

**REQUEST FOR PROPOSALS
FOR CONSULTING ENGINEERING SERVICES**

MISCELLANEOUS ELECTRICAL ENGINEERING SERVICES 2024-2025

ECWA Project No. 202300268

General

The Erie County Water Authority (Authority) is seeking Professional Services Proposals for consulting engineering services for miscellaneous electrical design and construction phase projects.

The Authority reserves the right to modify or cancel this Request for Proposals and/or the projects; to reject any or all proposals; and to waive any or all irregularities. This Request for Proposals does not obligate the Authority to award a contract for any of the projects or to reimburse any costs associated with the preparation of any proposal.

The Request for Proposal (RFP) is being conducted pursuant to the New York State Finance Law §§139-j and 139-k and the Erie County Water Authority's Procurement Disclosure Policy. The Procurement Disclosure Policy is available by accessing the Erie County Water Authority's web site – <http://www.ecwa.org>, under the caption "Doing Business with ECWA".

Project Description

In support of their facilities, the Erie County Water Authority performs routine electrical improvement projects at various sites throughout the Authority's service area; these sites include office type buildings like the Union Road Service Center, and production facilities including tank/pump stations and the Sturgeon Point and Van de Water Treatment Plants.

The Authority seeks to engage a professional consulting engineering firm or firms to provide services that may include field measurements and investigations, cost estimates, designs, drawings, specifications, field inspections, power system and arc-flash hazard studies, technical meetings, reports, and other related services as requested.

Scope of Work

The general scope of work is described in § 1.02, paragraph B of the example Professional Services Contract included as Attachment 1.

Special Services are described in § 1.02, paragraph C of the example Professional Services Contract included as Attachment 1.

The methods of payment shall be per the Professional Services Contract.

Information Requests

All questions and requests for information are to be directed to the designated ECWA Contact Person, Michael J. Quinn, PE, Senior Distribution Engineer at 716-685-8203 or by e-mail at mquinn@ecwa.org, in accordance with New York State Finance Law §§139-j and 139-k.

Proposal Requirements

Proposals are to be concise, specific and straightforward. All pertinent information is to be contained in the proposal. The use of artwork, special covers, and extraneous information in the proposals is discouraged. Proposals are to remain valid for a minimum of 60 days. Each proposal is to include the following:

- Item 1 - Qualifications and related experience, particularly on the type of projects outlined herein. Include a minimum of three references for similar work including project name, location, contact person, budget, date of completion and state the relevance to this project.

Item 1 Page Limit – 4 Pages, including related project summaries. More detailed project descriptions may be provided as an appendix.

- Item 2 - Project understanding, technical approach and detailed scope of services. Identify any suggested revisions to and expand upon the detail of the general scope of work as outlined herein.

Item 2 Page Limit – 4 pages.

- Item 3 - Project staffing and qualifications for all key engineering and construction personnel and subcontractors. Identify the proposed role of all staff proposed for this project. Provide a table of the current and projected workload of each proposed project staff member as it relates to availability to perform the proposed work. Provide the office of each proposed project staff member and the location(s) where work will be performed. Provide resumes of the proposed personnel with listed experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.

Item 3 Page Limit – 3 pages including the organization chart. Full resumes for key staff members may be provided as an appendix.

- Item 4 - Work performed for the Water Authority in 2021, 2022, and 2023.

- Item 5 - Current remaining workload with the Water Authority.

- Item 6 - Completed Section 139 of State Finance Law per Attachment 1, Appendix C (pp. 18-25).
- Item 7 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix B.
- Item 8 - Fee proposal which is to include a breakdown of engineering cost showing personnel (including title/grade), hourly rates (billing and direct labor), overhead rates, and any anticipated subcontractor costs. All consultants shall include a Special Services lump sum cost of \$10,000.00 as well as a Contingency lump sum cost of \$20,000.00. Include rates and total calculated fee for the personnel listed below for the provided hours of the two-year contract duration. Provided hours are for comparative purposes and are not a guarantee of actual contract effort.
- Principal, 10 hours
 - Project Manager, 120 hours
 - Senior Electrical Engineer, 160 hours
 - Electrical Engineer, 160 hours
 - Junior Electrical Engineer, 160 hours
 - Senior Civil Engineer, 20 hours
 - Civil Engineer, 20 hours
 - Junior Civil Engineer, 20 hours
 - Structural Engineer, 20 hours
 - Mechanical Engineer, 20 hours
 - Architect, 10 hours
 - Landscape Architect, 10 hours
 - Licensed Surveyor, 16 hours
 - Survey Crew (2 person), 16 hours
 - Construction Observer, 40 hours
 - CADD Drafter, 40 hours
 - Administration/Word Processing, 20 hours
 - Electrical Engineer (Subcontractor), 20 hours

Proposals will be accepted until 4:00 p.m. on Wednesday, February 7, 2024. Five hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, NY 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: “PROPOSAL – MISCELLANEOUS ELECTRICAL ENGINEERING SERVICES 2024-2025.”

