



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

September 1, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer *LFK*

Subject: Environmental Facilities Corporation Funding Agreement for  
Contract MP-084 (PN 202000084) Water System Improvements, Transmission Main  
Installation, Town of Tonawanda.  
Contract MP-088 (PN 202100111) Sturgeon Point Water Treatment Plant Washwater  
Tank Replacement.  
Contract MP-090 (PN 202200014) Sturgeon Point Water Treatment Plant Filtration  
Piping, Valve, and Underdrain System Improvements  
ECWA Project No. 202300190

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ECWA was awarded a grant for the above referenced projects in the not to exceed amount of \$20,000,000. The grant is being administered by the Environmental Facilities Corporation (EFC).

EFC has requested that the agreement be properly executed and returned via email to Brian Hahn, Program Manager ([brian.hahn@efc.ny.gov](mailto:brian.hahn@efc.ny.gov)). Once received, EFC will countersign and email back a fully executed agreement.

The following material is attached:

- Blue Authorization Form. The Blue Authorization Form is requesting Board Authorization for the Chairman to execute the agreement.
- One copy of the Funding Agreement between Erie County Water Authority and New York State Facilities Corporation dated as of August 22, 2023.

LFK:jmf  
Attachments  
cc: L.Lester  
ECWA-263-2301

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

<b>Contract:</b> _____	<b>Project No.:</b> 202300190
<b>Project Description:</b> Environmental Facilities Corporation Funding Agreement for Contract MP-084, MP-088, and MP-090.	

**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: 8/30/2023
<input type="checkbox"/> Chief Operating Officer	_____	Date: _____
<input checked="" type="checkbox"/> Executive Engineer		Date: 09/08/2023
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 09/06/2023
<input checked="" type="checkbox"/> Legal		Date: 9-8-2023

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority		Date: 9/8/2023
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**Remarks:** EFC Funding Agreement Execution.

<b>Resolution Date:</b> _____	<b>Item No:</b> _____
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FUNDING AGREEMENT

between

ERIE COUNTY WATER AUTHORITY

and

NEW YORK STATE  
ENVIRONMENTAL FACILITIES CORPORATION

Dated as of August 22, 2023

This FUNDING AGREEMENT, dated as of the date set forth on the cover page, is between the Erie County Water Authority (the “Recipient”) and the New York State Environmental Facilities Corporation (the “Corporation”).

WITNESSETH:

WHEREAS, the Corporation is empowered under the NYSEFC Act to provide financial assistance to eligible recipients for the planning, design, and construction of projects that provide a water quality benefit; and

WHEREAS, the State of New York (the “State”) has made funding available to the Corporation to support municipal water quality infrastructure programs; and

WHEREAS, the Recipient will finance, procure and provide the services necessary to complete certain municipal water quality infrastructure projects described herein; and

WHEREAS, on the basis of Recipient’s approved Municipal Water Quality Infrastructure Program Funding Form, and the representations, warranties and covenants set forth in this agreement, the Corporation proposes to make funding available for the benefit of the Recipient in accordance with Article III of this agreement, to fund costs incurred for the benefit of the Recipient in connection with the Project, and the Recipient desires to receive such funding upon the terms and conditions set forth in this agreement.

NOW THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

**ARTICLE I  
GENERAL PROVISIONS**

Section 1.1 Definitions.

Unless stated otherwise, each capitalized term used in this Agreement has the meaning specified for it in **Exhibit B**.

Section 1.2 Effective Date and Term.

This Agreement is effective and enforceable as of the date on the cover page following its execution by the Recipient and the Corporation, and it will remain in full force and effect until March 31, 2027, unless extended by written agreement of the parties.

Section 1.3 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement are incorporated into, and made a part of, this Agreement.

Section 1.4 Amendments.

This Agreement may not be amended except by an instrument in writing signed by each of the parties. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The exchange of copies of signature pages by scanned portable document format (“.pdf”) e-mail attachment shall constitute effective execution of this Agreement. Scanned .pdf copies of this Agreement shall have the same force and effect as an original.

