

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

Contract: NC-043 **Project No.:** 202100048
Project Description: New Pump Station at Newstead Tank

Item Description:





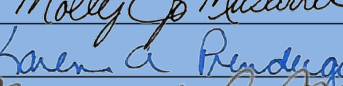
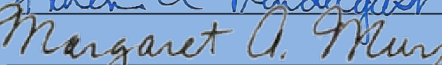

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|---|---|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input checked="" type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr. Distribution Engineer		Date: <u>2/21/2021</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>02/21/21</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>02/19/2021</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>02/22/2021</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>02/22/2021</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>02/22/2021</u>
<input checked="" type="checkbox"/> Legal		Date: <u>02/24/21</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>02/24/21</u>
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Remarks: _____

Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 19, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: William W. Wheeler, Distribution Engineer

A handwritten signature in blue ink, appearing to be "WW", is written over the name William W. Wheeler.

Subject: Contract NC-043
New Pump Station at Newstead Tank
ECWA Project No. 202100048

The following material is attached:

- Authorization Form requesting Board Authorization to execute the attached Professional Service Contract with Nussbaumer & Clarke, Inc.
- Professional Service Contract for the above referenced project.
- Copy of Interoffice Memorandum from William W. Wheeler, Distribution Engineer, dated January 26, 2021, detailing recommendations for the contract assignment after review of Request for Proposals (PN 202100010).

This project, budgeted for design in 2021 and construction in 2022, will consist of the development of a Basis of Design and the Detail Design for a new pump station within the pedestal of the existing Newstead Tank. The Newstead Tank is an elevated tank and as the pressure zone developed in the vicinity of the tank, the pressure in the system has decreased such that the tank is currently unable to be filled completely. Due to aging infrastructure, ECWA is currently unable to simply increase the system pressure using upstream pump stations, without the risk of causing line breaks. The ability to completely fill the tank will provide increased pressure in the pressure zone and enhanced fire flows. In addition, the extra capacity can be used to ensure that we meet our contractual agreement for supplemental supply to Genesee County.

Budget Information:

Unit 2520 Eng/Const Control

Item No. 101589 Newstead PS Improvements

WWW:jmf

Attachments

cc: L.Kowalski

M.Quinn

L.Lester

CONT-NC-043-2101-X-01



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

January 26, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: William W. Wheeler, PE, Distribution Engineer

A handwritten signature in blue ink, appearing to be "WW", is written over the name William W. Wheeler.

Subject: Request for Proposals
Newstead Pump Station at Newstead Tank
ECWA Project No. 202100010

The Erie County Water Authority (ECWA) recently issued a Request for Proposal (RFP) for the construction of a new pump station within the base of the existing Newstead Water Storage Tank. The RFP included the development of a Basis of Design and the Detail Design under a single contract.

The Newstead Tank is an elevated tank and as the pressure zone developed in the vicinity of the tank, the pressure in the system has decreased such that the tank is currently unable to be filled completely. Due to aging infrastructure, ECWA is currently unable to simply increase the system pressure using upstream pump stations, without the risk of causing line breaks. The ability to completely fill the tank will provide increased pressure in the pressure zone and enhanced fire flows. In addition, the extra capacity can be used to ensure that we meet our contractual agreement for supplemental supply to Genesee County.

The RFP was issued to four consulting engineers: Barton & Loguidice, LaBella Associates, GHD, and Nussbaumer & Clarke as well as posted to the ECWA Website. Three other firms Dubois & King, Encorus Group, and JM Davidson obtained the RFP through our website. All seven firms chose to submit proposals for this project. This is a single project requiring one consulting firm.

The proposals were reviewed and discussed among the engineering and production staff (Michael Wymer, Michael Quinn, and William Wheeler). Experience, staffing, scope, and project approach were considered. It was determined that each firm possessed the basic relevant qualifications to perform the work proposed.

Nussbaumer & Clarke provided an experienced project team to perform the work and demonstrated direct experience with recent work at similarly sized facilities as well as other facilities of comparable complexity and capacity to the Newstead Pumping Station. Their team, approach and level of effort showed an understanding of the necessary project process and workflow for all the required tasks in this RFP.

If there are no objections, the Engineering Department plans on moving forward with negotiations with Nussbaumer & Clarke to develop a Professional Services Contract for the referenced project.

WWW:jmf

cc: K.Prendergast

R.Stoll

L. Kowalski

M.Quinn

M.Wymer

L.Lester

ECWA-650-2101-X-16

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES**

This Agreement, effective as of March 4, 2021 (“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

NUSSBAUMER & CLARKE, INC.

3556 Lake Shore Road, Suite 500
Hamburg, New York 14219-1494

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to construction of a new pump station at the Newstead Water Storage Tank (the “Project”).