Evaluation and Selection

All proposals will be evaluated by a small in-house committee made up of Water Authority personnel familiar with the proposed project. Interviews and/or presentations of the proposals will be requested if needed. The proposals will be evaluated based on the criteria listed above.

The final scope of work and fee for the engineering services for the project will be negotiated with the selected firm(s). Professional Service Contracts will then be executed pending successful negotiation and authorization by the Water Authority Board of Commissioners. All firms submitting proposals will be notified of the selection results. It is anticipated that the selection process will be completed in February 2024, and that the agreement will be executed by March 2024.

ATTACHMENT 1

This is a sample Agreement. All shaded provisions are examples for illustration purposes only and will be changed to reflect the appropriate agreement between the Authority and the Consultant awarded the contract.

Project No. _____
Contract _____

PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

This Agreement, effective as of _____, 2024 (“Effective Date”), is by and between

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

hereinafter referred to as the “Authority,” and

< **Consultant Name** >
< Consultant Address >
< City, State, Zip Code >

hereinafter referred to as the “Consultant.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to miscellaneous design and construction related services for electrical improvements at Authority facilities in various locations throughout the Authority’s service area (the “Project”).

In consideration of the mutual promises set forth in this Agreement, the Authority and the Consultant agrees as follows:

ARTICLE 1 – CONSULTANT SERVICES

1.01 Standard of Performance

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the time and in the same locality.
- B. **Technical Accuracy:** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Consultant’s services. The Consultant shall correct deficiencies in technical accuracy without additional compensation,

unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

1.02 Scope of Services

- A. The Authority and the Consultant will identify and quantify the tasks and activities undertaken under this Agreement prior to executing the work and billing the Authority, in the manner described as follows:
1. The Authority's Chief Operating Officer (the "COO") and the Authority's Executive Engineer will monitor and oversee the tasks and activities being performed by the Consultant pursuant to this Agreement. The Department Head for which the scope of work is being completed must have approval of the COO or the Executive Engineer before a task or assignment may be given to the Consultant or its personnel.
 2. Before the task or assignment is undertaken, the Consultant will provide the Authority with a proposal including an estimate of the time (broken down by title) and expenses to complete the work. No work should proceed until the COO or Executive Engineer has approved the estimate after consulting with the Department Head. The Authority will provide the Consultant with acceptance of the proposal via email.
 3. The Consultant will keep the Department Head updated on the progress of the work. Before any task or assignment exceeds the estimated time or expenses, the Consultant will advise the Department Head, the COO, and the Executive Engineer, revising the original estimate for time and expenses to complete the work. The approval of the COO or Executive Engineer is necessary before the Consultant can invoice the Authority for additional time and/or expenses.
 4. The Consultant will only bill for actual time and expenses. The Consultant's invoice must identify the task or assignment by project name and project number.
- B. The Consultant agrees and represents it will provide services related to electrical engineering design and construction services to the Authority, on an as needed basis subject to Paragraph A of this § 1.02, including but not limited to:
1. Perform site visits to take field measurements and perform investigations.
 2. Perform electrical designs which include the development of drawings, specifications, and cost estimates.
 3. Perform facility inspections to determine condition of equipment and compliance with applicable codes, regulations, and best practices.

4. Attend meetings as requested and provide technical assistance.
5. Provide on-call assistance and support of Authority personnel in response to emergency and after-hour events.
6. Provide electrical engineering support in the scheduled absence of Authority electrical personnel.
7. Develop technical reports.
8. Assist with the development of capital plans and budgets.
9. Develop electrical drawings for rehabilitation projects.
10. Develop electrical drawings for new construction projects.
11. Develop equipment specifications for procurement purposes.
12. Interface with vendors for retrofits to existing equipment.
13. Interface with electrical utilities for electrical service modifications or data requests.
14. Provide structural engineering services for duct bank design.
15. Provide in-house support staff for minor civil, structural, architectural, and mechanical design.
16. During construction; make on-site visits, review material submittals, shop drawings and test results, and respond to contract's Requests for Information (RFI).
17. Start-up assistance with newly constructed equipment.
18. Conduct power system and arc-flash hazard studies and/or field data collection. SKM software shall be used for electrical coordination and arc-flash analysis.

C. ***Special Services:*** The Consultant may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:

1. Detailed mill, shop and/or laboratory inspection of materials and equipment.
2. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed

facilities.

