

## PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this \_\_\_\_ day of October 2018 (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

**INGENIOUS, INC.**  
755 Seneca Street, Suite 201  
Buffalo, New York 14210

hereinafter referred to as “Consultant”.

**WHEREAS**, the Authority wishes to procure from the Consultant the website design and development services described in this Agreement, and the Consultant wishes to provide such services to the Authority, and

**WHEREAS**, the Consultant represents that it is properly qualified to render such services; and

**WHEREAS**, the parties desire to set forth herein the terms and conditions under which the said professional services will be furnished;

**NOW, THEREFORE**, in consideration of mutual promises herein set forth, the parties agree as follows:

**1. DEFINITIONS:**

- 1.1 “**Agreement**” has the meaning this agreement, as set forth in the preamble.
- 1.2 “**Allegedly Infringing Materials**” has the meaning set forth in Section 11.3.
- 1.3 “**Approved Third-Party Materials**” has the meaning set forth in Section 3.4(a).
- 1.4 “**Authority**” means the Erie County Water Authority, as set forth in the preamble.
- 1.5 “**Authority Indemnitee**” has the meaning set forth in Section 11.1.

1.6 “**Authority Materials**” means, collectively, all Content and all other information in any form or media, including but not limited to documents, data, know-how, ideas, specifications, software code, and other materials provided to the Consultant by or on behalf of the Authority hereunder, whether or not the same: (a) are owned by the Authority, a third party, or in the public domain; or (b) qualify for or are protected by any Intellectual Property Rights.

1.7 “**Certifications**” mean Forms A-C contained in the Request for Proposals and signed by the Consultant at the time it submitted its proposal, as reference in Section 9.2(a).

1.8 “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Authority considers confidential or proprietary, including trade secrets, technology, information pertaining to business operations, strategies, customers, pricing and marketing, and the terms and existence of this Agreement. Confidential Information does not include information that the Consultant can demonstrate by written or other documentary records: (a) was already known to the Consultant without restriction on use or disclosure prior to receipt of such information from or on behalf of the Authority; (b) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Consultant or any of its Representatives; (c) was received by the Consultant from a third party who was not, at the time, under any obligation to the Authority or any other Person to maintain the confidentiality of such information; or (d) was or is independently developed by the Consultant without reference to or use of any of the Authority’s Confidential Information.

1.9 “**Content**” means any audio, visual, and audiovisual content, including illustrations, graphics, photographic images, music, sound effects, lyrics, narration, text, film, video, animation, characters, and interface layouts and designs, whether or not the same qualify for or are protected by any Intellectual Property Rights.

1.10 “**Consultant**” means Ingenious, Inc., as set forth in the preamble.

1.11 “**Consultant Personnel**” means all employees of the Consultant and any Permitted Subcontractors involved in the performance of Services hereunder.

1.12 “**Deliverables**” means, as the context dictates, the Design Deliverables, the Development Deliverables or, collectively, the Design Deliverables and Development Deliverables.

1.13 “**Design Deliverables**” means all documents, work product, and other materials that the Consultant is required to or otherwise does deliver to the Authority or its designee hereunder in connection with the Design Services, including those items designated under the heading “Design Deliverables” in the Scope of Work.

1.14 “**Design Services**” means the website design services described in the Scope of Work.

1.15 “**Development Deliverables**” means each separately deliverable portion of the Website and the final Website as a whole, each together with the Documentation therefor, and all other work product and other materials that the Consultant is required to or otherwise does deliver to the Authority or its designee hereunder in connection with any Phase of the Development Services, including those items designated under the heading “Development Deliverables” in the Scope of Work.

1.16 “**Development Services**” means the website development services described in the Scope of Work.

1.17 “**Documentation**” means all manuals, instructions, specifications, and other documents and materials, in any medium, that describe the functionality, components, features, or requirements of the Website, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.18 “**Effective Date**” has the meaning set forth in the preamble.

1.19 “**Fees**” has the meaning set forth in Section 6.1.

1.20 “**Force Majeure Event**” has the meaning set forth in Section 14.1.

1.21 “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.22 “**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

1.23 “**Milestone**” means an event or task described in the Scope of Work for which there is a corresponding date by which it must be completed in the Milestone Schedule.

1.24 “**Milestone Schedule**” means the schedule set forth in the Scope of Work setting out the dates by which the parties are required to achieve the Milestones.

1.25 “**Non-Acceptance Notice**” has the meaning set forth in Section 4.3(b)(i).

1.26 “**Non-conformity**” means a Development Deliverable does not conform to the Site Specification or Documentation and which does not conform to a standard existing within the industry at the time of development or at the time of acceptance of the Website.

1.27 “**Open Source Components**” means any software components that are subject to any open source copyright license agreement, including but not limited to any GNU General

Public License or GNU Library or Lesser Public License, or other license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative.

1.28 “**Open Source License(s)**” has the meaning set forth in Section 3.5.

1.29 “**Permitted Subcontractor**” has the meaning set forth in Section 3.3.

1.30 “**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

1.31 “**Phase**” means each distinct phase of Services specifically identified as such in the Scope of Work, at the completion of which the Consultant shall deliver Deliverable(s) to the Authority as set forth in Section 4.1.

1.32 “**Pre-Existing Materials**” means all Content and any other information in any form or media, including documents, data, know-how, ideas, specifications, and software code, in which the Consultant owns all Intellectual Property Rights and that (a) were developed or otherwise acquired by the Consultant prior to the Effective Date and (b) are identified as pre-existing materials in the Scope of Work.

1.33 “**Reimbursable Expenses**” has the meaning set forth in Section 6.2.

1.34 “**Representatives**” means the Consultant’s employees, officers, and Permitted Subcontractors.

1.35 “**Scope of Work**” means the Scope of Work attached as Schedule A to this Agreement.

1.36 “**Services**” means, collectively, the Design Services, the Development Services, and all other services the Consultant is required to provide hereunder as described in the Scope of Work.

1.37 “**Site Specification**” means the specification document setting forth the design, content, features, functionality, technical, and other specifications for the Website, attached as Schedule B to this Agreement.

1.38 “**Term**” has the meaning set forth in Section 9.1.

1.39 “**Testing Period**” has the meaning set forth in Section 4.3(a).

1.40 “**Third-Party Materials**” means Content and any other materials in any form or media, including but not limited to documents, data, know-how, ideas, specifications, and software code, in which any Person other than the Authority or the Consultant owns any Intellectual Property Right, but specifically excluding Open Source Components.

1.41 “**Website**” means the website to be designed and developed by the Consultant hereunder.

1.42 “**Work Product**” means the Website and all Deliverables, Documentation, Specifications, and other documents, work product, and materials related thereto, that the Consultant is required to or otherwise does create or provide to the Authority or its designee in connection with the Services hereunder.

