



**ERIE COUNTY WATER AUTHORITY**  
**INTEROFFICE MEMORANDUM**

April 10, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Michael W. Wymer, Senior Production Engineer *MWW*

Subject: Contract LA-007  
New ECWA Operations Center  
ECWA Project No. 202300077

---

The Erie County Water Authority (ECWA) issued a Request for Proposal (RFP) for engineering/architectural consulting services for the design and construction of the New ECWA Operations Center, to be located on the recently purchased 60-acre parcel on North America Drive in the Town of West Seneca.

Seven firms (Bergmann, Carmina-Wood, Canon Design, Hunt EAS, Labella Associates, Trautman, and Young + Wright) were issued the RFP. An additional five firms (CPL, EI Team, Kideney Architects, RDHA, and Wm Schutt Associates) obtained the RFP through the posting on our website.

Seven firms chose to submit proposals for this project: Carmina Wood, CPL, EI Team, Hunt EAS, Labella Associates, Trautman, and Young + Wright (Note: recognition of the submittal by CPL was inadvertently omitted from the March 13, 2023, memo to the Board). Five firms chose not to submit a proposal (Bergmann, Canon Design, Kideney Architects, RDHA, and Wm Schutt Associates). This is a single project requiring one consulting firm.

Labella Associates provided an experienced project team to perform the work related to the New ECWA Operations Center and demonstrated experience with similar work of comparable sized facilities including an operation center for a large water utility. Their approach showed an understanding of the necessary project process and workflow and they acknowledged completion of the work will be in accordance with the durations identified in the RFP. Their fee was carefully reviewed and is appropriate for the level of effort and detail requested in the RFP.

Therefore, the Engineering Department recommends execution of a Professional Services agreement with Labella Associates.

The following material is attached:

- Authorization Form requesting Board Authorization to execute the attached Professional Service Contract with LaBella Associates.
- Professional Service Contract for the above-referenced project.
- Copy of Interoffice Memorandum from Leonard F. Kowalski, Executive Engineer, dated March 13, 2023, detailing recommendations for the contract assignment after review of Request for Proposals (PN 202200119).

This project, budgeted for design in 2023 and construction in 2024, will consist of the design and construction of a New Operations Center, to be located on Authority property on North America Drive in the Town of West Seneca. For additional project details and scope of work please refer to the Professional Service Agreement for Engineering Services – Contract LA-007.

**Budget Information:**

Unit: 3070 Facilities

Item 101334 Comprehensive Facilities Plan – Phase 2, Design of New Service Center Facility

MWW:jmf

Attachments

cc: L.Kowalski

L.Lester

CONT-LA-007-2301-X-01



## ERIE COUNTY WATER AUTHORITY

### INTEROFFICE MEMORANDUM

March 13, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, PE, Executive Engineer

A handwritten signature in blue ink, appearing to be "L.F. Kowalski", is written over the printed name of the sender.

Subject: Request for Proposals  
New ECWA Operations Center  
ECWA Project No. 202200119

---

The Erie County Water Authority (ECWA) issued a Request for Proposal (RFP) for engineering/architectural consulting services for the design and construction of the New ECWA Operations Center, to be located on the recently purchased 60-acre parcel on North America Drive in the Town of West Seneca.

Seven firms (Bergmann, Carmina-Wood, Canon Design, Hunt EAS, Labella, Trautman, and Young + Wright) were issued the RFP. An additional four firms (Wm Schutt Associates, EI Team, Kideney Architects, and RDHA) obtained the RFP through the posting on our website. 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 administrative staff. Experience, staffing, scope, and project approach were considered. It was determined that each firm possessed relevant qualifications to perform the work proposed. Four firms, Carmina-Wood, Hunt EAS, Labella Associates, and Young + Wright were invited for follow-up interviews which included a discussion of the related experience of each firm and how that experience would be applied to the New ECWA Operations Center project.

Labella Associates provided an experienced project team to perform the work related to the New ECWA Operations Center and demonstrated experience with similar work of comparable sized facilities including an operation center for a large water utility. Their approach showed an understanding of the necessary project process and workflow and they acknowledged completion of the work will be in accordance with the durations identified in the RFP. Their fee was carefully reviewed and is appropriate for the level of effort and detail requested in the RFP.

The Engineering Department will move forward with the preparation of a Professional Services agreement with Labella Associates.