3. Environmental Impact Statements or other environmental studies or permit applications.
4. Hazardous material testing and assessment.
5. Air, water, and/or soil sampling, testing, and/or analysis.
6. Assistance with grant research, completion of grant applications, and reporting/documentation after award.
7. Development/updating electrical safety plans, programs, or policies.
8. Legal services, as deemed necessary and approved by the Authority's General Counsel, for acquiring lands, easements and rights-of-ways or other Project-related services.
9. Other services, as deemed necessary by the Authority's COO or in their absence the Executive Engineer and Chief Financial Officer (CFO) or in their absence the Authority Comptroller.

D. **Contingency Allowance:** The Engineer may use contingency allowance when the original scope of work for the Project was not sufficient to allow for subsequent changes in scope to improve the completed Project. The Engineer may use the contingency allowance to accommodate specific scope modifications necessary for overall project completeness. The Engineer may only use contingency allowance following review and approval of the Department Head, COO or in their absence the Executive Engineer and Chief Financial Officer (CFO) or in their absence the Authority Comptroller.

1.03 Access to Authority Property:

- A. If the Consultant, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose of the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer.
- B. The Authority's Security Officer will issue security passes to the Consultant's employees assigned to work on-site at one of the Authority's facilities, allowing entrance to such Authority facility subject to the same conditions as an Authority employee.

- C. No person may visit any Authority property without the authorization of the Authority and/or its Security Officer.
- D. While on Authority property, the Consultant's employees and representatives shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

1.04 Compliance with Laws and Regulations, and Policies and Procedures

- A. The Authority and the Consultant shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Public Authority's Law forms, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
- C. The Consultant shall comply with the provisions set forth in State Finance Law §§ 139-j and 139-k. In response to the Authority's Request for Proposals, the Consultant submitted and signed Forms A, B, and C, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
- D. By executing this Agreement, the Consultant affirms under the penalties of perjury that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
- E. The Consultant shall comply with the provisions of State Finance Law § 139-L of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Sexual Harassment Bidding Certification, a copy of which is attached to, and incorporated in, this Agreement, as Appendix A.
- F. The Consultant shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
- G. The Authority shall provide the Consultant in writing any and all Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.

1.05 Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Engineer, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using a personal protective face mask, or complying with any testing or vaccination requirements, before entering any Authority worksite.

1.06 Unknown Conditions. The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Authority agrees not to make resolution of any dispute with the Consultant for payment on any amount due to the Consultant in any way contingent upon the Consultant signing any such documents.

ARTICLE 2 – PAYMENT OF PROFESSIONAL SERVICES

2.01 The Consultant shall submit monthly invoices to the Authority, detailing the hours and description of the services rendered to the Authority, as well as expenses incurred, in a form acceptable to the Authority's Chief Financial Officer and/or Comptroller. The Consultant will be responsible for completing all work covered by this Agreement.

2.02 Costs for services provided under § 1.02, paragraph B, of this Agreement shall be billed at the hourly rates included in Appendix B of this Agreement.

2.03 For Special Services provided under § 1.02, paragraph C, of this Agreement, the Authority shall pay the Consultant for special services pre-approved by the Authority's Chief Operating Officer (Executive Engineer in the absence of Chief Operating Officer) in an amount approved by the Authority's Chief Financial Officer (Comptroller in the absence of Chief Financial Officer).

- A. When the Engineer is performing the Special Services described in § 1.02, paragraph B of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains special services from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

2.04 For Contingency Allowance items described under § 1.02, paragraph D, of this Agreement, the Authority shall pay the Engineer for contingency items pre-approved by the Authority's Chief Operating Officer (Executive Engineer in the absence of Chief Operating Officer) in an amount approved by the Authority's Chief Financial Officer (Comptroller in the absence of Chief Financial Officer).

- A. When the Engineer is performing the services described in § 1.02, paragraph D of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains services required as part of a contingency items from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

2.05 The Consultant shall keep accurate records and books of all disbursements, or expenses made or incurred by the Consultant pursuant to the services provided under this Agreement.

- A. Payments for services for will be based on detailed actual hours worked with a total cost not to exceed <insert total based upon proposal>.
- B. The cost of Special Services shall not exceed \$10,000.00.
- C. The cost of Contingency items shall not exceed \$20,000.00.
- D. The Consultant shall seek pre-approval from the COO or the Executive Engineer and the Chief Financial Officer or the Comptroller for disbursements or expenses expected to exceed \$500.00. Expenses will be reimbursed upon presentation of paid receipts with a total not to exceed \$10,000.00.

2.06 The Authority reserves the right to audit the Consultant's records to verify bills submitted and representations made. For this purpose, the Consultant agrees to make company records available for inspection upon written notice by the Authority. The Authority shall have two years from the date of the Consultant's final bill to complete this audit. If the audit establishes an overcharge, the Consultant agrees to refund the excess.