## **2. Engagement of the Consultant; Project Management; Changes.**

2.1 Engagement of the Consultant. The Authority hereby engages the Consultant, and the Consultant accepts such engagement, to provide the Services, as described more fully in the Scope of Work, in accordance with this Agreement.

2.2 Project Management. Each party shall, throughout the Term, maintain within its organization a project manager to serve as such party’s primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services hereunder. Each project manager is responsible for providing all day-to-day consents and approvals. Each party shall ensure its project manager has the requisite organizational authority, and necessary skill, experience, and qualifications, to perform in such capacity. The parties’ initial project managers are identified in Schedule C. Each party shall use its best efforts to maintain the same project manager in place throughout the Term. If either party’s project manager ceases to be employed by such party or such party otherwise wishes to replace its project manager, such party shall promptly name a new project manager by written notice to the other party.

2.3 Authority Changes. The Authority may, at any time during the Term, request in writing changes to the Scope of Work and/or Site Specification. The parties shall evaluate and, if agreed, implement all such changes in accordance with the change request procedure set forth in Schedule D. No changes will be effective unless and until memorialized in a written change order signed by both parties.

## **3. The Consultant Obligations.**

3.1 Services and Deliverables. The Consultant shall perform the Services to design and develop the Website that fully conforms to the Site Specification, and provide all Deliverables to the Authority on a timely basis in accordance with the Scope of Work and Milestone Schedule. Without limiting the foregoing:

(a) All Design Deliverables shall be subject to the Authority’s review and approval as set forth in Section 4.2; and

(b) All Development Deliverables and the Website shall be subject to the testing and acceptance procedures set forth in Section 4.3 and Section 4.4.

(c) All Documentation shall:

(i) include such information as is reasonably necessary to enable the Authority's personnel to install, operate, use, and maintain and update the Website.

(ii) be provided in both hard copy and electronic form, in such formats and media as are set forth in the Scope of Work.

3.2 Consultant Personnel Confidentiality and Proprietary Rights Agreements. Prior to any Consultant Personnel performing Services hereunder, the Consultant shall require such Personnel to execute written agreements in form and substance acceptable to the Authority that bind such Consultant Personnel to confidentiality provisions that are at least as protective of the Authority's information as those contained in this Agreement and Intellectual Property ownership provisions that grant the Authority ownership rights in the Work Product consistent with the provisions of Section 7.1. Upon the Authority's request, the Consultant shall provide the Authority with the executed original of each such agreement;

3.3 Subcontractors. Consultant shall not, without the prior written consent of the Authority, which consent shall not be unreasonably withheld, engage any Person that is not an employee of the Consultant to perform Services or provide Deliverables hereunder. The Authority's approval of any such Person (each approved Person, a "**Permitted Subcontractor**") shall not relieve the Consultant of its obligations under the Agreement, and the Consultant shall:

(a) be responsible and liable for the acts and omissions of each Permitted Subcontractor (including its employees) to the same extent as if such acts or omissions were by the Consultant or its employees.

(b) prior to the commencement of Services by any Permitted Subcontractor, enter into a written agreement in form and substance acceptable to the Authority with such Permitted Subcontractor that binds such Permitted Subcontractor to confidentiality provisions that are at least as protective of the Authority's information as those contained in this Agreement and Intellectual Property ownership provisions that grant the Authority ownership rights in the Work Product consistent with the provisions of Section 7.1, and upon the Authority's request provide the Authority with the executed original of such agreement;

(c) be responsible for all fees and expenses payable to any Permitted Subcontractor, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.

### 3.4 Third-Party Materials.

(a) The Consultant shall not include in the Website, and operation of the Website in accordance with the Site Specification and Documentation shall not require the use of, any Third-Party Materials, other than Third-Party Materials expressly approved by the Authority and described in the Scope of Work and licensed to the Authority in accordance with Section 8.3 ("**Approved Third-Party Materials**").

(b) Except as specifically provided in the Scope of Work, the Consultant shall secure, at its sole cost and expense, all necessary rights, licenses, consents, and approvals necessary for the Authority to use, as incorporated into or otherwise used in conjunction with the Website, perpetually and throughout the world, all Approved Third-Party Materials.]

3.5 Open Source Components. In accordance with the Site Specification and Documentation, the Consultant shall not include in the Website, and the operation of the Website shall not require the use of, any Open Source Components, except for any Open Source Components expressly approved by the Authority and identified in, and for which the relevant open source license ("**Open Source License**") is attached as an exhibit to, the Scope of Work.

3.6 Time of the Essence. The Consultant acknowledges that time is of the essence with respect to the Consultant's obligations hereunder and that prompt and timely performance of all such obligations in accordance with all timetables, Milestone Schedules, and other requirements, schedules, and deadlines in this Agreement is strictly required. Notwithstanding the foregoing, the Consultant shall not be deemed in breach and shall not be liable for any delays caused by the Authority's delay in performing its obligations as set forth in Section 5.1.

## 4. Delivery, Testing, and Acceptance.

4.1 Delivery. Upon completion of the Services under each Phase, the Consultant shall deliver or otherwise make available to the Authority the Deliverable(s) for such Phase in accordance with the delivery criteria set forth on Schedules A and E. The Consultant shall deliver:

(a) an indefinite non-transferable, exclusive license to the content management system for the Website, which the Authority agrees not to resell, give away or create a derivative;

(b) each Development Deliverable with complete Documentation therefor; and

No Development Deliverable shall be deemed to have been delivered unless and until the Consultant has provided all of the foregoing. If the Consultant ceases to exist, it will provide the Authority with the object code and the fully annotated source code, as well as all files required to run the content management system for the Website. For purposes

of this section, if the Consultant has any changes the ownership, management or control, then such a change will be treated as the Consultant ceasing to exist.

#### 4.2 Design Deliverable Review and Approval.

(a) All Design Deliverables will be subject to the review and approval process set forth in Schedule A. Upon the Authority's approval of the Design Deliverables, the Scope of Work and Site Specification shall be automatically updated to reflect and incorporate by reference the approved Design Deliverables.

(b) The Design Services will be considered complete when the Authority has approved in writing all Design Deliverables required under the Scope of Work. If the Consultant fails to complete the Design Services on a timely basis in accordance with the Milestone Schedule, such failure will be deemed a material breach of this Agreement that is incapable of cure, for which the Authority will have the right to terminate this Agreement in accordance with Section 9.2(b). The foregoing is in addition to, and not in lieu of, all other remedies that may be available.

4.3 Development Deliverable Testing and Acceptance. Upon the Authority's receipt of each Development Deliverable:

(a) The Authority will have a **Testing Period** to inspect and test such Development Deliverable to ensure that it conforms to the Site Specification and Documentation therefor.