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

ARTICLE 1 – THE PROJECT

1.01 The Engineer shall provide engineering services for the Project which consists of construction of a new pump station within the base of the existing Newstead Water Storage Tank site. The Engineer agrees to provide the following services, which include, but are not limited to:

A. Hydraulics:

1. Conduct a desktop hydraulic analysis to size pumps and piping based on Authority provided data;

B. Mechanical:

1. Design new pumps to fill the tank;
2. Design new piping, valves, and associated mechanical equipment;
3. Determine removal of existing piping, valves, and appurtenances for the installation of new pumps;

C. Structural:

1. Conduct a structural analysis of existing tank base and its ability to support the new pumping system;
2. Prepare design of new pump pads and pipe supports;
3. Prepare design of new portable A-frame gantry type hoist;
4. Prepare design of new condensation break and associated structural analysis for the support of the structure, as required;

D. Electrical:

1. Investigate existing electrical service and its ability to meet the new pump station's service requirements;
2. Provide a list of new electrical equipment (power, cable, conduit, etc.) associated with the new pump station including a new electrical service if necessary;
3. Provide design of VFDs for the new pumps;
4. Evaluate existing lighting and new lighting as required for condensation break;
5. Provide design of new backup power generation equipment including automatic transfer switch;

E. HVAC:

1. Provide design for new HVAC equipment (gas unit heaters, exhaust fan components, AC for electrical equipment) associated with the new pump station/room and existing tank base enclosure;
2. Evaluate for the mitigation of condensation (e.g. condensation break) between pump station and bottom of bowl;

F. Controls:

1. Provide design for new PLC, control logic, and SCADA integration to operate the new pumps (ECWA to provide programming);
2. Provide design for new instrumentation, including, but not limited to pressure sensors, tank level sensors, flow meter, etc.

ARTICLE 2 – COMPLIANCE STANDARDS

2.01 Standard of Performance

- A. **Standard of Care:** The Engineer shall be held to the same standard of applicable to any consultant providing professional engineering and related services. The Engineer shall use the same 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 Engineer's services. The Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

2.02 Compliance with Laws and Regulations, and Policies and Procedures

- A. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Engineer 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 Engineer submitted and signed Forms A, B, and C, a copy of which is attached to, and incorporated in, this Agreement as Appendix C.
- C. By executing this Agreement, the Engineer 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.
- D. The Engineer 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 Engineer submitted and signed the Sexual Harassment Bidding Certification, a copy of which is attached to, and incorporated in, this Agreement, as Appendix C.
- E. The Engineer 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.
- F. The Authority shall provide the Engineer in writing any and all Authority policies and procedures applicable to the Engineer's performance of services under this Agreement. The Engineer agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- G. While on Authority property, the Engineer's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

2.03 Health Screening Questionnaire. 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 or the Authority including, but not limited to, completing a health screening questionnaire before entering any Authority worksite.

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

ARTICLE 3 – SCOPE OF SERVICE

3.01 Kick-off Meeting. Prior to rendering any professional services, the Engineer will conduct a kickoff meeting with Authority personnel to take place at the same time as the site walkthroughs referenced in § 3.02 of this Agreement.

3.02 Preliminary Investigation and Due Diligence. The Engineer shall provide all engineering services necessary to design and install the Project improvements including, but not limited to, the following:

A. *Basis of Design (“BOD”):*

1. In contemplation of the basis of design, the Engineer shall:
 - a. Review reports, drawings, specifications, and other records furnished by the Authority.
 - i. Conduct project kick-off meeting with Authority personnel and provide associated meeting minutes. Provide meeting minutes to the Authority within 5 business days of the meeting date.
 - b. Verify site conditions at the tank location.
 - i. Complete a site walkthrough and conduct meetings with operating staff to discuss current operational strategies and challenges.
 - ii. Review applicable operating records.
 - iii. Determine the condition of critical assets and document the need for rehabilitation, remaining life, and required replacement.
 - iv. Specifically note the condition of equipment to remain in relation to the improvements described in § 1.01 of this Agreement.

- c. Identify locations of possible hazardous materials (e.g., lead paint, asbestos, etc.) or concerning environmental conditions, based on known/assumed age and type of construction at each location.
 - i. If material sampling and testing becomes necessary, such sampling and testing would be considered a Special Service, subject to the provisions of paragraph B of this Section.
- d. Prepare preliminary design documents for the new pump station. Preliminary design documents should include:
 - i. Final design criteria including but not limited to equipment selection, pump capacity, and hydraulic analysis.
 - (a) The hydraulic analysis will be performed based on information and data provided by the Authority for present and future demand conditions.
 - ii. Include preliminary design drawings including:
 - (a) Process Flow Diagram
 - (b) Process and Instrumentation Drawing
 - (c) Plan view of the pump station
 - (d) Elevations/Sections/Details required to relay the design intent
 - iii. Include an equipment/motor list for all electrical equipment and identify code compliance requirements for electrical components.
 - iv. Include product information including manufacturer's cut sheets, dimensional information, and installation guidance.
 - v. Include a process control narrative for operation and monitoring of the system.
 - vi. List the required technical specifications for final design.
 - vii. Describe the construction sequencing (maintenance of tank operations and incorporation of pump station into system operations).
 - viii. State an opinion of probable project costs.
 - ix. Set forth a Project schedule identifying the duration of final design, bid, and construction phases.

2. The Engineer shall prepare a draft BOD Report, setting the factors considered by the Engineer including, but not limited to, those specifically identified in paragraph A, subparagraph 1 of this section. The Engineer shall supply the Authority with four (4) copies of the draft BOD Report with supporting documentation, along with a digital .pdf file of the draft BOD Report with supporting documentation.
3. The Engineer shall meet with the Authority to review the draft BOD Report and will incorporate all comments into a final version. The Engineer shall supply the Authority with an electronic (pdf) file and three hard copies of the final BOD Report with supporting documentation, along with a digital .pdf file of the final BOD Report with supporting documentation.
4. The Engineer will conduct at least two (2) review meetings with the Authority. Provide meeting minutes to the Authority within ten (10) calendar days.