ARTICLE 3 – GENERAL PROVISIONS

3.01 Subcontract and Assignments: The Consultant may not subcontract or delegate any of the work, services, and/or other obligations of the Consultant without the express written consent of the Authority. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

3.02 Amendments: Any modification or variation from the terms of this Agreement must be in writing, authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties to be effective.

3.03 Right to Terminate: The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days' written notice. The Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

3.04 Indemnification:

- A. To the fullest extent permitted by law, the Consultant agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors and employees may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Consultant's performance of professional services provided under this Agreement and those of its subcontractors or anyone for whom the Consultant is legally liable.

- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Consultant harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its contractors, engineers, or anyone for whom the Authority is legally liable.

3.05 Confidential Information:

- A. In order to assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performance of services including but not limited to information relative to the services to be performed.
- B. The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Consultant's benefit or for the benefit of others shall be permitted.
- C. In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. The Consultant may provide such information to its subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- D. The terms of this section shall be binding during and subsequent to the expiration or termination of this Agreement.

3.06 Insurance:

- A. The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C-1.
- B. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.

- C. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant shall provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email addresses.
- E. The Engineer agrees to require all direct or indirect subcontractors to procure and maintain insurance in accordance with the Insurance Requirements, as set forth in the Addendum Agreement, attached as Appendix C-2.

3.07 Copyrights, Trademarks and Licensing:

- A. All materials produced under this Agreement, whether produced by the Consultant alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.
- B. In performing work under this Agreement, the Consultant may be granted access to the Authority's data, documents, and other information. The Consultant understands and agrees to the use of such data, documentation and information shall be treated as confidential information and the Consultant shall abide by the terms and conditions of the Confidentiality and Copyright Licensing Agreement, attached and incorporated in this Agreement as Appendix D.

3.08 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 Consultant 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.

3.09 Conflicts of Interest: The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without being subject to further obligations under its terms, except for the payment of services already rendered by the Consultant. So long as the Consultant reports such a conflict as required by this section, the

Consultant will have no further obligations for completing the scope of services under the terms of this Agreement.

3.10 Additional Conditions: The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.

3.11 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 subsequent agreement 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 by such agreement.

3.12 Independent Status:

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant, an owner, member, officer, partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Consultant is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 2.
- C. Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

3.13 Doing Business Status: The Consultant represents it is qualified to do business in the State of New York and has registered with the New York Secretary of State.

3.14 Gratuities: The Consultant shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone

under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

3.15 Notice: Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

ARTICLE 4 – SEVERABILITY

4.01 Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agrees that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

ARTICLE 5 – DURATION

5.01 All services to be provided under this Agreement shall be provided over a two-year period from April 1, 2024 through March 31, 2026 with one potential one-year extension, at the sole discretion of the Authority, at mutually agreed upon terms.

5.02 The Authority reserves the right to terminate this Agreement in the event it is found that the Certification filed by the Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this Agreement.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

< *insert name of Consultant* >

By _____

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 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 Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

Notary Public

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

On the _____ day of _____, in the year 2024, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____, New York, that he/she is the _____ of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

APPENDIX A
RESPONSE TO RFP
STATE FINANCE LAW REQUIRED FORMS

< Consultant's RFP response including the following required forms to be inserted here >

FORMS A, B, and C

STATE FINANCE LAW REQUIREMENTS

The Erie County Water Authority (the “Authority”) is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). When the Authority seeks to procure goods or services by means of an Invitation or Notice to Bid, or a Request for Proposals, the State Finance Law imposes certain restrictions on anyone who may wish to offer goods or services to the Authority as an Offerer, as that term is defined in §§ 139-j(1)(h) and 139-k(1)(h).

During the Restricted Period, as defined in §§ 139-j(1)(f) and 139-k(1)(f), when bids or proposals are being solicited, the Authority will designate a contact person with whom the Offerer may contact for information and other authorized purposes as set forth in §139-j of the State Finance Law. The designated contact is identified in the Notice to Bidders, or in the Request for Proposal. An Offerer is authorized to contact the Authority’s designated contact for such purposes as set forth in § 139-j(3).

Pursuant to the State Finance Law, the Authority is also required to make certain findings before making any determinations as to the qualifications and eligibility of those seeking a procurement contract, as that term is defined in State Finance Law §§ 139-j(1)(g) and 139-k(1)(g). Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings of non-responsibility occurring within a 4-year period, the Offerer will be debarred from obtaining procurement contracts with the Authority. Further information about these requirements can be found in §§139–j and 139–k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

The following forms will be used by the Authority to make such findings:

Form A - Offerer’s Affirmation of Understanding of, and Agreement to Comply with, the Authority’s Permissible Contact Requirements During the Restricted Period.