(b) If the Authority determines any Development Deliverable does not conform to the Site Specification or Documentation:

(i) The Authority shall notify the Consultant in writing of such non-conformity(ies) ("**Non-Acceptance Notice**").

(ii) Subject to the proviso set forth in Section 4.3 (c), following receipt of a Non-Acceptance Notice, the Consultant, at the Consultant's sole cost and expense, shall remedy all non-conformities and re-deliver the Development Deliverable in accordance with the applicable requirements set forth in Schedule E as promptly as commercially possible.

(c) The parties shall repeat the process set forth in Section 4.3(a) and Section 4.3(b) until the Deliverable has been accepted as set forth in Section 4.3 (d), provided, however, if Consultant: (1) fails to re-deliver any Development Deliverable within the time period specified in Section 4.3(b)(ii) or (2) fails more than once to remedy a non-conformity, the Authority will have the right, at the Authority's option, to:

(i) treat such failure as a material breach that is incapable of cure and



terminate this Agreement in accordance with Section 9.29(b); or

(ii) accept the Development Deliverable as nonconforming, in which case the fees will be reduced equitably to reflect the value of the Development Deliverable as received relative to the value of the Development Deliverable had it conformed to the Site Specification and Documentation.

(d) Promptly upon completing acceptance testing, if the Authority has determined that the Development Deliverable(s) conform to the Site Specification and Documentation therefor, the Authority shall give the Consultant written notice of its acceptance of the Development Deliverable(s). Each Development Deliverable will in any case be deemed accepted by the Consultant upon the expiration of any Testing Period if the Authority has not delivered a Non-Acceptance Notice prior thereto. Acceptance of any Development Deliverable will be subject to Integration Testing as set forth in Section 4.4.

4.4 Integration Testing. Notwithstanding the Authority's acceptance of any Deliverable, upon delivery of the final completed Website, the Authority shall have the right to perform additional tests on each previously-accepted Development Deliverable to ensure full integration and compatibility with all elements of the Website. The Authority shall perform such testing, and the Consultant shall correct any nonconformities, in accordance with the procedures set forth in Section 4.3, as though each such Development Deliverable were delivered on the date of delivery of the final Website.

## 5. Authority Obligations.

5.1 Authority Resources and Cooperation. The Authority will be responsible for, on a timely basis in accordance with the Milestone Schedule:

- (a) providing the Authority Materials and such other resources as may be specified in the Scope of Work;
- (b) participating in meetings scheduled on no less than five (5) business days' prior notice and making its personnel readily available for such meetings; and
- (c) providing all consents, approvals, and exception notices.

5.2 Effect of Authority Delays. If the Authority fails to perform any of its obligations set forth in Section 5.1 on timely basis, all subsequent due dates for Milestones set forth in the Milestone Schedule for such Phase may be extended by the Consultant, by written notice to the Authority, for up to a day-for-day basis for the length of the Authority's delay, but no longer than necessary. Notwithstanding the foregoing, the Consultant shall use its best efforts to meet the dates specified in the Milestone Schedule without any extension. If any overtime is required to meet the original schedule, the Consultant shall notify the Authority in writing, and such overtime may be incurred and charged to the Authority only if approved in advance by the Authority in writing. The Authority's

failure to perform its obligations on a timely basis will not be deemed a breach of this Agreement, and the foregoing constitutes the Consultant's sole remedy, and the Authority's sole liability, for any such failure or delay.

## 6. Compensation.

### 6.1 Fees.

(a) In consideration of the Services and Deliverables provided and rights granted by the Consultant under this Agreement, the Authority shall pay the Consultant properly invoiced fees ("**Fees**") as set forth in Schedule F.

(b) At all times during the Term, the Fees and rates upon which any such Fees may be determined hereunder shall be the lowest fees charged by the Consultant for services of the type and scope of the Services hereunder. If at any time, the Consultant offers or provides to another Person pricing for comparable services that is lower than Fees and rates hereunder, the Consultant shall immediately provide the Consultant with written notice thereof and the Fees hereunder shall be updated automatically to reflect such lower pricing.

(c) Subject to any change pursuant to Section 2.3, or any reduction required under Section 6.1(b), the Fees and rates stated herein are firm and shall not be modified during the Term of this Agreement.

6.2 Reimbursable Expenses. The Authority shall reimburse the Consultant, in accordance with the Authority's standard expense reimbursement policy in effect from time to time for direct, documented, out-of-pocket expenses ("**Reimbursable Expenses**") incurred by the Consultant in performing the Services hereunder, provided that any expense item in excess of \$ 1,000.00 requires the Authority's prior written approval.

Notwithstanding the foregoing or anything else contained in this Agreement, in no event will service fees, license fees, royalties, or other amounts incurred by the Consultant to any Permitted Subcontractor or for any Third-Party Materials be a Reimbursable Expense, unless expressly stated in the Scope of Work.

6.3 Invoices. The Consultant shall invoice the Authority for Fees and Reimbursable Expenses in accordance with the invoicing schedule and requirements set forth in Schedule F. The Consultant shall submit each invoice in electronic format, via such delivery means and to such address as are set forth on Schedule F or otherwise specified by the Authority in writing from time to time. Each invoice shall:

(a) list each Fee item and Reimbursable Expense separately;

(b) include sufficient detail for each line item to enable the Authority to verify the calculation thereof;

(c) be accompanied by all supporting documentation required hereunder for Reimbursable Expenses; and

(d) include such other information as may be required by the Authority as set forth in Schedule F.

#### 6.4 Payment.

(a) Subject to Section 6.4(c), the Authority shall pay all properly invoiced Fees and Reimbursable Expenses for Services satisfactorily rendered within 45 days after the later of:

(i) the Authority's receipt of the proper invoice therefor; or

(ii) the due date for such amounts as set forth in Schedule F or the Scope of Work.

(b) the Authority may withhold from payment any amount disputed by the Authority in good faith, pending resolution of the dispute, provided that the Authority:

(i) timely pays all amounts not subject to dispute;

(ii) notifies the Consultant of the dispute prior to the due date, specifying in such notice (1) the amount in dispute; and (2) the reason for the dispute set out in sufficient detail to facilitate investigation by the Consultant and resolution by the parties;

(iii) works with the Consultant in good faith to resolve the dispute promptly; and

(iv) promptly pays any amount determined to be due by resolution of the dispute.

The Consultant shall continue performing the Services in accordance with this Agreement notwithstanding any such dispute.

(d) The Authority shall make payments to the address or account specified in Schedule F or such other address or account as is specified by the Consultant in writing from time to time, provided that the Consultant shall give the Authority at least ten (10) business days' prior notice of any account, address, or other change in payment instructions. The Authority will not be liable for any late or misdirected payment caused by the Consultant's failure to provide timely notice of any such change.