Section 1.5 Applicable Law.

This Agreement is governed by and construed in accordance with the laws of the State.

Section 1.6 Consent to Jurisdiction.

To the fullest extent permitted by law, the parties consent to the initiation of any proceedings to enforce the terms of this Agreement in any court of competent jurisdiction within the State of New York and, if applicable, agrees not to assert the defense of sovereign immunity in any such proceedings.

Section 1.7 No Warranty Regarding Condition, Suitability or Cost of Project.

The Corporation makes no warranty, express or implied, as to the work required by the Project or that it will be suitable for the Recipient's purposes or needs, or that the funding provided under this Agreement will be sufficient to pay the costs of the Project. The Recipient is solely responsible to plan, design, and build the Project properly, and to operate and maintain the Project effectively, as required by laws, regulations, permits and good management practices. The Recipient acknowledges and agrees that the Corporation is not responsible for increased costs resulting from defects in the plans, design drawings and specifications, or other Project documents. Nothing in this section prohibits the Recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

Section 1.8 Notices.

All notices or other communications under this Agreement must be sufficiently given, and will be deemed given, when delivered in writing to the address or e-mail of the identified party or parties set forth on the signature page of this Agreement, or to such other address, facsimile number, or e-mail as the appropriate party may hereafter designate by notice in writing given to the others.

Section 1.9 Severability.

If any provision of this Agreement is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of the Recipient.

As of the date set forth on the cover page, the Recipient represents and warrants as follows:

(a) The Project description stated in **Exhibit A** is an accurate description of the scope of activities to be funded, in whole or in part, with the funding provided under this Agreement.

(b) The Estimated Project Costs as shown in **Exhibit C** represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project.

(c) All documentation and information provided to the Corporation in connection with this Agreement is accurate in all respects and the Recipient acknowledges that the Corporation is executing this Agreement and providing funding in reliance upon the accuracy of such documentation and information.

(d) The Recipient has obtained all necessary approvals required to undertake the Project. The Recipient further represents that to the extent required it has complied with the State Environmental Quality

Review Act, Section 14.09 of the State Historic Preservation Act, and all other applicable federal, state and local laws, ordinances and regulations.

### **ARTICLE III AGREEMENT TO PROVIDE FUNDING**

#### Section 3.1     Agreement to Provide Funding for Project Costs.

Subject to the conditions and in accordance with the terms of this Agreement, the Corporation shall provide funding for the benefit of the Recipient in an aggregate amount not to exceed \$20,000,000 in the form of grant. The Corporation shall disburse funds to an account administered by the Recipient pursuant to a disbursement request submitted by the Recipient to the Corporation in the form of **Exhibit D**. Each such disbursement request must include sufficient documentation to demonstrate that the Recipient has incurred the Project costs for which the disbursement is requested and be approved by the New York State Department of Health (the “Department”).

Additionally, the Recipient shall promptly submit proof of payment for all disbursements provided by the Corporation to the Recipient under this Agreement. The Corporation shall have no obligation to process any disbursement requests until satisfactory proof of payment has been received for all prior disbursement requests. The Corporation shall have no obligation to make disbursements more frequently than once per week. If applicable, notwithstanding anything herein to the contrary, proceeds will not be disbursed for costs of construction of the Project, other than planning and design, unless and until the plans and specifications for the Project have been approved or accepted by the Department, the Recipient has submitted all items requested in such approval, and the Recipient has complied with any other conditions of such approval.

#### Section 3.2     Source of Funding; Nature of Obligation.

The Corporation shall provide funding pursuant to this Agreement solely from appropriated moneys made available to it for such purpose. The Corporation has no obligation to make any disbursements and no obligation shall be incurred by the State or the Corporation in excess of the moneys made available for that purpose. The Corporation will retain custody and control over the appropriated funds which will only be made available upon submission to the Corporation of documentation of incurred Project costs and approval thereof by the Corporation.

