York, 14203, hereinafter called the "Authority", and **4280 RESEARCH PARKWAY LLC**, 9850 Main Street, Clarence, New York 14031, (hereinafter "Owner Applicant) and **KULBACK'S INC.**, 2 Wendling Court, Lancaster, New York 14086 [Contractor Address], (hereinafter "Contractor Applicant," collectively with Owner Applicant as "Applicants"). The Applicants agree as follows:

- 1. This Agreement is made pursuant to Subdivision 10, Section 1054 of the Public Authorities Law and Title 10.00, "Extensions of Mains" of the Authority's Tariff.
- 2. The Applicants desire to install water mains, hydrants and appurtenances as follows:

**INSTALL** approximately 80 +/- linear feet of 8-inch PVC water main along Research Parkway, Town of Clarence, under an Erie County Water Authority Main Extension Special Agreement.

**INSTALL** one (1) line valve along Research Parkway, Town of Clarence, under an Erie County Water Authority Special Agreement.

**INSTALL** approximately 78 +/- linear feet of 8-inch PVC for fire protection service and approximately 10 +/- linear feet of 2-inch copper for domestic services to 4280 Research Parkway, Town of Clarence, under an Erie County Water Authority Main Extension Special Agreement.

### Research Parkway

**BEGINNING** at the end of the existing watermain along Research Parkway, at station -1 +50.4, thence northerly a distance of approximately 80+/- linear feet within the existing right-of-way of Research Parkway, ending with blow-off at station 0+73.3.

### Service Connection at 4280 Research Parkway

**BEGINNING** at approximate station -0+76.9 along Research Parkway, thence westerly a distance of approximately 78+/- linear feet crossing Research Parkway, ending with an 8-inch gate service valve at the western right-of-way of Research Parkway.

**AS SHOWN** and noted on Metzger Engineering's drawing of Research Parkway, Town of Clarence dated April 15, 2024.

3. The Applicants must be business entities registered with the New York Secretary of State to do business in the State of New York.

- 4. Prior to beginning installation of the water mains, hydrants and appurtenances, Applicants shall provide the Authority with the following:
  - a. Names of all sub-contractors, if any, who will be installing water mains and appurtenances;
  - b. Shop drawings showing that all materials used in the construction of the water mains and appurtenances meet the Authority's specifications;
  - c. Name of engineer who will do the full-time inspection;
  - d. Five (5) days advance written notice of the starting date of construction;
- 5. The Applicants shall arrange for water samples and bacterial tests to be taken and tested by an approved laboratory. The results shall be submitted to the Erie County Health Department for approval, and if all tests are satisfactory, the County Health Department shall submit a Certificate of Acceptance to the Authority.
- 6. Authority personnel shall direct the operation of valves on existing water mains during the required leakage and pressure tests and the disinfection of the water mains and appurtenances. If the mains and appurtenances should fail the pressure or leakage tests, the necessary corrective measures shall be taken, and the tests repeated until satisfactory results are obtained. Upon completion of these tests, the mains shall be shut off and not placed into service until the County Health Department issues a Certificate of Acceptance, all legal and administrative requirements have been satisfied, and the work has been accepted by resolution of the Authority. The Authority will then turn on the mains, which have been accepted by the Authority, and service can begin.
- 7. Within four (4) weeks of the date the Erie County Health Department Certificate of Acceptance is received, and prior to both acceptance by the Authority and the date water service is begun, Applicants shall have the Contractor Applicant provide the Authority with the following:
  - a. Maintenance bond.
    - A maintenance bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances.
    - (2) Said bond shall cover a period of twenty-four (24) months following the completion of the installation of water mains and appurtenances. During this 24-month period, the Contractor Applicant agrees to maintain and repair the water mains and appurtenances accepted by the resolution of the Authority.
    - (3) The completion date shall be established as the date of the acceptance

of the work by resolution of the Authority.

- (4) If the Contractor Applicant defaults on its/his/her obligation, the Authority may seek to recover the cost of maintenance and repair from the carrier/surety of the maintenance bond.
- b. Payment bond.
  - (1) A payment bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances.
  - (2) The Contractor Applicant will provide said payment bond to insure all labor and materials supplied for the construction and installation of the water mains and appurtenances have been fully paid, ensuring the Authority accepts such water mains and appurtenances without liens or encumbrances.
  - (3) Said bond shall cover a period of twelve (12) months following completion of the installation of water mains and appurtenances.
  - (4) The completion date shall be established as the date of acceptance of the work by resolution of the Authority.
- c. The Authority may review and verify the actual construction cost of the mains and appurtenances. The actual cost will be used to determine the amount of the maintenance and payment bonds mentioned above, and for all other legal and administrative purposes. The actual cost shall include the furnishing and installing of the pipe, valves, hydrants, paving and other appurtenances required to be completed before the work is accepted by resolution of the Authority.
- d. A statement, signed and sealed by the Applicants' engineer, that all work involved in the installation of water mains and appurtenances was completed in accordance with drawings approved by the Authority and in accordance with the Authority's specifications, that all valves, hydrants and appurtenances are in satisfactory operating condition and that the Applicants' engineer provided full time resident inspection of the work.
- d. One (1) reproducible and electronic file AutoCad 2000 version on CD Rom or diskette record drawing, to a scale determined by the Authority, showing the constructed location of all mains with at least three readily identifiable ties to all fittings, valves and services. The record drawing shall be marked "As-Built" and bear the seal and license number of the Applicants' engineer. The Applicants' engineer shall certify by seal and signature that he has measured or has supervised the measurement of all dimensions shown on the "As-Built" drawing.