6.5 Taxes. The Authority, pursuant to Public Authority Law § 1063, is exempt from

all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity. The Consultant may not collect such taxes from the Authority for services it renders.

6.6 Right of Set-off. Without prejudice to any other right or remedy it may have, the Authority reserves the right to set-off at any time any amount owing to it by the Consultant against any amount payable by the Authority to the Consultant under this Agreement.

6.7 Audit Right. The Authority shall have the right, upon reasonable notice, to audit any time up to three (3) years after payment of its final invoice, the Fees, Reimbursable Expenses and any other information relative to the Consultant's representations, warranties, and covenants under this Agreement. During the Term and for three (3) years after the payment of the final invoice, the Consultant shall maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees, Reimbursable Expenses, and any other information relevant to the Consultant's representations, warranties, and covenants under this Agreement. During the Term and for three (3) years after the payment of the final invoice, the Consultant shall make such books and records, and appropriate personnel, available during normal business hours for audit by the Authority or its authorized representative; provided that the Authority shall:

- (a) provide the Consultant with reasonable prior notice of any audit;
- (b) undertake an audit no more than once per calendar quarter; and
- (c) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Consultant's normal business operations.

The Authority may take copies and abstracts of materials audited, provided, that such material will be the Consultant's Confidential Information, subject to the same protections as are afforded the Authority's Confidential Information pursuant to Section 13.1. The Authority will pay the cost of such audits unless an audit reveals a discrepancy in payment or reporting of five (5) percent or more, in which case the Consultant shall reimburse the Authority for the reasonable cost of the audit. The Consultant shall immediately upon notice from the Authority pay the Authority the amount of any overpayment revealed by the audit, together with any reimbursement pursuant to the preceding sentence.

## **7. Intellectual Property Rights.**

7.1 Work Product. Except as set forth in Section 7.2, Section 7.4, and Section 7.5, the Authority is and will be the sole and exclusive owner of all right, title, and interest in and to the Work Product, including all Intellectual Property Rights therein. In furtherance of the foregoing, the parties agree that, subject to Section 7.2, Section 7.4, and Section 7.5:

- (a) The Consultant shall, and shall cause the Consultant Personnel and Permitted

Subcontractors to, create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976.

(b) To the extent any Work Product does not qualify as work made for hire:

(i) The Consultant shall, and hereby does, immediately on its creation, assign, transfer, and otherwise convey to the Authority, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights therein.

(ii) The Consultant shall, and hereby does, irrevocably waive, and shall cause the Consultant Personnel to irrevocably waive in signed written instruments in form and substance acceptable to the Authority any and all claims such Consultant Personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Work Product.

(c) The Consultant shall, and shall cause all Consultant Personnel and Permitted Subcontractors to, take all appropriate action and execute and deliver all documents, necessary or reasonably requested by the Authority to effectuate any of the foregoing provisions of this Section 7.1, or otherwise as may be necessary for the Authority to prosecute, register, perfect, or record its rights in or to any Work Product or any Intellectual Property Right therein. The Consultant hereby appoints the Authority as the Consultant’s attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if the Consultant refuses or, within a period deemed reasonable by the Authority, otherwise fails to do so.

7.2 Pre-Existing Materials. The Consultant and its licensors are, and will remain, the sole and exclusive owners of all right, title, and interest in and to the Pre-Existing Materials, including all Intellectual Property Rights therein.

7.3 Authority Materials. The Authority and its licensors are, and will remain, the sole and exclusive owners of all right, title, and interest in and to the Authority Materials, including all Intellectual Property Rights therein. The Consultant has no right or license to use any Authority Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to the Authority. All other rights in and to the Authority Materials are expressly reserved by the Authority and its licensors.

7.4 Third-Party Materials. All right, title, and interest in and to Approved Third-Party Materials will remain with the respective owners thereof, subject to any express licenses or sublicenses granted to the Authority pursuant to or in accordance with this Agreement.

7.5 Open Source Components. All right, title, and interest in and to any Open Source Components will remain with the respective owners thereof, subject to the Authority’s rights under the applicable Open Source Licenses.

## 8. Licenses.

8.1 Pre-Existing Materials License. The Consultant hereby grants to the Authority such rights and licenses with respect to the Pre-Existing Materials that will allow the Authority to use and otherwise exploit the Website, and any website that replaces or a substantial portion of the Website, to the same extent as if the Authority owned the Pre-Existing Materials to the same extent as if the Authority owned them without incurring any fees or costs to the Consultant (other than the Fees and Reimbursable Expenses set forth herein) or any other Person in respect of the Pre-existing Materials. In furtherance of, and without limiting, the foregoing, such rights and licenses shall:

(a) be perpetual, worldwide, fully paid-up, and royalty-free;

(b) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create derivative works of, distribute, import, make, have made, sell, and offer to sell the Pre-Existing Materials, including all such modifications, improvements, and derivative works thereof solely as part of, or as necessary to use and exploit, the Website and any successor website thereto; and

(c) be freely assignable and sublicensable, in each case solely in connection with the assignment or licensing of the Website or any portion thereof or successor thereto, and only to the extent necessary to allow the assignee or sublicensee, as the case may be, to use and exploit the Website or portion thereof or successor thereto.

The Consultant reserves all rights in the Pre-Existing Materials not expressly granted to the Authority herein.

8.2 Authority Materials License. The Authority hereby grants to the Consultant the limited, royalty-free, non-exclusive right and license to the Authority Materials solely as necessary to incorporate the Authority Materials into the Deliverables as described in the Scope of Work. The term of such license shall commence upon the Authority's delivery of the Authority Materials to the Consultant, and shall terminate upon the Authority's acceptance or rejection of the Deliverable(s) incorporating such Authority Materials. Subject to the foregoing license, the Authority reserves all rights in the Authority Materials. Authority Materials shall be deemed the Authority's Confidential Information.

8.3 Third-Party Materials Licenses. Not later than the date specified on the Milestone Schedule and except as otherwise may be set forth in the Scope of Work, the Consultant shall secure for the benefit of the Authority, at the Consultant's sole cost and expense, all necessary, rights, licenses, consents, and approvals necessary for the Authority to use the Approved Third-Party Materials in connection with the Website or any portion thereof or successor thereto, perpetually and worldwide, and to freely sublicense and assign such rights in connection with sublicensing or assigning, as the case may be, the Website or

any portion thereof or successor thereto. Promptly upon execution of such license agreements, the Consultant shall provide the Authority with copies thereof. All royalties, license fees, or other consideration payable in respect of such licenses are included in the Fees hereunder unless specifically stated otherwise in the Scope of Work, and any additional amounts shall be the sole responsibility of the Consultant.