Form B - Offerer’s Certification of Compliance with State Finance Law.

Form C - Offerer’s Disclosure of Prior Non-Responsibility Determinations.

FORM A

**Offerer's Affirmation of Understanding of, and Agreement to Comply
with, the Permissible Contact Requirements During the Restricted Period**

Instructions:

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a written affirmation of understanding and agreement to comply with procedures regarding permissible contacts with the Authority in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

FORM B

**Offerer's Certification of Compliance
With State Finance Law §139-k(5)**

Instructions:

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a Certification that the information submitted for a procurement contract is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to sign the Certification, under penalty of perjury, and to provide the Certification to the Authority. The Certification should be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

Offerer Certification:

I certify that all information provided to the Authority relating to the awarding of a procurement contract is complete, true, and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

FORM C**Offerer's Disclosure of Prior
Non-Responsibility Determinations****Background:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §§139-j(1) and §139-k(1). These sections also set forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement, as that term is defined in State Finance Law §§ 139-j(1)(b) and 139-k(1)(b), within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

Instructions:

The Authority must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Authority conducting the Governmental Procurement no later than when the Offerer submits its proposal.

FORM C (Continued)

Offerer's Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

<p>1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):</p> <p style="text-align: center;">No Yes</p> <p>If yes, please answer the next questions:</p> <p>2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):</p> <p style="text-align: center;">No Yes</p> <p>3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle)</p> <p style="text-align: center;">No Yes</p> <p>4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.</p> <p>Governmental Entity: _____</p> <p>Date of Finding of Non-Responsibility: _____</p> <p>Basis of Finding of Non-Responsibility: _____</p> <p>_____</p> <p>_____</p> <p>_____</p>

(Add additional pages as necessary)

FORM C (Continued)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.
Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

Offerer certifies that all information provided to the Erie County Water Authority with respect to State Finance Law §139-k is complete, true, and accurate.

By: _____ Date: _____
Signature

Name: _____

Title: _____

CONTRACT TERMINATION PROVISION

Instructions:

A Contract Termination Provision will be included in each procurement contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the governmental entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Government Entity” and “procurement contract” are defined in State Finance Law §§ 139 j(1) and 139-k(1).

This required clause will be included in a covered procurement contract.

A sample of the Termination Provision is included below. If a contract is terminated in accordance with State Finance Law §139-k(5), the Erie County Water Authority, as a governmental entity, is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

Sample Contract Termination Provision

The Erie County Water Authority, as a governmental entity, reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

SECTION 139-L OF THE STATE FINANCE LAW
STATEMENT RELATING TO SEXUAL HARASSMENT POLICY

1. "Bidder" has the same meaning as the term, "Offerer," as that term is defined in State Finance Law § 139-k(1)(h), and includes anyone who submits a bid or proposal.
2. Every proposal or bid hereafter made and submitted to the Erie County Water Authority, where competitive bidding or a sealed proposal is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the Bidder and affirmed by such Bidder as true under penalty of perjury:

SEXUAL HARASSMENT BIDDING CERTIFICATION

- (a) "By submission of this bid/proposal, EACH BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section two hundred one-g of the Labor Law."
3. A bid/proposal shall not be considered for award nor shall any award be made to a Bidder who has not complied with subdivision one of this section; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid/proposal a signed statement which sets forth in detail the reasons therefore.

The undersigned CERTIFIES, under penalty of perjury, that he is authorized to make this bid/proposal and execute this statement on sexual harassment; that he is familiar with the statements contained in ¶2(a) of this document, as well as the provisions of State Finance Law §139-L and Labor Law §201-g, and such statements are true and have been complied with by the Bidder.

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

**APPENDIX B
CONSULTANT FIXED HOURLY BILLING RATES**

<i>Title/Grade</i>	<i>Hourly Billing Rate Year 1</i>	<i>Hours Year 1</i>	<i>Cost Year 1</i>	<i>Hourly Billing Rate Year 2</i>	<i>Hours Year 2</i>	<i>Cost Year 2</i>	<i>Total Cost for Year 1 + 2</i>
Principal		5			5		
Project Manager		60			60		
Sr. Electrical Engineer		80			80		
Electrical Engineer		80			80		
Jr. Electrical Engineer		80			80		
Sr. Civil Engineer		10			10		
Civil Engineer		10			10		
Jr. Civil Engineer		10			10		
Structural Engineer		10			10		
Mechanical Engineer		10			10		
Architect		5			5		
Landscape Architect		5			5		
Licensed Surveyor		8			8		
Survey Crew (2-person)		8			8		
Construction Observer		20			20		
CADD Drafter		20			20		
Administration		10			10		
Electrical Engineer (Subcontractor)		10			10		
Subtotals							
Special Services							\$10,000.00
Contingency							\$20,000.00
Total Estimated Cost							

APPENDIX C-1

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

MISCELLANEOUS ELECTRICAL ENGINEERING SERVICES 2024-2025

ECWA Project No. 202300268

Insurance specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract. These requirements include but are not limited to the minimum insurance requirements.