### **ARTICLE IV COVENANTS**

#### Section 4.1     Project Compliance.

The Recipient shall complete the Project in compliance with all applicable federal, State and local laws and regulations and this Agreement to ensure the availability of the Project for its intended purposes, protect water quality, and ensure the safety of the public and public health.

#### Section 4.2     Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities (“EEO”) for Minority Group Members and Women.

The Corporation and the Recipient acknowledge the importance of providing business participation opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”) and equal employment opportunities (“EEO”) for minority group members and women in the performance of contracts and subcontracts for the Project (hereinafter referred to as “Contracts” and “Subcontracts”). Accordingly, the Corporation encourages the Recipient, and the Recipient agrees to encourage contractors and subcontractors, to comply with the provisions of New York State Executive Law Article 15-A and 5 NYCRR

Parts 140-145 for Contracts and Subcontracts with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

(a) *Equal Employment Opportunities.* The Corporation encourages the Recipient, and the Recipient will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO refers to the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) *Business Participation Opportunities for MWBEs.* The Corporation encourages the Recipient, and the Recipient will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to make good faith efforts to promote and assist the participation of MWBEs on Contracts and Subcontracts. The directory of New York State Certified MWBEs can be found at: <https://ny.newnycontracts.com>. The Recipient will provide information on any MWBE participation on Contracts and Subcontracts to the Corporation on an MWBE Utilization Plan prior to or at the time of final disbursement under this Agreement. The Recipient will also provide information on any payments made to MWBEs for work performed on Contracts and Subcontracts to the Corporation prior to or at the time of final disbursement under this Agreement.

Section 4.3 Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses (“SDVOB”).

The Corporation and the Recipient acknowledge the importance of providing business participation opportunities for New York State certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”) in the performance of Contracts and Subcontracts. Accordingly, the Corporation encourages the Recipient, and the Recipient agrees to encourage contractors and subcontractors, to comply with the provisions of New York State Executive Law Article 17-B and 9 NYCRR Part 252 for Contracts and Subcontracts with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. The Corporation encourages the Recipient, and the Recipient will encourage contractors and subcontractors performing work pursuant to Contracts or Subcontracts, to make good faith efforts to promote and assist the participation of SDVOBs on Contracts and Subcontracts. The directory of New York State Certified SDVOBs can be found at: <https://ogs.ny.gov/Veterans/>. The Recipient will provide information on any SDVOB participation on Contracts and Subcontracts to the Corporation on a SDVOB Utilization Plan prior to or at the time of final disbursement under this Agreement. The Recipient will also provide information on any payments made to SDVOBs for work performed on Contracts and Subcontracts to the Corporation prior to or at the time of final disbursement under this Agreement.

Section 4.4 Use of Funding.

The Recipient shall use the funding provided pursuant this Agreement solely for Project costs in accordance with this Agreement and shall reimburse the Corporation if it fails to do so. The Recipient shall not use materials, equipment, or personnel paid for with funding pursuant to this Agreement for any activity other than those provided for under this Agreement.

Section 4.5 Prevailing Wage Requirements.

The Recipient shall comply, in all applicable respects, with the prevailing wage requirements under

Article 8 of the Labor Law.

Section 4.6     Procurement.

The Recipient shall comply with all federal, State and local laws and regulations pertaining to any procurement for contracts whose payment obligations are to be satisfied with funding provided pursuant to this Agreement. The Recipient shall not enter into a contract or subcontract with any party deemed to be ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b. In addition, the Recipient shall not enter into a contract or subcontract with any party deemed to be ineligible to submit a bid under Executive Law § 316.

Section 4.7     Project Approvals.

The Recipient shall obtain all necessary approvals from all governmental agencies requisite to the completion of the Project and shall comply with any requirements and/or conditions included in such approvals.

Section 4.8     Payment of Additional Project Costs.

The Recipient shall promptly complete the Project. The Recipient shall pay any Project costs in excess of the funding provided pursuant to this Agreement, and the Recipient shall not be entitled to any reimbursement or funding for such excess costs from the Corporation.