B. *Special Services:*

1. The Engineer may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
 - a. Soils investigations including test borings, pavement cores, and the related analysis;
 - b. Detailed mill, shop and/or laboratory inspection of materials and equipment;
 - c. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
 - d. Air, water, and/or soil sampling, testing, and/or analysis;
 - e. Hazardous material testing and assessment;
 - f. Wetlands investigations, delineation, and mitigation;
 - g. Technical assistance with operation and maintenance manuals;
 - h. Start-up services relating to equipment to be installed by the contractor;
 - i. Assistance with permit and other applications with the New York State Department of Environmental Conservation (DEC);

- j. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
 - k. Laboratory testing, jar testing, and pilot testing;
 - l. Extra travel and subsistence for the Engineer and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority;
 - m. 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; or
 - n. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officer.
2. **Reliance on Others.** Subject to the standard of care set forth in § 2.01, paragraph A, the Engineer and its special services consultants may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers and the publishers of technical standards.
 3. **Expert Witness Assistance.** The Engineer agrees to assist the Authority as an expert witness in litigation arising from the project development and construction, even if such assistance is requested by the Authority after the expiration or termination of this Agreement.

3.03 Design: The Engineer will complete design documents for the new pump station. It is anticipated the work will be designed and bid as a single project.

A. *Detailed Design Drawings, Specifications and Contract Documents:* Upon authorization from the Authority, the Engineer shall complete the following design services:

1. Obtain field topographic survey data for the preparation of construction plans required for final design of the project. Survey data is to be according to NAD83 and NGCD29 standards.
2. Visit the site as needed to assist in preparing the drawings and specifications.
3. Prepare detailed design drawings, specifications and contract documents at 60%, 90%, and 100% design stages. Tasks include, but are not limited to:
 - a. Review of available drawings and records furnished by the Authority.

- b. Prepare base drawings in AutoCAD Version 2018 from the survey data obtained in the survey phase and the available records furnished by the Authority.
 - c. Prepare engineering calculations to support the design of the improvements, including related civil, mechanical, electrical/instrumentation, structural, and architectural features of the project.
 - d. Submit plans to various companies and regulatory agencies as required.
 - e. Prepare final plans, profiles/sections, and project specific detail drawings where appropriate.
 - i. Prepare a Process Flow Schematic for the pump station.
 - ii. Prepare Process and Instrumentation diagrams for the pump station.
 - iii. Prepare control description and PLC system for the pump station.
 - f. Prepare contract specifications with edited Authority's standard "front end" specifications and standard technical specifications where appropriate;
 - g. Prepare additional technical specifications, which includes Maintenance of Tank Operations specifications, as required;
 - h. Obtain New York State Prevailing Wage Rates and inserting such rates into the specifications;
 - i. Prepare a quantity take-off and an opinion of probable construction cost.
 - j. Submit the Task 1 Basis of Design with contract specifications, drawings, application forms and fees to Erie County Health Department for approval.
- 4. Determine the appropriate project type under the New York State SEQR program, developing all required SEQR documentation and assisting the Authority with implementation.
- 5. Determine the requirement for a project specific SWPPP and if required completing all associated SWPPP documentation (as applicable).
- 6. Assist Authority in filing applications for permits with applicable regulatory agencies, having jurisdiction to review and approve the design; assist Authority in consultations with such agencies; and revise the drawings and specifications

in response to directives from such agencies, as appropriate. Submit final copies of the revised reports, drawings, and specifications to the appropriate regulatory agencies.

7. Assist the Authority with assembling known reports and drawings of existing conditions, and identifying the technical data contained in such reports and drawings upon which bidders may rely

B. *Design Phase Meetings and Reports.* The Engineer shall:

1. Conference with the Authority and other related Project stakeholders, as necessary and as required;
2. Report to the Authority bi-weekly on the progress of the design work via email, with the following information:
 - a. Design work performed during the previous two weeks;
 - b. Design work scheduled for the next two weeks;
 - c. Schedule status/deliverable status, attaching an updated project schedule in Microsoft Project format, identifying all project milestones and current project status;
 - d. Budget status/percent completed;
 - e. Input needed from the Authority or others;
 - f. Requests for scope changes; and
 - g. Other issues or concerns;
3. Furnish to the Authority four (4) hardcopy sets of review copies of the drawings, specifications, and other contract documents, during 60%, 90%, and 100% design.
4. Conduct at least three meetings with the Authority engineers and operators to discuss and/or review detailed design drawings, specifications and contract documents. Provide meeting minutes to the Authority within five (5) calendar days; and
5. Attend a final design meeting with the Authority. Provide meeting minutes to the Authority within five (5) calendar days.

3.04 Construction Services

A. *Construction Bids.* Upon authorization from the Authority, the Engineer shall:

1. Assist Authority personnel in preparing bid invitation and contract documents;
2. Refrain from discussing the Project or the bid process with anyone outside of the Authority prior to the advertisement of bids and during the restricted period for the submission and award of bids;
3. Coordinate with Avalon Plan Room (Buffalo) to host plans and project manuals on their site for bidding purposes. Furnish up to ten (10) sets of stamped and signed contract drawings, final specifications, and other documents required for bidding and construction purposes to ECWA as directed;
4. Conduct, at the appropriate time, a pre-bid meeting:
 - a. Prepare and distribute addenda for pre-bid meeting;
 - b. Record, publish, and distribute minutes from the pre-bid meeting; and
 - c. Prepare and distribute addenda, utilizing the Avalon Plan Room. Confirm with Avalon that all plan holders received all addenda prior to bid opening.
5. Evaluate and determine whether substituted materials and equipment proposed in a bid submission of a prospective contractor is acceptable and at least equal to the materials and equipment set forth in bid and contract documents; and
6. Assist the Authority in securing bids, bid results, analyzing bid results, and making recommendations on the award of each construction contract;

B. *Pre-Construction.* Prior to construction, the Engineer shall:

1. Provide pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested stakeholders;
2. Conduct a pre-construction meeting:
 - a. Prepare and distribute agenda for pre-bid meeting; and
 - b. Record, publish, and distribute minutes from the pre-bid meeting.