Insurance Requirements:

a. Workers Compensation:

Part 1: Workers Compensation: Statutory

Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

b. New York Disability Benefits Liability: Statutory coverage if New York State domiciled employees are used.

c. Commercial General Liability:

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

d. Automobile Liability:

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

e. Umbrella Liability:

- \$1,000,000. Each Occurrence
- \$1,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured

f. Professional Liability:

- \$1,000,000 Per Claim
- \$1,000,000 Aggregate

g. Cyber Liability:

- \$1,000,000 Per Claim
- \$1,000,000 Aggregate

Certificates of Insurance to be provided to the Authority prior to start of work as follows:

ACORD 25 (Item a-e) including copy of Additional Insured Endorsement Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Renewals of Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be received by the Authority 30 days prior to the expiration of the insurance policy period.

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than “A-” with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name the Authority, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies. Any liability coverage on a “claims made” basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer’s National Association of Insurance Commissioners (N.A.I.C.) identifying number or A. M. Best identifying number appears on the Certificate of Insurance.

Please list the project number on the Certificate of Insurance.

Acceptance of a Certificate of Insurance and/or approval by the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities or liabilities.

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, Claim Representative/Risk Manager, Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.

APPENDIX C-2

[THIS FORM IS INTENDED TO BE USED AS AN EXHIBIT OR ADDENDUM TO ANY SUBCONTRACT — IT SHOULD NOT BE USED BY ITSELF AS A SOLE CONTRACT DOCUMENT]

ADDENDUM AGREEMENT

This Addendum to the Agreement (“Addendum Agreement”) between [**Insert name of Upstream Contractor or Upstream Subcontractor**] (hereinafter referenced as “Contractor”) and [**Insert name of Downstream Subcontractor**] (hereinafter referenced as “Subcontractor”) is being entered into by the parties for any and all work done for, with, or on behalf of **the Erie County Water Authority** (hereinafter the “Authority”) under the Primary Contract No. _____, Project No. _____ [**Insert Project Description**] with [**Insert name of Contractor**], a copy of which may be obtained from [**Insert name and contract information of the entity**].

In accordance with the terms and conditions of the Primary Contract No. _____ entered into with the Erie County Water Authority, an **ACORD25-Certificate of Liability Insurance** and **ACORD 855 NY-NY Construction Certificate of Liability Addendum** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing the Authority as Certificate Holder and additional insured. You should share these requirements with your current insurance agent, broker or insurance company.

Insurance Requirements

Prior to the commencement of any work designated in any contract or agreement to which this Addendum Agreement is attached, and until at least the final completion and acceptance of the work under the contract or agreement to which this Addendum Agreement is attached, the Subcontractor, at its sole expense, shall maintain the following minimum insurance on its own behalf, and furnish to the Authority certificates of insurance evidencing same and reflecting the effective date of such coverage as listed below. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Authority of the Subcontractor’s obligation to maintain the insurance set forth herein. The insurance required shall not be canceled, not renewed or materially changed after the issuance of the certificate of insurance required by this Addendum Agreement.

A. Worker’s Compensation, Occupational Disease & Employer’s Liability Insurance:

Worker’s Compensation, Occupational Disease & Employer’s Liability Insurance in accordance with the applicable laws and statutes to cover any injuries or illness to employees and any other person eligible for compensation, and the liability of the employer thereof to any person or organization, as follows:

Worker’s Compensation & Occupational Disease: Statutory

Employer’s Liability: \$1,000,000 bodily injury by accident or disease, except for work work/employers subject to the New York Worker’s Compensation Law, in which this insurance shall be unlimited.

All such coverage shall: not contain any exclusion for injuries to sole proprietors, partners, members of limited liability companies or executive officers of any corporate entity; and provide for a “Waiver of Subrogation” endorsement in favor of the Owner/Contractor.

Any Contractor/Subcontractor with a principal place of business located outside of the State of New York must include New York under Part 3A of the policy.

