



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

March 13, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer

A handwritten signature in dark ink, appearing to be "MJQ", is written over the name Michael J. Quinn.

Subject: Cooperation and Cost Sharing Agreement
City of Buffalo Interconnection
Hancock Tank Site
PN 202000310

The Erie County Water Authority (Authority) has been working with the City of Buffalo Division of Water (City) to enhance the current network of interconnections between the two systems to make the provision of water more sustainable as well as to provide supplemental supply to the Authority's system in periods of high demand or for emergencies. Through the use of the hydraulic model, a new possible large interconnection site has been identified near the City's Hancock Storage Tank located on Dorrance Avenue in South Buffalo. In order to effectuate this interconnection, a study must be completed to evaluate the feasibility and develop the plan for necessary the capital improvements. The Authority needs to work with the City and their consultant on this project, sharing the cost under this Cooperative Agreement. This concept was presented to the Board during May 13, 2021 staff portion of the meeting and there were at that time no objections. (Please see attached memo dated May 5, 2021).

The Authority's Law and Engineering Departments have been working with the City to develop the terms of the Cooperation and Cost Sharing Agreement and is now requesting Board approval and execution of the agreement.

Budget Information:

Unit: 2520 Eng/Const Control

Item 101703 Hancock Tank Interconnection

Attached find four copies of the Cooperation and Cost Sharing Agreement for execution by the Chairman. Thank you and please feel free to contact me if you have any questions.

MJQ:jmf

Attachments

cc: L.Kowalski

M.McAuley

ECWA-260-2002

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

Contract: _____ **Project No.:** 202000310
Project Description: Cooperation and Cost Sharing Agreement with City of Buffalo
Hancock Tank

Item Description:








- | | | | |
|---------------------------------------------------------------|--------------------------------------------------------|---------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input 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: 3/13/2023
<input checked="" type="checkbox"/> Chief Operating Officer		Date: 3/13/2023
<input checked="" type="checkbox"/> Executive Engineer		Date: 03/13/2023
<input checked="" type="checkbox"/> Director of Administration		Date: 03/13/2023
<input checked="" type="checkbox"/> Risk Manager		Date: 03/13/2023
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 03/13/2023
<input checked="" type="checkbox"/> Legal		Date: 3/13/2023

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: 3/13/2023
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Remarks: _____

Resolution Date: _____ **Item No:** _____

COOPERATION AND COST SHARING AGREEMENT

THIS COOPERATION AND COST SHARING AGREEMENT (the “**Agreement**”) made and entered into as of the Effective Date, as hereinafter defined, by and between the **Buffalo Water Board**, a public benefit corporation of the State of New York, whose principal place of business is 65 Niagara Square, 502 City Hall, Buffalo, New York 14202 (the “**Buffalo Water**”) and the **Erie County Water Authority**, a public benefit corporation of the State of New York, whose principal place of business is 295 Main Street, Room 350, Buffalo, New York 14203 (the “**ECWA**”). Buffalo Water and ECWA are from time to time referred herein as a “**Party**” and collectively as “**Parties**.”

WITNESSETH:

WHEREAS, Buffalo Water owns and operates the water treatment system and water distribution system located in and constituting the City of Buffalo’s water system (collectively the “**Buffalo Water System**”) and ECWA owns and/or operates the water treatment and water distribution system located in and servicing various municipalities located in Erie County (collectively the “**Authority Water System**”); and

WHEREAS, pursuant to General Municipal Law Section 119-o, municipal corporations, including public benefit corporations, are authorized to enter into agreements for the performance, among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis; and

WHEREAS, pursuant to Public Authorities Law Section 1054, ECWA has the power to enter into cooperative agreements for the inter-connection of facilities, the exchange or interchange of services and commodities or for any other lawful purpose; and

WHEREAS, Buffalo Water and ECWA have been working together to enhance the current network of interconnections between their two independent water systems for the purpose of maximizing the scale of economies and sustainability of each independent water system; and

WHEREAS, Veolia Water North America-Northeast, LLC (the “**Veolia**”) is an independent professional manager of the Buffalo Water System and has expertise in the management of public water systems, and in furtherance of its Management Agreement with Buffalo Water will assist Buffalo Water and ECWA to develop the Project, as hereinafter defined; and

WHEREAS, Buffalo Water and ECWA are examining the feasibility of an additional interconnection located near the City of Buffalo and City of Lackawanna border in the vicinity of the Hancock Water Storage Tank in South Buffalo; and