MWW:jmf  
cc: L.Kowalski  
M.Wymer  
L.Lester

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

**Contract:** LA-007 **Project No.:** 202300077  
**Project Description:** New ECWA Operations Center.

**Item Description:**

<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 Production Engineer	<u><i>Richard Wynn</i></u>	Date: <u>4/10/2023</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>Jemaid F. Koudali</i></u> For RJS	Date: <u>04/10/2023</u>
<input checked="" type="checkbox"/> Executive Engineer	<u><i>Jemaid F. Koudali</i></u>	Date: <u>04/10/2023</u>
<input checked="" type="checkbox"/> Director of Administration	<u><i>Raymond Justice</i></u>	Date: <u>04/10/2023</u>
<input checked="" type="checkbox"/> Risk Manager	<u><i>Molly Jo Musara</i></u>	Date: <u>4/10/2023</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>Jeffery...</i></u>	Date: <u>04/10/2023</u>
<input checked="" type="checkbox"/> Legal	<u><i>[Signature]</i></u>	Date: <u>4/10/2023</u>

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority	<u><i>[Signature]</i></u>	Date: <u>4/10/23</u>
--	---------------------------	----------------------

**Remarks:** \_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT  
FOR ENGINEERING SERVICES**

This Agreement, effective as of April 20, 2023 (“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

**LABELLA ASSOCIATES, DPC**

300 Pearl Street, Suite 130  
Buffalo, New York 14202

hereinafter referred to as the “Consultant.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to the investigation, design, and construction of improvements for a New Operations Center (the “Project”).

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

**ARTICLE 1 – THE PROJECT**

**1.01** The Consultant shall provide engineering services for the Project, which consists of the design and construction of a New Operations Center, to be located on Authority property on North America Drive in the Town of West Seneca. All engineering services for the Project will be performed under this Agreement. The Consultant will provide the Authority with integrated set(s) of design documents (as identified by Phase) incorporating the components and related components of the Project, with services during construction, as described below.

**1.02** The Consultant shall provide engineering services for the following tasks:

- A. Project Initiation.
- B. Phase 1 Basis of Design Report including concept level site and building layouts, scheduling, and planning-level cost estimating
- C. Phase 2 Design, Bidding, General Services, and Resident Inspection for Site Grading.
- D. Phase 2 Record Documents.

## ARTICLE 2 – COMPLIANCE STANDARDS

### 2.01 Standard of Performance

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

### 2.02 Compliance with Laws and Regulations, and Policies and Procedures

- A. The Authority and the Consultant shall comply with all applicable federal, state, or local laws and regulations and all applicable Authority policies and procedures.
- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Public Authorities Law forms, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
- C. The Consultant shall comply with the provisions set forth in State Finance Law §§139-j and 139-k. In response to the Authority's Request for Proposals, the Consultant submitted and signed Forms A, B, and C, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
- D. By executing this Agreement, the Consultant affirms under the penalties of perjury that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
- E. The Consultant shall comply with the provisions of Human Rights Law (Executive Law § 290, *et. seq.*) and Labor Law § 201-g of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to and incorporated in, this Agreement as Appendix A.
- F. The Consultant shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.

- G. The Authority shall provide the Consultant in writing any and all Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- H. If the Consultant, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Consultant's employees, representatives, and Consultants shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

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

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

## **ARTICLE 3 – SCOPE OF SERVICES**

### **3.01** *Phase 1 – Basis of Design*

- A. **Project Initiation.** In contemplation of the basis of design, the Consultant shall, prior to rendering any professional services, conduct a kickoff meeting with Authority personnel. The Consultant shall prepare and provide a meeting agenda no less than five (5) business days before the meeting. The Consultant shall provide meeting minutes within five (5) business days of the meeting. In preparation for the meeting, at a minimum, the Consultant shall review all information provided by the Authority including existing surveys, studies, and wetland delineation reports, prepare a Request for Information (RFI) for additional information required from the Authority, and provide an initial project schedule detailing protected timelines, milestones, and deliverables.

**B. Reporting.** The Consultant shall report to the Authority bi-weekly on the progress of the work via email, with the following information:

1. Work performed during the previous two weeks.
2. Design work scheduled for the next two weeks.
3. Schedule status/deliverable status, attaching an updated project schedule in Microsoft Project format, identifying all project milestones and current project status. Provide updated project cashflow projection quarterly.
4. Budget status/percent completed.
5. Input needed from the Authority or others.
6. Requests for scope changes.
7. Other issues or concerns.