8.4 Open Source Licenses. Any use of the Open Source Components by the Authority will be governed by, and subject to, the terms and conditions of the applicable Open Source Licenses, each as attached as exhibits to the Scope of Work.

## **9. Term and Termination.**

9.1 Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the Authority's final acceptance or rejection, as the case may be, of the Website and the Consultant's full performance to the Authority's satisfaction of all obligations set forth on the Scope of Work (the "**Term**").

### 9.2 Termination.

(a) The Authority reserves the right to terminate this Agreement in the event it is found that the Certifications filed by the Consultant in accordance with New York State Finance Law were 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.

(b) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.

(c) Either party may terminate this Agreement, effective upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

### 9.3 Effect of Expiration or Termination.

(a) Upon any expiration or termination of this Agreement:

(i) All licenses granted to the Consultant in the Authority Materials will also expire or terminate, and the Consultant shall promptly return all such Authority Materials to the Authority.

(ii) The Consultant shall (1) return to the Authority all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the Authority's Confidential Information; and (2) permanently erase the Authority's Confidential Information from its computer systems.

(iii) The Consultant shall certify in writing to the Authority that it has complied with the requirements of Section 9.3(a)(1) and Section 9.3(a)(ii).

(b) If the Authority terminates this Agreement pursuant to Section 9.2(b), the Authority will be relieved of any obligation to pay any Fees hereunder, and the Consultant shall promptly refund to the Authority all Fees previously paid. In such event, the Authority will not retain any rights in or to the Work Product (other than Authority Materials).

(c) Except as set forth in Section 9.3(b), if this Agreement terminates early the Authority will remain obligated to pay Fees for all Services and Deliverables received before the effective date of such termination.

(d) Except as set forth in Section 9.3(b), no expiration or termination of this Agreement will affect the Authority's rights in any of the Work Product.

9.4 Surviving Terms. The provisions set forth in the following Sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 7, Section 8., Section 8.3, Section 9.3, this Section 9.4, Section 10, Section 11, Section 12, and Section 18.

## **10. Representations and Warranties.**

10.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set



forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2 Additional Consultant Warranties. The Consultant warrants to the Authority that:

(a) it will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement;

(b) the Work Product, including the Website and all Deliverables (excluding Authority Materials), as delivered by the Consultant and used in accordance with this Agreement and the Documentation: (i) will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any third party; and (ii) will comply with all applicable Laws.

(c) in performing the Services hereunder, the Consultant will comply with all Laws.

(d) when delivered, the Website and all Deliverables will not contain within the Content provided by the Consultant or its Permitted Subcontractors: (i) any virus, trojan horse, worm, backdoor, malware, or other software the effect of which is to permit unauthorized access or to disable, erase, corrupt, or otherwise harm any computer, systems, or software, or (ii) any time bomb, drop dead device, or other software designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive the Authority of its lawful right to use the Website and Deliverable; and

(e) when delivered and for twelve (12) months following the Authority's final acceptance of the Website, the Website and all Deliverables will be, and will function, in all respects in conformity with this Agreement and the Site Specification and Documentation. If any non-conformity, as defined in § 1.26 of this Agreement, is discovered during such warranty period, the Consultant shall promptly remedy such non-conformity at the Consultant's sole cost and expense.

(f) following the acceptance of the Website, technical support by the Consultant will be available for future enhancements to the Website at the Authority's cost and expense, based upon predetermined rates set forth in Schedule F, for a two-year period following the Authority's acceptance of the Website..

10.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY

DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT.

## 11. Indemnification.

11.1 Consultant Indemnification. The Consultant shall indemnify, defend, and hold harmless the Authority and its officers, directors, employees, agents, successors, and assigns (each, a “**Authority Indemnitee**”) from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys’ fees, the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, that are incurred by an Authority Indemnitee, arising out of or resulting from any claim, suit, action, or proceeding (each, an “**Action**”) alleging:

(a) the Consultant’s breach of any representation, warranty, covenant, or obligation of the Consultant (including any action or failure to act by any Permitted Subcontractor that, if taken or not taken by the Consultant, would constitute such a breach by the Consultant) under this Agreement; or

(b) any action or failure to take a required action by the Consultant or any Permitted Subcontractor in connection with performing Services under this Agreement.

11.2 Indemnification Procedure. The Authority will promptly notify the Consultant in writing of any Action for which it is entitled to be indemnified pursuant to Section 11.1 and cooperate with the Consultant at the Consultant’s sole cost and expense. The Consultant shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Authority to handle and defend the same, at the Consultant’s sole cost and expense. The Consultant shall not settle any Action in a manner that adversely affects the rights of the Authority without the Authority’s prior written consent. The Authority’s failure to perform any obligations under this Section 11.2 will not relieve the Consultant of its obligations under this Section 11 except to the extent that the Consultant can demonstrate that it has been materially prejudiced as a result of such failure. The Authority may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

11.3 Infringement Remedy. If the Website, or any component thereof other than Authority Materials, is found to be infringing or if any use of the Website or any component thereof is enjoined, threatened to be enjoined, or otherwise the subject of an infringement claim, the Consultant shall, at its option and sole cost and expense: (a) procure for the Authority the right to continue to use the Website or component thereof to the full extent contemplated by this Agreement; or (b) modify or replace the materials that infringe or are alleged to infringe (“**Allegedly Infringing Materials**”) to make the Website and all of its components non-infringing while providing fully equivalent features and functionality. If neither of the foregoing is possible notwithstanding the Consultant’s best efforts then the Consultant may direct the Authority to cease any use of

any materials that have been enjoined or finally adjudicated as infringing, provided that the Consultant shall refund to the Authority (i) all amounts paid by the Authority in respect of such Allegedly Infringing Materials and any other aspects of the Website that the Authority cannot reasonably use as intended under this Agreement; and (ii), in any case, at its sole cost and expense, secure the right for the Authority to continue using the Infringing Materials for a transition period of up to one month to allow the Authority to replace the affected features of the Website without disruption. The foregoing is in addition to, and not in lieu of, all other remedies that may be available to the Authority under this Agreement or otherwise, including but not limited to the Authority's right to be indemnified for such Actions.

**12. Confidentiality:**

12.1 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, is considered confidential. The Consultant shall hold in confidence and not disclose to any Person, any information regarding information learned during the performing of services including but not limited to information relative to the services to be performed.

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.

In no event is the Consultant authorized to disclose Confidential Information without the prior written approval of the Authority. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

**13. Insurance:**

13.1 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 there from in the amounts indicated on Schedule G. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.