C. *Construction.*

1. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work (the “Work”). The

Engineer shall not be held liable to the Authority for the failure of the construction contractor (the “Contractor”) to execute the Work in accordance with the contract documents (the “Contract Documents”).

2. The Engineer shall notify the Authority of all permanent Work which does not conform to the result required in the Contract Documents, prepare a written report describing any apparent non-conforming permanent Work and make recommendations to the Authority for its correction and when requested by the Authority, have recommendations implemented by the Contractor.
3. The Engineer shall have responsibility over the following:
 - a. Defective Work:
 - i. Based on the Engineer’s observations, if the Engineer believes that the Work is defective under the terms and standards set forth in the Contract Documents, the Engineer shall reject the Work and provide the Authority with its recommendations regarding whether the Contractor should correct such Work or remove and replace such Work, or whether the Authority should consider accepting such Work as provided in the Contract Documents.
 - b. Compatibility with Design Concept:
 - i. If the Engineer has actual knowledge a specific part of the Work, although not defective under the terms and standards set forth in the Contract Documents, but nonetheless is not compatible with the design concept of the completed Project as a functioning whole, the Engineer will inform the Authority of such incompatibility, and provide recommendations for addressing such Work.
 - c. Clarifications and Interpretations:
 - i. When the Contractor and the Authority submits to the Engineer any question concerning the requirements of the Contract Documents, including any requests for information (RFIs), or relating to the acceptability of the Work under the Contract Documents, the Engineer shall, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents.

d. Differing Site Conditions:

- i. When the Contractor notifies the Engineer of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions, the Engineer shall promptly review the condition and prepare findings, conclusions, and recommendations to the Authority as to how to address the condition.

e. Substitutes and “Or-equal”:

- i. The Engineer shall evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor.

f. Change Orders:

- i. The Engineer shall notify the Authority when a change in the Work is proposed, which will cause an adjustment in the contract cost.
- ii. The Engineer will evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval by the Authority’s Board of Commissioners.
- iii. The Engineer shall discuss changes in the plans or procedures recommended by the Engineer with the Authority prior to implementation.
- iv. The Engineer must obtain approval for all change orders from the Board of Commissioners prior to implementation.

g. Change Proposals and Claims:

- i. Review and respond to Change Proposals.

- (a) The Engineer shall review each submitted Change Proposal from Contractor and either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part.

- (b) Such actions shall be in writing, with a copy provided to the Authority and Contractor.

- (c) If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise),

the acceptability of the Work, or other engineering or technical matters, the Engineer will notify the parties that the Engineer will not resolve the Change Proposal.

ii. Reporting of Claims

- (a) When the Engineer becomes aware of a situation from which a legal dispute or claim (“Claim”) could be filed by a contractor, subcontractor, property owner or other third party against the Authority, the Engineer will promptly report the situation to the Authority.
 - (b) Upon request, the Engineer will assist the Authority’s Legal Department in its investigation and examination of any Claim. The Engineer will provide the names and, if available, addresses and phone numbers of individuals involved or having knowledge of the Claim.
 - (c) The Engineer will also gather information or data to the Authority regarding engineering or technical matters pertaining to the Claim.
- 4. The Engineer shall consult, report and advise appropriate Authority personnel as to all relevant and pertinent matters relating or affecting the progress of construction.
- 5. The Engineer shall review and determine the acceptability of any and all schedules that the Contractor is required to submit to the Engineer, including a Progress Schedule, Schedule of Submittals, and Schedule of Values.
- 6. The Engineer shall supply the Authority with a construction schedule, which has been submitted by the Contractor and approved by the Engineer.
- 7. The Engineer will prepare elementary sketches and supplementary sketches, when necessary or required, to resolve issues with actual field conditions encountered.
- 8. The Engineer shall interpret Contract Documents and resolve problems as to amount, quality, acceptability, and fitness.
- 9. The Engineer will review the Contractor’s submittals of material and/or equipment for compliance with the design concept and take appropriate action such as but not limited to: “approved”, “approved as corrected”, “revise and resubmit”; or “not approved”.

10. The Engineer will provide the Contractor and the Authority with detailed stakeout information, including benchmarks, reference and axis lines along the routes of the construction or wherever necessary.

11. The Engineer shall check installation for preparation of record drawings.

D. *Construction Meetings and Reports.*

1. The Engineer will schedule and attend progress meetings with the pertinent Authority personnel, the Contractor, subcontractors and other interested stakeholders at a minimum every two (2) weeks.

2. The Engineer will report to the Authority monthly on the progress of the Work with a written monthly summary including daily inspector reports.

3. The Engineer will report, via email, to the Authority bi-weekly on the progress of the Work with the following information:

a. Summary of the Work performed in the previous two-week period;

b. Updated project schedule, attached and in Microsoft Project format, identifying all project milestones and current project status;

c. Forecast of all upcoming work and project costs expected for the project, including the identification of any contract items which may exceed bid quantities; and

d. Copies of final inspection reports attached in .pdf format for reports in the previous two-week period.