Section 4.9     Non-Discrimination Requirements.

Pursuant to Article 15 of the Executive Law (also known as the New York State Human Rights Law), and all other State and federal statutory and constitutional non-discrimination provisions, the Recipient and any contractors/subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if the Project involves the construction, alteration, or repair of any public building or public work, the Recipient agrees that neither it nor its contractors/subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. The Recipient shall be subject to fines of \$50.00 per person per day for any violation of Labor Law § 220-e or § 239.

Section 4.10    Indemnification.

To the fullest extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless the Corporation against any loss or liability arising out of any claim or action brought against the Corporation for death, injury or damage to persons or property occurring in connection with the planning, design, construction, operation or maintenance of the Project. In each case, such obligation of the Recipient shall be conditioned upon (i) prompt written notice, by the Corporation to the Recipient, of the institution of any such claim or action and (ii) the assignment, by the Corporation to the Recipient, of the right to conduct the defense of any such claim or action, provided that such defense shall be undertaken by counsel reasonably satisfactory to the Corporation, and provided further that, absent the Corporation's prior written consent, no settlement, compromise or other voluntary resolution shall be entered into which would impose any liability or obligation on the Corporation. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against the Corporation with respect to any such claim or action and any settlement, compromise or other voluntary resolution thereof.



Section 4.11 Accounting and Records.

(a) *Establishment of Project Accounts.* The Recipient shall maintain Project accounts in accordance with generally accepted government accounting standards and any instructions of the Corporation.

(b) *Access to Records.* The Recipient shall: (i) permit the Corporation, or its authorized representatives to review or audit all records relative to this Project, subject to 15 calendar days prior written notice; (ii) produce or cause to be produced all records relating to any work performed under the terms of this Agreement for examination at such times as may be designated by the Corporation or its authorized representatives; (iii) permit extracts and copies of Project records to be made by the Corporation or its authorized representatives; and (iv) promptly fulfill information requests by any of the Corporation or its authorized representatives.

(c) *Access to Project and Work.* The Recipient shall permit agents, consultants and representatives of the Corporation to have access to the Project and its components at all reasonable times, provided the aforementioned do not interfere with the work and progress of the Project. All contracts of the Recipient for all or any portion of the Project must contain provisions that permit such access to the Project, and require the contractor to provide access and inspection, and shall permit extracts and copies of Project records to be made by the Corporation, or its authorized representatives.

(d) *Record Retention.* The Recipient shall retain Project files and records for the term of this Agreement plus six (6) years.

**ARTICLE V  
BREACH OF THIS AGREEMENT; REMEDIES**

Section 5.1 Events of Breach.

The occurrence of any of the following shall be a breach of this Agreement, if not cured within thirty (30) days after written notice thereof is received:

(a) *Misrepresentation.* Any warranty, representation or other statement made by or on behalf of the Recipient pursuant to or in connection with this Agreement, is false or misleading.

(b) *Other Failure to Perform.* The Recipient fails to perform and/or comply with any covenant or condition under this Agreement, including but not limited to failure to use the funding provided under this Agreement solely for Project costs.

Section 5.2 Remedies.

Upon the occurrence of a breach of this Agreement, the Corporation may take whatever action at law or in equity may appear necessary or desirable to remedy the breach, in addition to the remedies below. Failure by the Corporation to exercise, or delay in exercising, any right or remedy under this Article V does not operate as a waiver of the right or remedy.

(a) *Reimbursement of Funding.* Notwithstanding anything herein to the contrary, upon the occurrence of a breach, the Corporation may upon written notice to the Recipient, require the Recipient to repay to the Corporation all funding paid pursuant to this Agreement. Upon such notification, such funding shall become immediately due and payable.

(b) *Nonexclusive Remedy.* If the Corporation determines that the Recipient or any Authorized Person is not complying with federal or State laws, regulations or requirements of the

Corporation relating to the Project or terms of this Agreement, the Corporation may, in addition to exercising any or all of the remedies described herein, exercise any or all of the remedies otherwise provided by federal or State law or regulations, at law or in equity, including but not limited to rights to seek injunctive relief or specific performance.