**14. Force Majeure.**

14.1 Neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes, or blockades in effect on or after the date of this Agreement, national or regional emergency (each of the foregoing, a “**Force Majeure Event**”), in each case, provided that (i) such event is outside the reasonable control of the affected party; (ii) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (iii) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

The Authority may terminate this Agreement if a Force Majeure Event affecting the Consultant continues substantially uninterrupted for a period of 60 days or more. Unless the Authority terminates this Agreement pursuant to the preceding sentence, all Milestone Dates shall automatically be extended for a period up to the duration of the Force Majeure Event.

**15. Conflicts of Interest:**

15.1 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 further liability of the Consultant, except to pay for services actually rendered.

**16. Compliance:**

16.1 The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York. The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.

**17. Gratuities:**

17.1 The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance 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.

**18. Miscellaneous:**

18.1 Further Assurances. Upon a party's reasonable request, the other party shall execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

18.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship, in each case, without the prior written consent of the other party.

18.4 Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 18.4):

If to the           INGENIOUS, INC.  
Consultant:       Email: [murphy@ingenious.org](mailto:murphy@ingenious.org)  
                          Attention: Joseph P. Murphy, President  
                          755 Seneca Street, Suite 201  
                          Buffalo, New York 14210

If to the           ERIE COUNTY WATER AUTHORITY  
Authority:         Email: [tmccracken@ecwa.org](mailto:tmccracken@ecwa.org)  
                          Attention: Terrence D. McCracken, Secretary to the Authority  
                          295 Main Street, Room 350  
                          Buffalo, New York 14203

Notices sent in accordance with this Section 18.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c)

when sent, if by email, with confirmation of transmission, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the five (5) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

**18.5 Interpretation.** For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (i) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

**18.6 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**18.7 Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.

**18.8 Assignment.** The Consultant shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the Authority's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving the Consultant (regardless of whether the Consultant is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which the Authority's prior written consent is required. No delegation or other transfer will relieve the Consultant of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 18.8 is void. The Authority may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without the Consultant's consent. This Agreement is binding upon and inure to the benefit of the parties hereto and their

respective permitted successors and assigns.

18.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

18.10 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

18.11 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18.12 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal Laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of Laws of any jurisdiction other than those of the State of New York. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted in the federal courts of the United States or the courts of the State of New York in each case located in the city of Buffalo and County of Erie, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

18.13 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

18.14 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the

other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

18.15 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

**ERIE COUNTY WATER AUTHORITY**

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

**INGENIOUS, INC.**

By \_\_\_\_\_  
Joseph P. Murphy, President



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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, 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 \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came Joseph P. Murphy, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is the President 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

## SCHEDULE A

### SCOPE OF WORK

This project entails the redesign and redevelopment of the existing Authority Website, located at [www.ecwa.org](http://www.ecwa.org). The Consultant will add custom designed elements to provide a consistent style, conveying professionalism and distinctiveness of all aspects of the Website.

The Consultant will design and develop the Website so that the architecture, design aesthetic and overall tone of the Website's content maximizes the public's ability to quickly and easily search, locate, read/view, and/or download information.

#### **Discovery and Design Phase: Milestones & Design Deliverables:**

The initial part of this phase will be a discovery component, in which the Authority and the Consultant will meet and identify the tasks needed to be addressed or resolved to complete the project.

**Milestone No. 1:** The key Authority personnel, along with a representative from the Authority's public relations firm, will meet and share ideas as to the component and vision for the new Website with the Authority's designated project manager. Authority personnel will review and comment on features used in the current website. The Authority project manager will then summarize these ideas, suggestions and comments into a written document to be shared with the Consultant.

**Deliverable No. 1.1:** The Authority will appoint a website design team, whose members will include a representative from the Authority's public relations firm.

**Deliverable No. 1.2:** The Authority design team will meet and discuss the Content of the Website.

**Deliverable No. 1.3:** Authority project manager will deliver to the Consultant a written summary of ideas, suggestions and comments regarding the Content of the Website.

**Deliverable No. 1.4:** The Authority project manager will identify and/or gather, in a useable and transferrable format, all Authority Materials currently used or incorporated in the Authority's current website or other promotion materials and which are to be made available to the Consultant.

**Milestone Schedule:** **Week 1**, prior to the meeting with the Consultant.

**Milestone No. 2:** Consultant Personnel will meet and share ideas as to the component and vision for the new Website with the Consultant's designated project manager. Consultant Personnel will review and comment on features used in the current

website. Consultant Personnel will review and be familiar with the guidelines set forth by the Authorities Budget Office (ABO) [Policy Guidance for Posting and Maintaining Reports on Public Authority Websites](#) (dated April 12, 2010), as the findings made by the Buffalo Niagara Coalition for Open Government in their [Local Government Authority Website Report Card](#) (dated March 12, 2018). The Consultant project manager will then summarize these ideas, suggestions and comments into a written outline to be shared with the Authority.

**Deliverable No. 2.1:** Consultant will prepare and provide to the Authority a creative brief survey to be reviewed and completed by the Authority design team.

**Deliverable No. 2.2:** The creative brief survey will be reviewed by the Authority's public relations firm and its design team to help facilitate the discussion among members of the Authority's design team.

**Deliverable No. 2.3:** Consultant project manager will deliver a written outline of ideas, suggestions and comments to the Authority.

**Milestone Schedule:** **Week 1**, prior to the meeting with the Authority.

**Milestone No. 3:** Pursuant to the notice provisions set forth in 5.1(b), the Authority and Consultant will meet to refine an intuitive, site architecture with a thoroughly defined list of content data types to maximize the site functionality and usability for new and returning visitors.

**Deliverable No. 3.1:** Initial meeting will be held in **Week 2**.

**Deliverable No. 3.2:** The Authority and Consultant will discuss and agree upon a Site Specification plan, which shall be incorporated into this Agreement as Schedule B.

**Deliverable No. 3.3:** The Authority will provide the Consultant with Authority Materials identified in the Site Specification plan, including but not limited to all account access information (i.e. domain registrar, current site FTF/admin, Google analytics, etc.).

**Milestone Schedule:** **Weeks 2-3**

Following the adoption of a Site Specification plan, the Consultant will concentrate its efforts on creating a visually appealing/user-friendly design, allowing Website visitors to obtain information they are looking for quickly and easily.

**Milestone No. 4:** The Consultant will create three (3) design variations (i.e. concepts) of the general/overall home page and corresponding internal pages for approval before any coding begins.

**Deliverable No. 4.1:** The Consultant will present its initial site design concepts at an in-person meeting to be held at the Authority's Union Road Service Center to obtain feedback from the Authority key personnel.

**Deliverable No. 4.2:** The Authority will select from the three (3) design concepts presented by the Consultant.

**Milestone Schedule:** **Weeks 4-5**

**Milestone No. 5:** After chosen design concept has been chosen, the Authority will may request three (3) further design revisions to the chosen design concept/layout prior to the Development & Testing Phase.