4. As previously stated in paragraph C, subparagraphs 3f and 3g of this section, the Engineer shall notify the Authority when a change in the work is proposed which will cause an adjustment in the contract cost and will:

a. Evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval.

b. Discuss changes in the plans or procedures authorized by the Engineer with the Authority prior to implementation.

c. Obtain approval for all change orders from the Authority's Board of Commissioners prior to implementation.

5. The Engineer will make a final inspection, furnish a report on project completion, and make recommendations for final payments to contractors and for the release of retained amounts, if any.

3.05 Resident Inspections:

A. Upon authorization from the Authority, the Engineer shall furnish a full-time Resident Project Inspector (RPI) who will conduct technical inspection of the Work relating to the Project;

1. *Inspector's duties and responsibilities:* The Engineer, through the RPI's observations, shall protect the Authority against defects and deficiencies in the Work.

2. *RPI's duties and responsibilities:*

a. The RPI shall not:

- i. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), without written approval by the Authority and the Engineer;
- ii. Exceed limitations of the Engineer's authority as set forth in this Agreement;
- iii. Undertake any of the responsibilities of the Contractors, subcontractors, or suppliers;
- iv. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work;
- v. Advise on, issue relating, or assume control over security or safety practices, precautions, and programs in connection with the activities of the Authority or its Contractors;
- vi. Participate in specialized field or laboratory tests or inspections conducted off-site by others; or
- vii. Accept shop drawings or sample submittals from anyone other than the Contractor.

b. The RPI shall:

- i. Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values prepared by the Contractor and consult with the Engineer concerning acceptability;

- ii. Attend meetings with Contractor and subcontractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings;
- iii. Provide email updates to the Engineer and the Authority regarding meetings with Contractor and subcontractors;
- iv. Conduct daily on-site inspections of all Work in progress;
- v. Prepare daily inspection reports to determine if the Work is progressing in accordance with Contract Documents;
- vi. Report to the Authority and the Engineer whenever the RPI believes any portion of the Work will not produce a completed Project, conforming with the Contract Documents, or will imperil the integrity of the Project design as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made;
- vii. Advise the Authority and the Engineer whether any part of the Work in progress should be corrected or rejected or should be uncovered for observations, or requires special testing, inspection, or approval;
- viii. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Authority personnel, and that the Contractor maintains adequate records relating to the same;
- ix. Observe, record, and report to the Engineer appropriate details relative to the test procedures and systems start-ups;
- x. Report to the Engineer and the Authority when clarifications and interpretations of the contract documents are needed and transmit to the Contractor clarifications and interpretations as issued by the Engineer;
- xi. Advise the Engineer and the Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPI believes that the submittal has not been approved by the Engineer; and
- xii. Submit, via email, bi-weekly updates to the Authority summarizing the resident inspection costs and projecting further resident inspection costs for the duration of the Work.

3.06 General Services:

A. *Contractor's Request for Payment:*

1. As a general service to the Authority, the Engineer will review applications for payment with the Contractor for compliance with the established procedure for their submission and forward recommendation to the Authority, noting particularly the relationship of the payment requested to the schedule of values, work completed, and materials and equipment delivered to the Project site but not incorporated in the work.
2. Based on the Engineer's observations and on review of Applications for Payment and accompanying supporting documentation, the Engineer shall:
 - a. Determine the amounts that the Engineer recommends Contractor be paid;
 - b. Recommend reductions in payment based on the provisions stated in the Construction Documents;
 - c. Such recommendations of payment will be in writing and will constitute the Engineer's representation to the Authority, based on such observations and review, that, to the best of the Engineer's knowledge, information and belief, the Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents:
 - i. Subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation, and
 - ii. Subject to the conditions precedent that permits a Contractor to receive payment based on the Work performed, which has been reviewed and accepted by the Engineer;
 - d. In the case of unit price Work, the Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work subject to any subsequent adjustments allowed by the Contract Documents.

B. *Standards for Certain Construction-Phase Decisions:*

1. The Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Contract for initial interpretations, Change Proposals, and acceptance of the Work.

2. In rendering such decisions and judgments, the Engineer will not show partiality to the Authority or the Contractor, and will not be liable to the Authority, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

C. *Certificates, Operation and Maintenance Materials:*

1. During the course of construction, as a general service, the Engineer will verify whether materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents.
2. After receipt from the Contractor, the Engineer will review and transmit to the Authority:
 - a. Any maintenance and operating instructions,
 - b. Schedules,
 - c. Guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents,
 - d. Certificates of inspection, tests and approvals, and
 - e. Shop Drawings, Samples, and other data as required.
3. Upon receipt from the Contractor, the Engineer will review and transmit to the Authority the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.
4. The Engineer must deliver to the Authority those documents described in subparagraph 2 of this paragraph, prior to the payment for such work.

D. *Completion:*

1. Upon authorization from the Authority, as general services, the Engineer shall:
 - a. Participate in visits to the Project to determine substantial completion, assist in the determination of substantial completion and the preparation of lists to be completed or corrected;
 - b. Participate in a final visit to the Project with Authority personnel; and prepare a final list of items to be completed and deficiencies to be remedied; and

- c. Observe whether all items on the final list have been completed or corrected and make recommendations to the Authority concerning acceptance of the Project and final payment.