(c) *Right to Remedial Action.* Nothing in this Agreement affects the right of the Corporation to take remedial action including but not limited to administrative enforcement action and actions for breach of contract if the Recipient fails to carry out its obligations under this Agreement.

*[Space Intentionally Left Blank/Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have each caused this Agreement to be executed and delivered as of the date first written above.

**ERIE COUNTY WATER AUTHORITY**

I certify that I am authorized to sign this Agreement and that I have been duly and formally delegated or designated as the authorized signatory and have the authority to agree to all of the terms and conditions of this Agreement.

By: \_\_\_\_\_  
Jerome D. Schad  
Chair

Notice Address:

Erie County Water Authority  
Attn: Chair  
295 Main Street  
Room 350  
Buffalo, NY 14203-2494

**NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION**

By: \_\_\_\_\_  
Maureen A. Coleman  
President and CEO

Notice Address:

New York State Environmental Facilities Corporation  
Attn: President  
625 Broadway  
Albany, New York 12207-2997

## EXHIBIT A

### PROJECT DESCRIPTION

#### Transmission Main Redundancy Project

The project consists of the installation of approximately 4,100 LF of new 48-inch transmission main and appurtenances from the southernmost point on Brookside Terrace West (in the City of Tonawanda) easterly to a point approximately 325 feet west of Military Road in the Town of Tonawanda. The new transmission main will parallel an existing ECWA 48-inch transmission main, adding a redundant pipe to the distribution system. The project is defined by the engineering report entitled “Contract MP-84: Town of Tonawanda Water System Improvements” dated February 2021 and the bid documents (drawings and project manual) entitled “Contract MP-84: Water System Improvements Transmission Main Installation Town of Tonawanda Project No. 202000084” dated May 2022, by the engineering firm Arcadis of New York, Inc

#### Sturgeon Point Water Treatment Plant Project

The project consists of the following work:

- Filter Nos. 1-10 Improvements: Complete rehabilitation of all filters including piping, valves, underdrain system, and filter media, and installation of high-capacity filter-to-waste piping. The underdrain system is being upgraded to a modern technology utilizing a combination air-water backwash to clean the filters more effectively, simultaneously optimizing water and energy use.
- Filter Valve Replacements: Replacement of over 60 filter valves including the inlet, effluent, wash water supply, waste and drain valves, ranging in size from 12 to 48-inches in diameter.
- Building Construction: Construction of a new building to house the equipment for the air backwash system and emergency generator; extension of the existing filter and chemical buildings to accommodate flow metering equipment, piping, and valves for the new filter to waste and washwater supply systems.
- HVAC Improvements: Installation of dehumidification and ventilation equipment to address current issues with the corrosion of exposed metal surfaces and electrical/instrumentation equipment.
- Washwater Tank: The construction of a new 1.14-million-gallon washwater tank to supply the filter backwash system. The new tank will be an American Water Works Association (AWWA) D-110, Type III prestressed concrete tank constructed to the west of the existing Filter Building. Project will also include a new 42-inch diameter washwater inlet/outlet pipe, a 12-inch diameter tank drain, and 18-inch diameter tank overflow piping.

The filter work, valve replacements, building construction and HVAC improvements are defined by the engineering report entitled “Sturgeon Point Water Treatment Plant Filtration Piping, Valve, and Underdrain Systems Improvements, Basis of Design Report, Contract MP-090” dated March 2022 and the bid documents (drawings and project manual) entitled “Contract No. MP-90 (G-General, H-HVAC, P-Plumbing, E-Electrical) ECWA Project No 202200014 Sturgeon Point Water Treatment Plant Filtration Piping, Valve, and Underdrain System Improvements” dated May 2023, by the engineering firm Arcadis of New York, Inc.