**C. Engagement and Needs Evaluation.** The Consultant shall:

1. Collaborate with the Authority to identify all internal and external stakeholders for the project. Conduct a work session to discuss future growth, operational additions, and long-term goals of the Authority.
2. Engage and perform on-site interviews/site walkthroughs with internal stakeholders to understand operational and space needs, and interactions between departments. At a minimum this is expected to include all division heads and key department heads. Identify common space needs such as conference rooms, break rooms, locker rooms, etc. as well as ancillary facility needs such as vehicle wash station, salt/cold patch/stone storage, fueling station, and a public meeting space.
3. Prepare a formal space and needs analysis and programming report summarizing existing and anticipated space needs for all of the divisions and operations into the foreseeable future. Develop simplified floor plans (massing diagrams) to convey how each area (interior and exterior) within a department or function area will relate to each other.
4. Develop parking requirements for employee and Authority service vehicles. Identify vehicles requiring conditioned parking environment and associated space needs.
5. Analyze the capacity of adjacent water, sewer, gas, and electric systems compared to the demand of the project.



6. Consult with the Authority to select general architectural styles to carry forward into project design.
7. Prepare agenda and supporting materials, and participate in Authority-lead calls with external stakeholders.

**D. Establish Resilient Design Goals.** The Consultant shall:

1. Develop strategies for a facility that will maintain livable conditions for operations staff (electrical, potable water and sanitation) during extreme events. Establish goals for how long the facility will be able to be self-sustainable during these events.
2. Determine alternatives for fueling of maintenance vehicles (gasoline and diesel) during extreme events.
3. Establish design goals for redundant electrical systems with traditional back-up power capacity, such as fuel fired generators.
4. Establish design goals for energy independence during normal operations using solar and wind, with islanding capability. Utilize LEED-type design analysis to present related options and effort required to meet each goal.
5. Establish goals for an electric vehicle fleet and required infrastructure to meet these goals.
6. Evaluate the financial impact of the design goals examined under Items 1 through 5, including construction cost impact and future operating and maintenance costs.

**E. Site Survey and Basemap Preparation.** The Consultant shall:

1. Review existing boundary survey (Wm Schutt Associates, issued 12/3/2021). Review related title report and easements or other title encumbrances within the project area. Identify effect of easements/encumbrances may have on the project and required actions/additional information.
2. Review existing topographic survey (Wm Schutt Associates, issued 11/24/2021). Perform additional survey services to supplement/verify the information within the existing site survey within and immediately adjacent to the project area for existing surface features, topography, and utilities as necessary and suitable for design and construction.
3. Prepare an AutoCAD basemap of the site for use in subsequent planning, design, and plan preparation.

4. Prepare an initial clearing and grading plan for the site, identifying general locations for buildings, utilities, roads, stored materials, buffers/berms, as well as areas not to be disturbed (i.e., wetlands).
5. Identify all permitting requirements including those related to site grading, erosion, and stormwater control.

**F. Environmental Services.** The Consultant shall:

1. Review all environmental review documentation completed related to the site.
2. Recommend the appropriate level of environmental review required under the New York State Environmental Quality Review Act (SEQRA), including but not limited to the identification of other involved agencies and the appropriate classification for the action to be taken (i.e., Type I, II or Unlisted). If an Archaeological survey (including Phase IA/IB archaeological surveys) are required by SHPO, they can be provided as a Special Service. If technical assistance with preparing any necessary documents is required by SEQRA for Type I or Unlisted actions, including the preparation of an environmental assessment form, and if necessary, an environmental impact statement becomes necessary, such work would be considered a Special Service (pricing for this task does not need to be included with the initial proposal).
3. Review and identify project requirements under the State Pollutant Discharge Elimination System (SPDES) General Permit and requirements for preparation of a Stormwater Pollution Prevention Plan (SWPPP).
4. Review and advise as to requirements for additional permits including but not limited to Sections 401 and 404 of the Clean Water Act, United States Army Corp of Engineers Nationwide permit, and/or New York State Department of Environmental Conservation Protection of Waters Permit.