2. *Substantial Completion:*

- a. After a notice has been given by the Contractor as to the substantial completion or completion of Work, the Engineer will promptly visit the Project site to review the Work and determine the status of completion.
- b. The Engineer will follow the procedures in the Contract Document regarding the following:
 - i. the preliminary certificate of Substantial Completion,
 - ii. punch list of items to be completed,
 - iii. objections made by the Authority,
 - iv. notice to Contractor, and issuance of a final certificate of Substantial Completion.
- c. The Engineer will assist Authority regarding any remaining engineering or technical matters affecting Authority's use or occupancy of the Work following Substantial Completion.

3. *Final Notice of Acceptability of the Work:*

- a. After conducting a final visit to the Project, the Engineer will determine if the Work is complete and acceptable so that the Engineer may recommend, in writing, final payment to the Contractor.
- b. Accompanying the recommendation for final payment, the Engineer shall also provide a notice to the Authority and the Contractor that the Work is acceptable to the best of the Engineer's knowledge, information, and belief, and based on the extent of the services provided by the Engineer under this Agreement.

3.07 Record Drawings:

A. Upon authorization from the Authority, the Engineer shall:

- 1. Provide record drawings, including the base mapping of all completed Work according to the latest Authority As-Built Standards, using the AutoCAD Version 2018 platform.
- 2. Furnish all AutoCAD files on CD to the Authority.

3. Submit two stamped/signed full size sets, AutoCAD files, .pdf version of the drawings and Project Manual (with addenda) and GPS coordinates no later than one month after final payment of the Work is recommended for approval and in accordance with Authority Standards.

3.08 Authority Program/Procedure Updates:

- A. Upon authorization from the Authority, the Engineer shall:
 1. Revise the Authority's Standard Operating Procedures (SOPs) for the pumping system improvements. Revisions shall be done in accordance with the Authority's existing format.
 2. Revise the Authority's Arc Flash program for the pumping system improvements. Revisions shall be done in accordance with the Authority's existing format.
 3. Revise the Authority's Lock-out Tag-out ("LOTO") program documentation for the pumping system improvements. Revisions shall be done in accordance with the Authority's existing format.

3.09 Service Timeframe. Unless otherwise extended by mutual agreement of the parties, the Engineer will render professional services relating to this Project within the following timeframe:

- A. All services under § 3.02, paragraph A of this Agreement, Basis of Design, shall be completed and delivered to the Authority within 90 days of the issuance of the Authority's notice to proceed. The Basis of Design is complete when the Final Basis of Design Report is submitted to the Authority;
- B. All services under § 3.03 of this Agreement, Design, shall be completed and delivered to the Authority within 210 days of the Authority's approval of Final Basis of Design Report. The Design is complete when the Bid Documents are submitted to the Authority;
- C. All services under § 3.08 of this Agreement, Authority Program/Procedure Updates, shall be completed and delivered to the Authority within 90 days following the contractor's date of Substantial Completion;
- D. All other services should be completed by the end of the project with an estimated completion date of January 19, 2023.

ARTICLE 4 – PAYMENT OF PROFESSIONAL SERVICES

4.01 Lump Sum Payments: The Engineer agrees to accept a lump sum payment for the following services:

- A. ***Basis of Design:*** For services described under § 3.02, paragraph A of this Agreement, the Authority shall pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- B. ***Design:*** For services described under § 3.03 of this Agreement, the Authority shall pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- C. ***Construction and General Services:*** For services described under § 3.04 and § 3.06 of this Agreement, the Authority shall pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- D. ***Record Drawings:*** For services described under § 3.07 of this Agreement, the Authority shall pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- E. ***Authority Program/Procedure Updates:*** For services described under § 3.08 of this Agreement, the Authority shall pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.

4.02 Resident Inspection: For services described under § 3.05 of this Agreement, the Authority shall pay the Engineer the payable hourly rates listed under §4.04, paragraph B and direct non-salary expenses. Overtime premium will be paid at 50% of the Resident Inspectors' direct hourly rate in addition to the payable hourly rate listed under §4.04, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

4.03 Special Services: For services described under § 3.02, paragraph B of this Agreement, the Authority shall pay the Engineer for special services pre-approved by the Authority's Chief Operating Officer in an amount approved by the Authority's Chief Financial Officer.

- A. When the Engineer is performing the special services described in § 3.02, paragraph B of this Agreement, such services will be billed at the fixed rates included in Appendix A 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%.

4.04 Engineering Cost Schedule:

A. *Engineering Costs:*

1. Lump Sum – Basis of Design Cost	\$36,000.00
2. Lump Sum – Design Cost	\$110,600.00
3. Lump Sum – Construction and General Services Cost	\$48,700.00
4. Lump Sum – Record Drawings Cost	\$6,100.00
5. Lump Sum – Authority Program/Procedures Update Cost	\$9,700.00

TOTAL LUMP SUM COST: \$211,100.00

B. *Resident Inspection Costs:*

	Payable Hourly Rate	Employee Direct Hourly Rate
NICET III - Resident Inspector	\$99.00	\$41.25

The Dollar amount for Estimated Resident Inspection is based fixed hour estimate of 1,320 hours of *NICET III - Resident Inspector* Payable Hourly Rate during the duration of the project. Payment will be made for actual hours worked during the duration of construction. Actual hours will vary based on production rates of the Contractor during construction, unforeseen circumstances that develop during construction, and weather conditions.