WHEREAS, in response to a request for proposals issued by the City of Buffalo Commissioner of Public Works, Parks and Streets, who also serves as the designated representative of Buffalo Water (the “**City Commissioner**” or the “**Buffalo Water Representative**”), Nussbaumer & Clarke, Inc. (the “**Consultant**”) has proposed to assess the impact of this proposed

new interconnection and is available to conduct a feasibility study with respect to such interconnection; and

WHEREAS, the Consultant has conducted a preliminary analysis of the Buffalo Water System and various facilities within the City of Buffalo (the “**City**”), concluding that under normal operating conditions, Buffalo Water has capacity to supply supplemental water to ECWA at a flow rate of approximately ten (10) million gallons per day (MGD) for emergency usage or during periods of high demands or reduced output from ECWA’s Sturgeon Point Water Treatment Plant; and

WHEREAS, recognizing the potential of the proposed additional interconnection between the Buffalo Water System and the Authority Water System, Buffalo Water proposes that the Consultant conduct a more detailed feasibility study (the “**Project**”) with the cost relating to the Project to be shared between the Buffalo Water and ECWA; and

WHEREAS, the Parties desire to enter into an agreement to share information and the costs of the Project, in the form and substance more particularly described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties acknowledge and agree as follows:

1. Buffalo Water and the Buffalo Water Representative will oversee the Consultant’s performance of the Project, and the Project is more fully outlined in that certain letter from the Consultant to Peter J. Merlo, P.E., the Secretary of Buffalo Water and Principal Engineer with the City’s Department of Public Works, Division of Water, dated October 19, 2021, which is attached hereto and made a part hereof as Appendix A.

2. To facilitate the performance and timely completion of the Feasibility Study Report (as outlined in Appendix A), the Parties agree to meet regularly with the Consultant, to confer and share information and records with each other and to provide such information to the Consultant as they deem necessary and appropriate for performance of the Project. Buffalo Water will also enlist the services of Veolia to meet regularly with ECWA to exchange information and develop the Project. Buffalo Water, will work cooperatively with the City, in furtherance of its consulting agreement with the Consultant to maintain any and all information provided to the Consultant to be maintained as confidential, and not to be disclosed, except as may be subject to disclosure pursuant to the New York Freedom of Information Law, or as may be otherwise required by due process of law or Court order.

3. Upon completion of the Project and approval of the final Feasibility Study Report by both Buffalo Water and ECWA, Buffalo Water agrees to (a) compensate the Consultant for labor and expenses (the “**Consultant Fee**”) and (b) share the Feasibility Study Report with ECWA.

4. Upon receipt of a copy of the approved final Feasibility Study Report and a copy of the Consultant’s final invoice, ECWA agrees to reimburse Buffalo Water in the amount fifty

percent (50%) of the Consultant Fee, based on actual invoices delivered by the Consultant, as approved by the Buffalo Water Representative, provided that the reimbursement by ECWA to Buffalo Water shall not exceed One Hundred Thousand Dollars (\$100,000.00).

5. The City Commissioner and the Buffalo Water Chair, and/or their respective designees and agents, upon consultation with ECWA Engineers shall have discretion to make strategic decisions about the Project, and in doing so shall duly consider the needs and recommendations of ECWA, and shall endeavor to maximize the benefit of Project for both Buffalo Water and ECWA.

6. In the event either Party notifies the other Party of a violation(s) or dispute(s) relating to any of the terms, conditions or performance of this Agreement, and such violation(s) or dispute(s) cannot be resolved among the Parties within thirty (30) days, the Parties agree to submit such violations or disputes to a mutually selected arbitrator. Upon selection of the arbitrator, the Parties shall submit a notice of such violation or dispute, in writing, to the arbitrator, with a specific description of the violation or dispute, together with any supporting documents or information, who shall, determine a resolution of such violation or dispute, within a reasonable time, not to exceed thirty (30) days. The arbitrator's decision shall be final and binding upon the Parties. Notwithstanding anything contained in this Agreement that could be construed to the contrary, it is agreed that in the event that the City determines that a dispute has arisen under this Agreement, the City shall have the unilateral right to terminate this Agreement and not participate in arbitration and in the event of such City termination ECWA shall not be obligated for cost sharing under this Agreement.