The washwater tank portion of the work is defined by the engineering report entitled “Preliminary Engineering Report, Sturgeon Point Water Treatment Plant Washwater Tank Replacement, Contract MP-088” dated September 2022 and the bid documents (drawings and project manual) entitled “Contract MP-88 Sturgeon Point Water Treatment Plant Washwater Tank Replacement Project No. 20210011” dated December 2022, by the engineering firm Arcadis of New York, Inc.

## **EXHIBIT B**

### **DEFINITIONS**

Capitalized terms used in this Agreement, unless otherwise defined herein, have the meanings set forth in this **Exhibit B**.

“Agreement” means this Funding Agreement, dated as of the date set forth on the cover page between the Recipient, and the Corporation.

“Authorized Person” means a person so authorized to act on behalf of the Recipient in connection with execution of this Agreement and the submittal of disbursement requests.

“Corporation” means the New York State Environmental Facilities Corporation established under the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented., and any entity which may succeed to its rights and duties.

“Department” means the New York State Department of Health.

“Estimated Project Costs” means the projected costs of the Project that are eligible for funding, as set forth in **Exhibit C**.

“NYSEFC Act” means the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the Public Authorities Law and Chapter 43-A of the Consolidated Laws of the State of New York, as from time to time amended and supplemented.

“Project” means the project described in **Exhibit A**.

“Recipient” means the Erie County Water Authority.

“State” means the State of New York.

**EXHIBIT C**

**ESTIMATED PROJECT COSTS**

<b>Total Estimated Project Cost</b>	<b>\$ 20,000,000</b>
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## EXHIBIT D

### DISBURSEMENT REQUEST FORM

REQUEST NO. \_\_\_\_\_

Dated as of \_\_\_\_\_, 202\_\_

All capitalized terms used but not defined herein have the respective meanings set forth in the Funding Agreement, dated as of August 22, 2023 between the Recipient and the Corporation.

I, the undersigned and Authorized Person of the Recipient, hereby certifies and agrees as follows:

1. With respect to the Recipient, all representations and warranties of the Recipient as set forth in Article II of the Agreement are still valid and effective as of today's date.

2. This request is being delivered pursuant to the Agreement.

3. The Corporation is hereby requested to make a disbursement under the Agreement in the amount of \$ \_\_\_\_\_ for Project costs.

4. The Recipient has determined that such Project costs are reasonable, necessary, and allocable to the Project under generally accepted governmental accounting standards.

5. This disbursement, if made, together with any prior disbursements made under the Agreement, will not exceed the total amount of funding available pursuant to the Agreement.

6. The Recipient hereby represents and warrants that it is not in breach of the Agreement, that it has performed all of the covenants and agreements that it is required to perform under the Agreement, that the making of the payment requested has been duly authorized by the Recipient, and that no change in circumstances has occurred, or will occur upon the making of the payment hereby requested, which would constitute a breach under the Agreement.

7. All amounts requested hereunder are for eligible Project costs which have not been included in any previous disbursement, and have not been previously paid using the proceeds of any other third-party source of funding.

8. If disbursement is requested for payment for costs of construction, the Recipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project, or to cause the Project to be undertaken.

9. The Recipient has complied with all applicable public bidding requirements in connection with the Project including, but not limited to, the requirements of General Municipal Law Section § 101.

10. The Recipient has encouraged the participation of MWBEs and SDVOBs on contracts and subcontracts for the Project. The Recipient has provided the Corporation with information on any MWBE and SDVOB participation, by submission of an MWBE and/or SDVOB Utilization Plan as applicable, and any payments made to MWBEs and SDVOBs.

11. The Recipient agrees that payment made pursuant to this disbursement request shall be

transmitted by the Corporation in accordance with the following wire instructions:

Wire Instructions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ERIE COUNTY WATER AUTHORITY

By: \_\_\_\_\_  
Name:  
Title:

---

**DEPARTMENT USE ONLY**

The New York State Department of Health has reviewed this Disbursement Request and any accompanying invoices or documentation of costs incurred, and approves the request in the amount of:

\$\_\_\_\_\_.

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Date)

Name:\_\_\_\_\_

Title:\_\_\_\_\_