- e. A cost estimate and bill of sale to the Authority for the water mains and appurtenances installed. A completed "Schedule of Inventory" shall be attached to bill of sale on the form provided by the Authority.
- 8. The Applicants shall notify the Authority when service is desired so that a meter can be installed. Meter installation will be in accordance with the provisions of Section 6.00 of the Authority's Tariff.
- 9. At the completion of all the work, labor and service as well as installation of all materials and after all the conditions hereinabove set forth are complied with to the satisfaction of the Authority, the Authority agrees to accept said water mains, hydrants, services, and other appurtenances.
- 10. Title to all water mains, hydrants, services, and appurtenances shall vest in the Authority and the Authority shall provide service to Applicants in the same manner as if the mains were originally installed by the Authority.
- 11. The Authority reserves the right at any time, without notice to shut off the water in its mains to make repairs, extensions or for other purposes, and it is expressly agreed that the Authority shall not be liable for deficiency or failure in the supply of water, water pressure or for any damage caused thereby or by the bursting or breaking of any main or service pipe or any attachment to the Authority's property, other than through the gross negligence of the Authority. All customers having boilers, hot water heaters, interior piping, etc. upon their premises depending upon the pressure in the Authority's pipes to keep them supplied are cautioned against danger of collapse or bursting and all such damage shall be borne exclusively by the customers.
- 12. In the interest of public health, the Authority will not permit its mains or services to be connected with any service pipe or piping which is connected with any source of water supply not approved by the Department of Health in the State of New York. In conformance with Part 5 of the New York State Sanitary Code, the Authority has implemented a Cross Connection Control Program and shall not permit its mains or service pipes to be connected in any way to any piping, tank, vat or other apparatus which contains liquids, chemicals, or any other matter which might flow back into the Authority's service pipe or mains and consequently endanger the water supply without the installation of a proper backflow prevention device as specified by the New York State Department of Health, at a location approved by the Authority. In conformance with Part 5 of the New York State Sanitary Code, the Customer shall install a backflow prevention device when required by the Authority.
- 13. It is mutually understood and agreed:
  - a. The mains laid or to be laid pursuant to this Agreement shall be and remain the property of the Authority, its successors and assigns, and the Authority retains and shall have the right to extend any mains installed by it pursuant

to the terms of the Agreement in or to other lands, streets or avenues, but Applicants shall not by reason thereof be entitled to any repayment.

- b. The water main and/or connection installed are to be used for only fire and domestic purposes and are to have no connection with any source of water supply not approved by the Department of Health of the State of New York, and the Erie County Water Authority.
- c. Any authorized representative of the Authority shall have free access to the premises of the Applicants at any reasonable time for the purpose of reading the meter or inspecting said construction.
- d. The Applicants agree to notify the Authority at the time of all tests, so that, if desired, the Authority may have a representative present. Such notification, however, need not be formal and written, but may be given by telephone to the principal office and place of business of the Authority.
- e. Violation by the Applicants of any of the conditions of this Agreement or of the Authority's rules, and so forth, shall terminate the same and the Authority may disconnect the pipe or shut off the supply of water.
- f. The Owner Applicant agrees to pay for services rendered under this Agreement the rates and charges under terms set forth in Service Classification No. 1 of the Authority's Tariff. If at any time the Owner Applicant elects to change the terms of this Agreement with respect to size of connection, this Agreement shall be modified accordingly, or a new Agreement shall be executed. The charges set forth in Service Classification No.1 of the Authority are subject to change from time to time as rates may be modified.
- g. Water through this connection and/or hydrants is to be supplied subject to the rights of public authorities to use water in the street mains through hydrants for fire purposes.
- h. Only a town, village or legally constituted water district is permitted to resell water supplied by the Authority except as provided in Section 11.05 of the Authority's Tariff.
- i. Water Service may be disconnected for any of the reasons enumerated in the Authority's Tariff.
- j. This extension shall be made in accordance with provisions of the Authority's Tariff.
- 14. This Main Extension Special Agreement constitutes the entire Agreement between the parties and supersedes all prior or other agreements and representations, oral or in writing. Neither this Agreement nor any terms, covenant, provision or condition may be changed, waived, discharged or terminated orally or in any manner other

than an instrument in writing executed and acknowledged by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

- 15. All the terms, covenants, provisions, conditions and agreements hereinabove set forth or provided for shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, successors and assigns.
- 16. The effective date of this Agreement is June 5, 2024.
- 17. The Owner Applicant and Contractor Applicant must sign, execute and return this Agreement to the Erie County Water Authority, Attn: Legal Department, 295 Main Street, Room 350, Buffalo, New York 14203 within six months of its effective date. If the Legal Department does not receive a fully executed Agreement within this six-month period, the Agreement will be considered null and void.

**IN WITNESS WHEREOF,** the parties acknowledge the terms and conditions of this Agreement and have duly caused their seals to be hereunto affixed and these presents to be signed by their duly authorized officers.

## 4280 RESEARCH PARKWAY LLC

PAUL STEPHEN, President

KULBACK'S INC.

THOMAS BARRETT, President

# ERIE COUNTY WATER AUTHORITY

JEROME D. SCHAD, Chair

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me personally came PAUL STEPHEN, to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_\_; that he is President of 4280 RESEARCH PARKWAY

LLC, the company described in, and which executed, the foregoing instrument; and acknowledged to me that he executed the same in his capacity as President of the company described in the above instrument, that by his signature he executed the instrument, and that he made such appearance before the undersigned.

Notary Public - State of New York

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

On this \_\_\_\_\_ day of \_\_\_\_\_\_, 2024, before me personally came THOMAS BARRETT, to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_\_\_; that he is President of KULBACK'S INC. the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Notary Public - State of New York

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

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2024, 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 ERIE COUNTY WATER AUTHORITY, the corporation named in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by a duly adopted resolution of the said Authority and that he signed his name thereto by like resolution.

Notary Public - State of New York