1. Estimated Resident Inspection	\$130,680.00
2. TOTAL NOT TO EXCEED RESIDENT INSPECTION:	\$150,000.00

C. *Special Services (not to exceed):* \$20,000.00

D. *Other Costs:*

1. Estimated Mileage (IRS rate)	\$0.56 / mile
2. Estimated Copy Costs (per copy)	\$0.10 / sheet
3. Prints (per print)	\$1.00 / print
4. Subcontractor Expenses, invoiced as special services	Cost plus 5% maximum
5. Other Direct Non-Salary Costs	At cost

4.05 Audit: The Authority reserves the right to audit the Engineer's records to verify bills submitted and representations made. For this purpose, the Engineer 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 Engineer's final bill to complete its audit. If the audit establishes an overcharge, the Engineer agrees to refund the excess.

ARTICLE 5 – GENERAL PROVISIONS

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

5.02 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.

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

5.04 Indemnification:

- A. To the fullest extent permitted by law, the Engineer 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 Engineer's performance of professional services provided under this Agreement and those of its subcontractors or anyone for whom the Engineer is legally liable.
- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Engineer 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.

5.05 Confidential Information:

- A. To assist the Engineer in the performance of this Agreement, the Authority may provide the Engineer with confidential information including, but not limited to information relative to the services to be performed. All information received by the Engineer in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Engineer 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 Engineer 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 Engineer shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Engineer's benefit or for the benefit of others shall be permitted.

- C. In no event is the Engineer authorized to disclose confidential information without the prior written approval of the Authority. The Engineer 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.

5.06 Insurance:

- A. The Engineer agrees to 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 B-1.
- B. The Engineer agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Engineer agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Engineer agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority requires the name of the employee, the employee's phone number and email address.
- 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 B-2.

5.07 Copyrights, Trademarks and Licensing: The Engineer agrees all materials or work produced under this Agreement, whether produced by the Engineer 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 Engineer shall, during and after 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.

5.08 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 Engineer 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.

5.09 Conflicts of Interest: The Engineer 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 Engineer from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Engineer 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 Engineer. So long as the Engineer reports such a conflict as required by this section, the Engineer will have no further obligations for completing the scope of services under the terms of this Agreement.

5.10 Additional Conditions: The Engineer 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.

5.11 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.

5.12 Independent Status:

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Engineer, 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 Engineer shall remain an independent contractor responsible for its own actions. The Engineer is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Engineer 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 4.
- C. Neither the Engineer 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 Engineer 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 Engineer agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Engineer further represents and warrants that any income accruing to the Engineer and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

5.14 Force Majeure: Engineer shall not be liable to the Authority for any failure to perform the Services if any such failure is caused by forces beyond Engineer's reasonable control, including without limitation, actions or inactions of any governmental agencies, changes in law, strikes, lockouts, or other industrial disturbances, acts or omissions of third-parties, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics, including issues arising out of the COVID-19 pandemic, which may include without limitation, workforce shortages, lack of necessary supplies or Personal Protective Equipment, travel restrictions, and other restrictions resulting from public guidance and emergency orders.

5.15 Gratuities: The Engineer 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 Engineer 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.

5.16 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 6 – SEVERABILITY

6.01 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 7 – TERMINATION

7.01 The Authority reserves the right to terminate this Agreement in the event it is found that the Certification filed by the Engineer 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 Engineer in accordance with the written notification terms of this Agreement.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

NUSSBAUMER & CLARKE, INC.

By _____
Michael T. Marino, PE, CEO

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of March, in the year 2021, 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 2021, before me personally came Michael T. Marino, PE, to me known, who, being by me duly sworn, did depose and say that he resides in _____, New York, that he is the CEO 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

APPENDIX A

FIXED RATES FOR SPECIAL SERVICES

Grade	Hourly Billing Rate
Principal Land Surveyor	\$230.00
Senior Corporate Associate	\$165.00
Corporate Associate	\$150.00
Project Manager	\$140.00
Project Engineer	\$120.00
Engineer 2	\$105.00
Engineer 1	\$90.00
Sr. CADD Designer	\$120.00
Survey Technician 2	\$85.00
2 Person Survey Crew (NYS Prev Wage)	\$300.00
Administrative Assistant	\$70.00

APPENDIX B-1

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

NEW PUMP STATION AT THE NEWSTEAD WATER STORAGE TANK

ECWA Project No. 202100048

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
- Per Project/Job Aggregate Limit Required
- 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

e. Professional Liability:

- \$2,000,000 Per Claim
- \$2,000,000 Aggregate
- Per Project/Job Aggregate Limit Required

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. Also, at the top of the Certificate of Insurance, please list the project number.

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.



NUSSB-1

OP ID: CC

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/05/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER E.T. Clauss & Co., Inc. 735 Delaware Ave. Buffalo, NY 14209 Eric T. Clauss	CONTACT NAME: Eric T. Clauss PHONE (A/C, No, Ext): 716-886-6600 FAX (A/C, No): 716-886-4128 E-MAIL ADDRESS: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Indemnity</td> <td>25658</td> </tr> <tr> <td>INSURER B: Phoenix</td> <td>25623</td> </tr> <tr> <td>INSURER C: Continental Casualty</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Indemnity	25658	INSURER B: Phoenix	25623	INSURER C: Continental Casualty		INSURER D:		INSURER E:		INSURER F:	
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INSURER D:															
INSURER E:															
INSURER F:															
INSURED Nussbaumer & Clarke Inc. 3556 Lake Shore Road Buffalo, NY 14219-1494															

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	X COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR X Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	680-5H781188-20	12/31/2020	12/31/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	X AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	BA-8A820065-20	12/31/2020	12/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	X UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	CUP-8A821990-20	12/31/2020	12/31/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below		X	XO-UB-8J694715-20	12/31/2020	12/31/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab			AEH591945570	01/01/2021	01/01/2022	Occ/Agg \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Erie County Water Authority is included as Additional Insured on a primary and non contributory basis (General and Auto Liability) -
 Reference: ECWA Project No. 202100048 - New Pump Station at the Newstead Water Storage Tank
 (NC-043/Proj 20J1-0154)