**Deliverable No. 5.1:** Based on feedback from the Authority, the Consultant will revise the design layout.

**Deliverable No. 5.2:** The Authority and Consultant will finalize the design concept and layout.

**Deliverable No. 5.3:** The Authority must deliver all approved Content to the Consultant prior to the Development & Test Phase. Consultant cannot begin the Development & Test Phase without all final, approved Content to be used for the Website.

**Deliverable No. 5.4:** The Authority and Consultant will discuss and agree upon the delivery criteria for Development Deliverables and a schedule for Delivery, Testing and Acceptance, which shall be incorporated into this Agreement as Schedule E.

**Milestone Schedule:** **Weeks 5-6**

### **Development & Testing Phase: Milestones & Development Deliverables:**

In the Development Phase, the Consultant will be responsible for developing and building the website and content management system to allow non-technical Authority personnel to intuitively control web page content (text & images) easily from anywhere with an Internet connection. The new Website must "react" to the size of the user's browser window and adjust content accordingly. The Website will be deployed after it has been beta tested by both the Consultant and the Authority.

**Milestone No. 6:** The Consultant will develop a robust and flexible content management system on the backend of the site, uniquely tailored for the Authority's needs.

**Deliverable No. 6.1:** The Consultant must deliver a Website designed for cross-browser and cross-platform compatibility.

**Deliverable No. 6.2:** The Consultant must code the Website with future additions/enhancement in mind.

**Deliverable No. 6.3:** The Consultant will modify and optimize all Authority graphics, and photos to minimize page load time. The Consultant will use the Authority's third-party video service (i.e. Vimeo) for video streaming, broadcasting and archiving.

**Deliverable No. 6.5:** The Consultant will consult with the Authority technical staff to devise the best solution for working with videos on the Website, using Vimeo that specializes in optimal delivery of video content.

**Milestone Schedule: Weeks 6-10**

**Milestone No. 7:** The Consultant will develop a user-friendly Website, allowing visitors to find information quickly and easily and to interact with the Authority through email portals.

**Deliverable No. 7.1:** The Consultant will code the Website to respond to the page dimensions of the site visitor, providing the optimal display for desktop, tablet and smartphone users of various screen sizes.

**Deliverable No. 7.2:** The Consultant will deliver a Website that embedded video will be set up to format properly for optimal display on each type and for each type of user device.

**Deliverable No. 7.3:** The Consultant will deliver a Website allowing visitors to submit their email addresses to a third party system for the management of such email list.

**Deliverable No. 7.4:** The Consultant will assist the Authority's technical staff with the integration of an email collection form on the Website.

**Deliverable No. 7.5:** The Consultant will provide further assistance to the Authority's technical staff by establishing up to three (3) design templates that will resemble the new Website design for outgoing correspondence from the Authority to its email list.

**Deliverable No. 7.5:** The Consultant will work with the Authority's technical staff to allow visits to search the content of all site data and files.

**Milestone Schedule: Weeks 6-10**

**Milestone No. 8:** The Consultant will optimize the Website for search engines to index the site content and to maintain/raise search engine rankings.

**Deliverable No. 8.1:** The Consultant will integrate the current Google Analytics accounts for the new Website, allowing the Authority to see the comparison of traffic for the new Website compared to the prior iterations.

**Deliverable No. 8.2:** The Consultant will develop the CMS to present basic analytic data in a Dashboard view.

**Deliverable No. 8.3:** The Consultant will deliver the site framework to be set up to optimize the delivery of site content to search engines.

**Deliverable No. 8.4:** The Consultant will leverage the Google Webmaster Tool Kit, to gain additional knowledge about how Google "sees" the content of the Website.

**Deliverable No. 8.5:** The Consultant will devise and XML site map file for submission to Google, allowing the site content to be listed in Google with as much up-to-date information as possible.

**Milestone Schedule: Weeks 6-10**

**Milestone No. 9:** After the Consultant has developed a flexible content management system, it will allow Authority staff the ability to effortlessly update Content.

**Deliverable No. 9.1:** The Consultant will provide an in-person training session with Authority staff when the site build-out is stages.

**Deliverable No. 9.2:** The Consultant will be available to provide follow-up or ongoing training via GoToMeeting screen share sessions, as necessary.

**Deliverable No. 9.3:** The Consultant will provide a printable user manual in a searchable PDF format as a reference for the use of the Website CMS.

**Deliverable No. 9.4:** The Consultant will develop the CMS to provide inline documented help for all datatype information.

**Milestone Schedule: Weeks 10-12**

**Milestone No. 10:** The Consultant will roll-out, host, and maintain the Website.

**Deliverable No. 10.1:** The Consultant will set up a Linux-based web-hosting environment and will host the Website on its Tier I server.

**Deliverable No. 10.2:** The Consultant will ensure the Website is secured with a secure certificate (SSL) to encrypt all information transfer, utilizing the HTTPS protocol.

**Deliverable No. 10.3:** The Consultant will not limit the Authority Website storage space, or its bandwidth on its server.

**Deliverable No. 10.4:** The Consultant will continually perform backups of all site data and files, both onsite and multiple redundancies of off-site locations.

**Deliverable No. 10.5:** The Consultant will regularly update, as necessary, its hosting server.

**Deliverable No. 10.6:** The Consultant will constantly monitor the Website for malicious activity and will alert the Authority immediately of any suspicious activity.

**Deliverable No. 10.7:** The Consultant will allow the Authority to beta test the Website prior to its launch date and will revise the Website based on the Authority's feedback.

**Deliverable No. 10.8:** The Consultant will allow the Authority to test the Website after its launch date and will make revisions, as necessary based on the Authority's feedback, prior to the Authority's final acceptance of the Website.

**Milestone Schedule: Weeks 10-12**

**SCHEDULE B**  
**SITE SPECIFICATION**



## **SCHEDULE C**

### **PROJECT MANAGERS**

Pursuant to § 2.2 of this Agreement, the parties have agreed to establish a single point of contract to be the direct liaison throughout the project. The following individual has been chosen as the Authority's project manager for purposes of all Authority-side communications:

Jeffrey Schlierf, Information Technology  
Erie County Water Authority  
3030 Union Road  
Cheektowaga, New York 14227  
Email: [jschlierf@ecwa.org](mailto:jschlierf@ecwa.org)  
Phone: (716) 685-8271

The following individual has been chosen as the Consultant's project manager for purposes of all Consultant-side communications:

Joseph P. Murphy, President  
Ingenious, Inc.  
755 Seneca Street, Suite 201  
Buffalo, New York 14210  
Phone: (716) 855-8550

## **SCHEDULE D**

### **CHANGE PROCEDURE**

Pursuant to § 2.3 of this Agreement, the Authority may, at any time during the term, request in writing changes to the Scope of Work and/or Site Specification. All such proposed changes must first be approved by the Secretary of the Authority. If the change to the Scope of Work and/or Site Specification does not require the Authority to allocate or expend additional funds, the parties will evaluate and, if agreed, implement all such changes. However, if change requires the allocation or expenditure of additional funds, such changes must be pre-approved by the Authority's Board of Commissioners.