7. This Agreement shall be subject to review, negotiation and cancellation, at any time upon no less than thirty (30) days' written notice by the Party seeking such review, negotiation or cancellation; provided, however, that in the event of cancellation, the ECWA shall pay to Buffalo Water the amount, for so much of the compensation due to the Consultant that has been approved by the City Commissioner for work that the Consultant has accomplished by the date of such cancellation, less any payments previously made by ECWA, subject to the provisions of Paragraph 4 of this Agreement.

8. No failure to exercise, and no delay in exercising on the part of the either Party, as the case may be, any right, power or privilege hereunder, shall operate as the waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The terms of this Agreement shall not be waived or modified without the express written consent of both Parties.

9. The Parties hereby covenant, from time to time, to do all acts and to make or enter into and deliver any other instruments as may be necessary or appropriate to effectuate this Agreement.

10. All provisions in the preamble or recitals are incorporated into this Agreement and made a part of this Agreement.

11. This Agreement may be executed in counterparts, by the Parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement. Signatures on counterparts that are delivered via facsimile or electronic means are authorized and shall be accepted by the Parties.

12. This Agreement shall be governed by the Laws of the State of New York, without regard to principles of conflicts of laws.

13. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

14. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contains herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to each subject matter. All paragraphs set forth in the Preamble are incorporated into the body of the Agreement, as though separately and specifically set forth as a term and condition of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ____ date of _____, 2023 (the “Effective Date”).

BUFFALO WATER BOARD

By: _____
Name: Oluwole A. McFoy
Title: Chairperson
Date:

ERIE COUNTY WATER AUTHORITY

By: _____
Name: Jerome D. Schad
Title: Chairperson
Date:

Appendix A

Nussbaumer & Clarke, Inc. Letter Proposal dated October 19, 2021
to City of Buffalo For Proposed Feasibility Report

October 19, 2021

Peter J. Merlo, P.E., Principal Engineer
City of Buffalo
DPW, Division of Water
City Hall, Room 602
Buffalo, NY 14202



RE: Proposal for Engineering Services
ECWA Interconnection near the Hancock Tank
Feasibility Study
Nussbaumer File No. 21P1-0087

Dear Mr. Merlo:

Nussbaumer & Clarke, Inc. (Nussbaumer) is pleased to present this proposal to the City of Buffalo Division of Water (City) for engineering services relative to conducting a Feasibility Study for the proposed Erie County Water Authority (ECWA) interconnection near the City's Hancock Elevated Water Storage Tank (Hancock Tank).

PROJECT UNDERSTANDING

The City and the ECWA have been working together to enhance the current network of interconnections between the two water systems to make the provision of water more sustainable, as well as to provide a supplemental supply to the ECWA system in periods of high demand or for emergencies. Currently there are seven (7) interconnections between the two water systems but only one, located at Texas Street & Lang Avenue in the City, is large enough to provide the needed flow to serve a large portion of the ECWA's system. The other interconnections essentially supply individual neighborhoods.

After some discussions, including a review of water system mapping and hydrant flow test data, the City and the ECWA decided that the City would explore the possibility of providing a supplemental supply of water to the ECWA via an interconnection near the Buffalo/Lackawanna border in the vicinity of the City's Hancock Tank. The proposed interconnection (to be located at McKinley Parkway & Downing Street) would be similar to the existing one at Texas & Lang, where the ECWA can obtain water from the City for use at their Pine Hill Reservoir (and Pump Station) during periods of high demand or for emergencies.

Under an existing consulting contract, the City engaged Nussbaumer to use the City's water system model to assess the impact of this proposed interconnection on the City's water system. The conclusions from this preliminary analysis suggest that a 10 million gallons per day (MGD) rate of flow would be available under normal operating conditions.

Following the completion of the City's preliminary analysis, the ECWA used their water system model and determined that a supplemental flow from the City near the Hancock Tank could potentially provide for an emergency supply to the ECWA Windom Reservoir (and Pump Station). This could effectively assist with supplying their system during reduced output from the Sturgeon Point Water Treatment Plant.

Recognizing the potential of the proposed interconnection the City and the ECWA acknowledged that a more detailed analysis is necessary to determine under what specific conditions in both water systems the supplemental flow could, or more importantly could not, be available as well as to identify any capital improvements to effectuate the proposed interconnection. Due to the mutual benefits of the proposed interconnection, the City and the ECWA decided to undertake the balance of the evaluation via a cooperative agreement and an even split of the cost. Given the work completed to date, the City and the



ECWA also decided that the City would engage Nussbaumer to provide the engineering services for the next phase of the project using the Division of Water / Buffalo Water Board list of qualified Consulting Engineer's pre-selected for this type of project.