APPROVED/MJM

CERTIFICATE HOLDER**CANCELLATION**

<div style="text-align: center;">X----01</div> Erie County Water Authority Risk Manager 295 Main Street, Suite 350 Buffalo, NY 14203	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (Use street address only) Nussbaumer & Clarke, Inc. 3556 Lake Shore Road Buffalo, NY 14219 Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy) Job # 202100048 – New Pump Station at the Newstead Water Storage Tank (NC-043 / Proj 20J1-0154)	1b. Business Telephone Number of Insured 716-827-8000 1c. NYS Unemployment Insurance Employer Registration Number of Insured 83-500124 1d. Federal Employer Identification Number of Insured or Social Security Number 16-0574460
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Erie County Water Authority Risk Manager 295 Main Street, Suite 350 Buffalo, NY 14203	3a. Name of Insurance Carrier Phoenix Ins Co (Travelers Ins Co) 3b. Policy Number of entity listed in box "1a" UB-8J694715-20 3c. Policy effective period ____ 12/31/2020 ____ to ____ 12/31/2021 ____ 3d. The Proprietor, Partners or Executive Officers are <input checked="" type="checkbox"/> included. (Only check box if all partners/officers included) <input type="checkbox"/> all excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under **Item 3A** on the **INFORMATION PAGE** of the workers' compensation insurance policy). The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The Insurance Carrier will also notify the above certificate holder within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.

Please Note: Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: _____ Eric T. Clauss / ET Clauss & Co., Inc. _____
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: _____ 02/05/2021 _____
(Date)

Title: _____ President _____

Telephone Number of authorized representative or licensed agent of insurance carrier: _____ 716-886-6600 _____

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are **NOT** authorized to issue it.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.



CERTIFICATE OF INSURANCE COVERAGE

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only) NUSSBAUMER & CLARKE, INC. 3556 LAKESHORE RD, SUITE 500 BUFFALO, NY 14219 Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)	1b. Business Telephone Number of Insured 716-827-8000 1c. Federal Employer Identification Number of Insured or Social Security Number 16-0574460
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)	3a. Name of Insurance Carrier Standard Security Life Insurance Company of New York 3b. Policy Number of Entity Listed in Box "1a" 35081-19 3c. Policy effective period 12/27/2020 to 1/12/2022

4. Policy provides the following benefits:

- ☒ A. Both disability and paid family leave benefits.
☐ B. Disability benefits only.
☐ C. Paid family leave benefits only.

5. Policy covers:

- ☒ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
☐ B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 1/13/2021 By 
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (212) 355-4141 Name and Title SUPERVISOR-DBL/POLICY SERVICES

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. Insurance brokers are NOT authorized to issue this form.



APPENDIX B-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. **NC-043**, Project No. **202100048**, **New Pump Station at Newstead Water Storage Tank** with **Nussbaumer & Clarke, Inc.**, a copy of which may be obtained from **Nussbaumer & Clarke, Inc., 3556 Lake Shore Road, Suite 500, Buffalo, New York 14219**.

In accordance with the terms and conditions of the Primary Contract No. **NC-043** 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 \$1,000,000.00 per occurrence and a \$1,000,000.00 aggregate. 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.

E. 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.

F. 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.

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 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]**

[Name of Representative]

[Insert Name by Representative]

(Print name and title)

(Print name and title)

Date:

Date:

APPENDIX C
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.

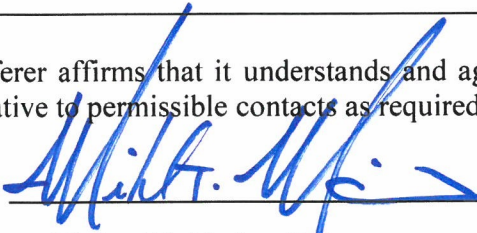
FORM A

**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: 01/14/2021

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

Contractor Name: Nussbaumer & Clarke, Inc.

Contractor Address: 3556 Lake Shore Road, Suite 500, Buffalo, NY 14219

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: 01/14/2021

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

Contractor Name: Nussbaumer & Clarke, Inc.

Contractor Address: 3556 Lake Shore Road, Suite 500, Buffalo, NY 14219

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:

Nussbaumer & Clarke, Inc.Address: 3556 Lake Shore Road, Suite 500, Buffalo, NY 14219

Name and Title of Person Submitting this Form: _____

Michael T. Marino, P.E., Chief Executive OfficerContract Procurement Number: P202100010Date: Revised 12/03/2020

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): No Yes

If yes, please answer the next questions: **Not applicable**

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle): No Yes
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) No Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

(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. Not applicable

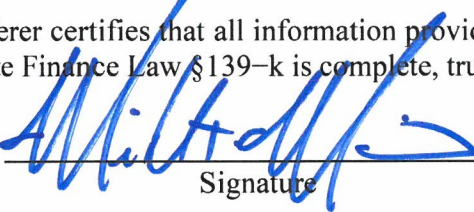
Governmental Entity: _____

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: 01/14/2021
 Signature

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

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(l).

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

<p>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.</p>

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.



Nussbaumer & Clarke, Inc.

(Name of Individual, Partnership or Corporation)

By

(Person authorized to sign)

Michael T. Marino, P.E., Chief Executive Officer