**SCHEDULE E**

**DELIVERY, TESTING AND ACCEPTANCE**

## **SCHEDULE F**

### **FEES, REIMBURSABLE EXPENSES, AND INVOICING**

In consideration of the Services and Deliverables provided and rights granted by the Consultant under § 6.1 of this Agreement, the Authority agrees to the following:

#### **FEES:**

**Design & Development Project Fee:** A fixed fee of \$18,000, payable in three installments: (1) an initial payment of \$6,000 immediately following the execution of the Agreement; (2) a second payment of \$6,000 upon the acceptance of the Design Deliverables; and (3) final payment upon the acceptance of all Deliverables and the acceptance a final completed Website after the Authority has performed and completed Integration Testing pursuant to §4.4 of this Agreement.

**Copy Editing & Creation:** An hourly fee of \$ 80.00 in an amount not to exceed \$3,000. Reimbursement for such fees may be submitted by the Consultant when seeking its second or final payment. The Authority will not reimburse fees in excess of the “amount not to exceed” ceiling, unless an amendment to this Agreement has been approved by the Authority’s Board of Commissioners prior to such fees being incurred.

**Custom Video & Custom Photography:** An hourly fee of \$ 150.00 in an amount not to exceed \$10,000. The Authority will not reimburse fees in excess of the “amount not to exceed” ceiling, unless an amendment to this Agreement has been approved by the Authority’s Board of Commissioners prior to such fees being incurred.

**Web Hosting:** No fee or charge for the first year, measured from the date of acceptance by the Authority of all Deliverables. After the first year, an annual fix fee of \$120.00.

**Future Enhancements:** An hourly fee of \$155 in amount not to exceed \$10,000.

**REIMBURSEABLE EXPENSES:** Expenses, verified by a receipt or invoice, which are ordinary and necessary, out-of-pocket expenses for the Consultant to fulfill its Deliverables under the provisions of this Agreement.

The Authority will not reimburse the Consultant for mileage or for travel. If the Consultant is required to attend meetings at the Ellicott Square Building, the Authority will reimburse the Consultant for parking. As set forth in § 6.2 of this Agreement, the Authority will not reimburse the Consultant for service fees, license fees, royalties, or other amounts incurred by the Consultant to any Permitted Subcontractor or for any

Third-Party Materials, unless such fees or charges are expressly stated in the Scope of Work.

As provided in §§ 6.3 and 6.4 of the Agreement, the Consultant shall submit invoices for Fees and Reimbursable Expenses in electronic format to [accountspayable@ecwa.org](mailto:accountspayable@ecwa.org). The Authority will process the invoice and render payment within 45 days. Payments will be mailed to the Consultant at the following address:

INGENIOUS, INC.  
Attention: Joseph P. Murphy, President  
755 Seneca Street, Suite 201  
Buffalo, New York 14210

## SCHEDULE G

### INSURANCE

Pursuant to §13.1 of this Agreement, 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 there from in the following amounts (an An X indicates insurance coverage is required)"

X **Commercial General Liability Insurance:** (including, but not limited to, Bodily (Personal) Injury, Premises Operations, Property Damage Liability (broad form), Contractual Liability, Advertising Injury, Independent Contractors, Product Liability, and Completed Operations – in an amount not less than \$1,000,000 combined single limit and \$2,000,000 in the aggregate:

- X **Per Policy**
- Per Project or Job**
- Per Location**

There should be no exclusions for any claims filed, actual or alleged, for violation of any applicable statute including, but not limited to, the New York State or federal labor laws, ordinances, administrative orders, executive orders, rules, regulations, or decrees of any court of competent jurisdiction.

X **Commercial Business Automobile Insurance** in an amount of not less than \$1,000,000 each accident and shall cover liability arising out of any automobile owned, leased, hired, borrowed and non-owned automobiles.

    **Excess Umbrella Liability Insurance:**

- \$1,000,000 in the aggregate
- \$2,000,000 in the aggregate
- \$3,000,000 in the aggregate
- \$4,000,000 in the aggregate
- \$5,000,000 in the aggregate

- Per Policy**
- Per Project or Job**
- Per Location**

**Professional Liability Insurance:** Per each occurrence and in the aggregate. Continuous coverage shall be maintained, or on an extended discovery period (“tail coverage”), for a period of not less than two years from the time the agreement has been completed in an amount of not less than:

- \$1,000,000 in the aggregate
- \$2,000,000 in the aggregate
- \$3,000,000 in the aggregate
- \$4,000,000 in the aggregate
- \$5,000,000 in the aggregate

**Cyber and Privacy & Security Coverage:**

All vendors with access to confidential records and/or access to any of ECWA’s communication networks, servers, etc. must carry Cyber Liability coverage for damages arising from a failure of computer security, or wrongful release of private information including expenses for notification as required by local, state or federal guidelines. Limit of liability must be at least One Million and 00/100 Dollars (\$1,000,000.00) per claim and One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate. Any retroactive date or prior acts exclusion must predate both the date of this agreement and any earlier commencement of any services. If coverage is on a "claims made basis", a 2 to 5 year extended reporting provision must be included.

**Fidelity Bond:**

Any vendor with access to ECWA financial systems must provide a Fidelity Bond in the amount of at least Five Hundred Thousand and 00/100 Dollars (\$500,000.00) through a responsible Surety Company naming ECWA as third (3rd) party to the Bond, with respect to all of vendor's employees, as may be necessary to protect against losses, including, without limitation, those arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. Coverage must extend to any losses incurred by ECWA due to theft, embezzlement or fraud by vendor, vendor's employees or subcontractors. Vendor shall notify ECWA in writing within five (5) days of filing a

claim under such coverage and to assign to the Authority, as the case may be, the proceeds of such coverage allocable to losses suffered with respect to the property of ECWA.

**X Workers' Compensation and Employers' Liability and New York State Disability Benefits Insurances**, as required by New York State statute.

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 the Agreement. 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 Consultant 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.

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.

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

Certificates of Insurance should be e-mailed to [AALESSI@ECWA.ORG](mailto:AALESSI@ECWA.ORG) or mailed to Mr. Anthony Alessi, ECWA Claims 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 Mr. Alessi by e-mail or phone (716) 849-8477.

All insurance required herein shall be obtained at the sole cost and expense of the Consultant, including deductibles and self-insured retentions.