City, ECWA, Veolia North America (Veolia), and Nussbaumer representatives then met to discuss the next phase of the proposed interconnection project. At that time, Nussbaumer was asked to provide a proposal for the services required to perform a Feasibility Study for the proposed ECWA interconnection near the City's Hancock Tank.

ASSUMPTIONS

1. The Feasibility Study will consider hydraulics and flow, not water quality. Provisions for feeding chlorine and caustic will be included in the proposed ECWA booster pump station that is needed to deliver the City supply into their water system.
2. The Feasibility Study will consider an emergency supply of up to 20 MGD from the City to the ECWA at the proposed interconnection. It will also consider a simultaneous emergency supply of up to 20 MGD from the City to the ECWA at the Texas & Lang interconnection.
3. The Feasibility Study will consider two alternatives. One for delivering the City supply to the ECWA Windom Reservoir (and Pump Station), and one for delivering the City supply into the ECWA water system at desired HGL elevation (no need to re-pump at Windom). The proposed capital improvements for both are anticipated to consist of the interconnection (with meter and flow control valve), ECWA booster pump station (and reservoir), and related transmission mains. The proposed ECWA booster pump station (and reservoir) will be located outside the City.
4. The ECWA will perform the required water modeling on their system.

SCOPE OF SERVICES

Feasibility Study

1. Conduct a kickoff meeting with City, ECWA, and Veolia personnel. Identify needed record information and GIS mapping/data. Provide associated minutes.
2. Work with the City to establish the operating conditions (physical and demand) that will be used in the City's water model.
3. Use the City's water model to determine the supplemental flow (rate and HGL elevation) that could be available at the proposed interconnection under the established operating conditions.
 - a. Conduct a monthly meeting with City, ECWA, and Veolia personnel to review status and planned progress. Provide associated minutes.
 - b. Prepare/issue a Technical Memorandum that summarizes the findings from the water modeling.
4. Work with the ECWA to determine the capital improvements (conceptual siting, sizing, routing, etc.) needed to deliver the City supply into the ECWA water system for two alternatives (refer to Item No. 3 under Assumptions). The ECWA will perform the required modeling on their water system.



- a. Conduct a monthly meeting with City, ECWA, and Veolia personnel to review status and planned progress. Provide associated minutes.
 - b. Obtain information from public sources such as USDA Natural Resources Conservation Service, FEMA, USEPA, NYSDEC, NYSOPR & Historic Preservation, NYS GIS Clearinghouse, and Erie County.
 - c. Consult with municipalities, approval/permitting agencies, jurisdictional authorities, utility companies, and other involved parties.
 - d. Review information on land ownership, easements, and rights-of-ways provided to Nussbaumer.
 - e. Develop conceptual siting/sizing/routing/etc. of the proposed capital improvements for two alternatives (refer to Item No. 3 under Assumptions).
 - f. Conduct site walk(s) with City and ECWA personnel to observe existing structures, utilities, topography, possible obstructions, etc.
 - g. Prepare/issue a Technical Memorandum that summarizes the findings from the conceptual siting/sizing/routing/etc. and water modeling.
5. Prepare a draft Feasibility Study Report for the proposed ECWA interconnection near the Hancock Tank which summarizes the following:
 - a. Background and purpose.
 - b. Findings.
 - c. Conceptual siting/sizing/routing/etc. of the proposed capital improvements for two alternatives (refer to Item No. 3 under Assumptions).
 - d. Tables, figures, exhibits, sketches/schematics, and appendices.
 - e. Opinion of probable conceptual project cost for two alternatives (refer to Item No. 3 under Assumptions).
 - f. Anticipated conceptual project phasing and schedule (milestone).
 - g. Anticipated special requirements – electrical power transmission lines, railroads, creeks/streams, SEQR, listed environmental sites, flora and fauna, archaeological/heritage, floodway and floodplain, wetlands, coastal zone, SWPPP, subsurface investigations, corrosion evaluations, acquisition of lands/easements/rights-of-way, jurisdictional authorities (M&PT, restoration) and approval agencies, and large-scale projects which may influence the decision process.
6. Conduct two (2) meetings with City, ECWA, and Veolia personnel to review the draft Feasibility Study Report:
 - a. Provide associated minutes.
 - b. Incorporate comments into a final version and supply electronic (pdf) file and hard copies of report.
7. Contingency Allowance

The City and/or the ECWA may require Nussbaumer to perform work that is outside the scope of services described above on an as needed/authorized basis, and/or provide other services and perform additional work as requested by the City and/or the ECWA, in order to carry out the project. Examples include, but are not necessarily limited to, the following:

 - a. Preparation of grant application(s).
 - b. Hydrant flow testing and/or pressure monitoring (data logging).
 - c. Field survey to determine ground and/or gauge elevations.
 - d. Field testing to validate results of water modeling.