B. Commercial General Liability:

Commercial general liability insurance as provided under the ISO Commercial General Liability Coverage Form, CG 00 01, or its equivalent, for claims of Bodily Injury, Property Damage and Personal and Advertising Injury, with limits of not less than:

Per Occurrence and Personal & Advertising Injury-	\$1,000,000.00
General Aggregate & Products/Completed Operations Aggregate-	\$2,000,000.00
Fire Damage Legal Liability/Damage to Rented Property-	\$100,000.00
Medical Payment (per-person)	\$5,000.00

The coverage must include the following:

1. Liability assumed by the insured in an “insured contract” as that term is defined in the ISO Commercial General Liability Coverage Form, CG 00 01.
2. Products/Completed Operations liability for a period of three years after acceptance of the work.
3. A per project aggregate of \$ 2,000,000.00.
4. A “Waiver of Subrogation” Endorsement in favor of the Owner/Contractor.
5. Exterior Insulation Finish System (“EFIS”) coverage must be specifically included or provided separately where the Contractor/Subcontractor work under this Agreement or in any contract or agreement to which this Addendum is attached in any way involves EFIS.
6. The coverage shall not include any provision, definition, exclusion or endorsement which in any way would serve to eliminate the insurance to any insured or additional insured for liability for bodily injury or property damage arising from work performed in New York State, for claims made under the New York Labor Law or for claims made by employees, subcontractors and employees of subcontractors hired to perform work by any insured or additional insured pursuant to work that is subject to this

Addendum Agreement or in any contract or agreement to which this Addendum Agreement is attached.

7. The insurance is to be provided through insurers licensed and admitted to do business in the State of New York, with an A. M. Best financial rating of A- or better, or otherwise specifically approved by the Owner.

The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis on both the ongoing and completed operations coverage required herein utilizing the ISO endorsements: CG 2010 04 13 or CG 2038 04 13 (or their equivalent) for ongoing operations; and CG 2037 04 13 (or its equivalent) for completed operations. The Additional Insured coverage shall contain no special limitation or limitation on the scope of the protection afforded to the Additional Insureds.

C. Commercial Automobile Liability Insurance:

Commercial Automobile Liability insurance covering the ownership, maintenance and use of all Owned, Non-Owned and Hired Vehicles by the Subcontractor with combined Bodily Injury and Property Damage limits including pollution transit coverage of \$1,000,000.00 per accident. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis. A “Waiver of Subrogation” in favor of the Authority must be included.

D. Commercial Umbrella/Excess Liability Insurance:

Commercial Umbrella/Excess Liability Insurance with limits of \$5,000,000.00 per occurrence and a \$5,000,000.00 aggregate. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a be included.

E. Pollution Liability:

Where the Subcontractor is performing work that is subject to this Addendum Agreement or to any contract or agreement to which this Addendum Agreement is attached, pollution liability coverage applicable to the type of work/operations being performed in the amount of \$5,000,000.00 per occurrence and \$5,000,000.00 aggregate limit. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis. A “Waiver of Subrogation” in favor of the Authority must be included.

F. Builder’s Risk/Installation Floater:

“All Risk” Property Insurance coverage afforded by a Builder’s Risk/Installation Floater or its equivalent insuring all materials, equipment and supplies provided by the Subcontractor and intended to become a permanent part of the construction, whether stored on the premises, away from the project site and/or while in transit, in an amount equal to the replacement cost of such materials, equipment and supplies. A “Waiver of

Subrogation” in favor of the Authority must be included.

G. Owned and/or Rented Tools or Equipment:

Property insurance covering all owned, rented, leased and/or borrowed tools or equipment of the Subcontractor or used by the Subcontractor in connection with the work that is subject to this Agreement or to any contract or agreement to which this Addendum is attached, in an amount equal to the replacement cost of such tools or equipment. A “Waiver of Subrogation” in favor of the Authority must be included.

H. Professional Liability:

- \$1,000,000 per claim
- \$1,000,000 aggregate

JOB-SITE SAFETY:

The Authority makes no representation with respect to the physical conditions or safety of the Project Site. The Subcontractor shall, at its own expense, protect from injury its employees engaged in the performance of the Work. The prevention of accidents to all workers engaged in the Subcontractor’s work and others affected by the Subcontractor’s work is the responsibility of the Subcontractor. Subcontractor shall comply with all applicable federal, state, labor and local laws, regulations and codes concerning safety.

For purposes of this Addendum Agreement, “Project Site” means the entire construction site or the various separately identifiable part of the site described in any contract or agreement to which the Addendum Agreement is attached, and as described in the Primary Contract with the Authority.

WORKERS COMP IMMUNITY WAIVER:

In any and all claims against the Authority by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor (including any of the Subcontractor’s subcontractors) or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

HOLD HARMLESS / INDEMNIFICATION:

To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Authority and its heirs, executors, administrators, successors, assigns, affiliates, employees and agents (hereinafter referenced as “Owner Indemnitees”) from and against any and all actions, claims, liabilities, damages, losses and expenses, including but not limited to bodily injury, death and property damage, and reasonable attorney’s fees and costs (including those incurred in the defense of any such underlying claim, as well as those incurred in the enforcement of this Addendum Agreement and/or in the prosecution of any claim for indemnification by Authority) arising out of or resulting from, or alleged to arise out of or result from, the Subcontractor’s work

(including the work by any of the Subcontractor's subcontractors), except to the extent caused by the negligence or willful misconduct of any Owner Indemnitees.