Peter J. Merlo, P.E,
City of Buffalo
October 19, 2021



The standard of care for the professional services performed or furnished by Nussbaumer under this Agreement will be the care and skill ordinarily used by members of the surveying and/or engineering profession(s) practicing under similar circumstances at the same time and in the same locality. Nussbaumer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by our company.

Should applicable federal, state, or local laws, codes, rules, regulations and / or standards change during the course of this project, Nussbaumer reserves the right to renegotiate the stated fee.

COMPENSATION AND PAYMENT

Nussbaumer proposes to perform the work described above on a per diem basis (hourly labor plus expenses per attached Hourly Rate Table, which is based upon the work being completed in 2022) for the following estimated amounts:

Feasibility Study	\$ 200,000.00
Includes \$25,000 for Contingency Allowance	
Scope of services, fees, and method of payment (lump sum or hourly) to be negotiated at the time the service is requested.	

It is understood the amount set forth herein is an estimate of the noted scope specific efforts and shall not be exceeded without written approval of the City and the ECWA. Nussbaumer reserves the right to request additional amount(s), accompanied with written explanation, should the estimated amount(s) be insufficient to complete the work.

Costs shall be billed monthly based upon the time expended, as determined by Nussbaumer. Amounts billed are due and payable within thirty (30) days of the date of the invoice. Costs and conditions included in this proposal are valid for a period of thirty (30) days from the date of this proposal. After execution of this contract, should the work be halted for reasons beyond the control of the Engineer, Nussbaumer shall be paid for all work accomplished up to the date of our receipt of a written order to suspend work.

Nussbaumer appreciates the opportunity to submit this proposal and looks forward to working with the City and the ECWA on this project. We are available at the City's and the ECWA's convenience should either party desire to discuss any aspect of this proposal.

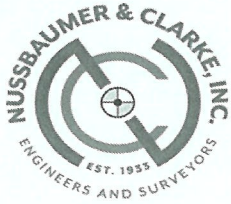
Sincerely,

NUSSBAUMER & CLARKE, INC.

Gary Muffoletto, P.E.
Vice President, Engineering

Attachment: Hourly Rate Table

c: File – 01 (w/attach.)



CORPORATE OFFICE
 3556 Lake Shore Road
 Suite 500
 Buffalo, NY 14219-1494
 Phone: (716) 827-8000
 Fax: (716) 826-7958

BRANCH OFFICES
 Lockport
 North Tonawanda
 East Aurora

HOURLY RATE TABLE

Job Title	Hourly Rate
Principal Engineer / Principal Surveyor	\$237.00
Sr. Associate Engineer / Surveyor	\$170.00
Associate Engineer / Surveyor	\$155.00
Project Manager	\$145.00
Sr. Project Engineer	\$139.00
Project Engineer / Project Architect	\$124.00
Engineer 2	\$108.00
Engineer 1	\$93.00
Sr. CADD Designer	\$124.00
CADD Designer	\$105.00
CADD Technician	\$93.00
Engineering Technician	\$83.00
Landscape Architect	\$113.00
Project Surveyor	\$129.00
Survey Technician 3	\$103.00
Survey Technician 2	\$88.00
Survey Technician 1	\$77.00
1 Person Survey Crew	\$160.00
1 Person Survey Crew (Prevailing Wage)	\$200.00
2 Person Survey Crew	\$180.00
2 Person Survey Crew (Prevailing Wage)	\$300.00
Construction Administrator	\$103.00
Sr. Construction Observer	\$113.00
Construction Observer	\$93.00
Grant Writer	\$72.00
Administrative Assistant	\$72.00
Testimony/Court Attendance (above rate for Job Classification - 4 Hour Minimum Charge)	

Fixed Costs

Mileage	at Current Federal Rate
Expenses such as Tolls, Copies, Printing	at Cost
Subconsultant or Third Party Expense	at Cost plus 10%