MISCELLANEOUS:

If any term or provision of this Addendum Agreement conflicts with or is otherwise inconsistent with any term or provision in the Primary Contract or any prior written agreement entered between the parties, the terms and provisions contained herein shall govern and control.

This Addendum Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. This Addendum Agreement, its terms and any claims arising therefrom, shall be interpreted and construed in accordance with the laws of the State of New York.

This Addendum Agreement may be executed via facsimile or email in any number of counterparts, all of which taken together shall constitute one and the same agreement. No waiver by a party of any breach by the other party of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

No modification or amendment of this Addendum Agreement shall be effective unless in writing and signed by both parties and approved in writing by the Authority. If any term or provision of this Addendum Agreement shall to any extent be invalid or unenforceable, the remainder of this Addendum Agreement shall not be affected thereby, and each provision of this Addendum Agreement shall be valid and enforceable to the fullest extent permitted by law.

[Insert name of Upstream Contractor or
Upstream Subcontractor]

[Insert name of Downstream Subcontractor]

[Print Name and Title of Representative]

[Print Name and Title of Representative]

Date:

Date:

APPENDIX D

ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY AND COPYRIGHT LICENSING AGREEMENT

LICENSE:

Upon execution of this Agreement, the Consultant acquires from the Authority a license to use the proprietary and intellectual property of the Authority for the purpose of completing the work under this Agreement.

The Authority reserves the right to incorporate any Consultant-created data into the Authority's database.

OWNERSHIP:

This License Agreement does not constitute a transfer of title or interest in the data. Any portion of the data that is modified or merged into another computer file or program by the Consultant or is integrated with other programs or data to form derivative products, shall continue to be subject to the provisions of this License Agreement. The Authority retains ownership of the data and all such portions.

CONFIDENTIALITY CLAUSE:

The Consultant agrees that all digital data and hard copy from the ECWA GIS Basemap Features provided to the Consultant are copyrighted by the Authority, are protected by the copyright laws of the United States and are furnished to the Consultant with all rights reserved. Therefore, the Consultant is hereby permitted to use the digital data and hard copies thereof only for the purposes allowed under this Agreement. The Consultant agrees not to otherwise copy, reproduce or use the digital data, hard copy, or the information contained therein for any other purpose whatsoever.

COPYRIGHT NOTICE:

The copyright notice included in each of the files is not only to be retained in those files but is also to be included in any copies made of those files. No part of the files may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photographing and recording, or by any information storage or retrieval system, except as expressly permitted in writing by the Erie County Water Authority.

Upon notification by the Licensor of any changes in copyright requirements, the Consultant will make said changes to all subsequent maps or reports, as required.

LIMITATION OF LIABILITY:

ECWA GIS Basemap Features are compiled to National Map Accuracy Standards for 1"=100' scale mapping by Woolpert, Dayton, Ohio, using Stereo photogrammetric methods from aerial photography dated April, May, and/or November 1990. The control grid is based on New York

State Plane Coordinates and North American Datum 1983. The parcels are from Erie County Tax Maps which were available in the County Finance office in June of 1993.

The Authority makes no claims as to the accuracy of the ECWA GIS Basemap Features and assumes no responsibility for their positional or content accuracy. The Authority makes no claims as to the ability of the ECWA GIS Basemap Features to fulfill Consultant application requirements. In providing data, the Authority assumes no obligation to assist the Consultant in the use of the data, or in the development, use, or maintenance of any applications applied to the data.

Consultant recognizes and agrees that the Authority makes NO REPRESENTATIONS OF ANY KIND INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, NOR ARE ANY SUCH WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE DATA OR INFORMATION FURNISHED.

TERMINATION:

The License to use data terminates upon completion of the work under this Agreement.

LIQUIDATION OF DAMAGES FOR BREACH OF AGREEMENT:

The parties agree that if Consultant breaches the Agreement and uses or discloses any of the copyrighted information in any way other than that allowed, during, or subsequent to, the terms of this Agreement for any purpose whatsoever, the damages of the Authority shall be deemed liquidated at three times the amount of the total value of the data as determined by the Erie County Water Authority.

In addition to treble damages for breach of Agreement, Consultant will additionally forfeit the license acquired to use aforementioned copyrighted property of the Authority.

SPECIFIC TERMS OF ACCEPTANCE:

This Agreement constitutes the entire agreement between the parties.