**G. Site Geotechnical Investigation.** The Consultant shall:

1. Perform a geotechnical investigation for the project area as necessary to determine general geotechnical design parameters such as soil type, soil properties, and location of groundwater. Include piezometer installations to allow for routine monitoring of groundwater levels.
2. Prepare a technical memo summarizing the methods and findings of the geotechnical investigation and analyses. Provide geotechnical-related recommendations specific to design and construction of site infrastructure and identify any general geotechnical-related items that should be considered for planning-level or final design.
3. The Authority and the Consultant agree that foundation design is excluded from the scope of work.

**H. Schematic Site Design and Layout.** The Consultant shall:

1. Prepare up to three (3) alternative schematic site designs and layouts to include locations of the following elements at a minimum:
  - a. Conceptual location of all major site elements (buildings, storage, vehicles and equipment, communication tower, fuel station, etc.).
  - b. General grading plan.
  - c. Site roadways and access for the public, operations, and administrative staff. Evaluate anticipated traffic generation and indicate staff and public vehicle circulation. Indicated traffic patterns/control related to vehicle operations including fueling, parts/materials loading, stone/gravel/asphalt loading, spoils storage area, etc.
  - d. Utility connections. Review and determine locations of all necessary utilities for the project and provide an initial assessment to determine if the existing utilities are adequate for the project. The scope of work excludes any design improvements to existing off-site utilities.
  - e. Wetlands, drainage, and stormwater treatment infrastructure. The Scope excludes any new Wetland Delineation, Wetland Delineation Report, and / or Jurisdictional Determination.
  - f. Landscaped/buffer areas.
  - g. Excavated materials (spoils) storage.
  - h. Lighting.
  - i. Fencing and security measures.
  - j. Identification of potential project phasing and implementation sequence

**I. Schematic Building Design and Layout.** The Consultant shall:

1. Prepare up to three (3) alternative schematic building design and layouts to include the following elements at a minimum:
  - a. General Floorplan. This floorplan is intended to show the general layout and sizes of various work areas and facilities for all departments based on the results of the needs assessment and programming report and considering general circulation and constraints at the site.
  - b. Building material and exterior finish types.
  - c. Anticipated foundation type.

- d. Power requirements including source of supply and redundant/emergency power provisions.
- e. Incorporated sustainability and green energy technology including solar, wind, and geothermal alternatives.
- f. Conceptual Building Rendering. This rendering is intended to give the overall mass, look, and feel of the building based on the schematic design.

**I. Project Cost Information.** The Consultant shall:

- 1. Prepare planning-level cost estimates for construction of site and building work including the initial capital and life-cycle costs of specific sustainability/green energy alternatives.
- 2. Research and report on funding opportunities including the availability of grant funding for initiatives such as green infrastructure, energy efficiency, use of recycled materials, etc.
- 3. Prepare planning level cost estimates for consultant services for completion of detailed design (Phase 3).

**J. Basis of Design Report.** The Consultant shall:

- 1. The Consultant shall prepare a draft Basis of Design Report, setting the factors considered by the Consultant including, but not limited to, those specifically identified in paragraph C through I of this section. The Consultant shall supply the Authority with five (5) copies of the draft report with supporting documentation, along with a digital .pdf file. Provide additional copies of the draft report as necessary for Authority distribution to applicable outside stakeholders.
- 2. The Consultant shall meet with the Authority to review the draft Basis of Design Report and will incorporate all Authority and outside stakeholder comments into a final version. The Consultant shall supply the Authority with five (5) copies of the final report with supporting documentation, along with a digital .pdf file. Provide additional copies of the final report as necessary for Authority distribution to applicable outside stakeholders.
- 3. In addition to the meetings required under Paragraphs A through I of this Section, the Consultant will conduct at least two (2) review meetings with the Authority to review the Basis of Design Report. Following each meeting, the Consultant will provide meeting minutes to the Authority within five (5) business days.
- 4. Upon acceptance of the Basis of Design Report, the Authority will provide written notice that the Consultant may proceed with services under Section 3.02, Phase 2 Site Grading Design.

**3.02 Phase 2 Site Grading Design** The Consultant will complete design documents for the design, bid and construction of site grading in preparation for construction of buildings and other site features.

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

1. Visit the site as needed to assist in preparing the drawings and specifications.
2. Prepare detailed design drawings, specifications, and contract documents at 60%, 90%, and 100% design stages. Tasks include, but are not limited to:
  - a. Preparing base drawings in AutoCAD version 2018. Incorporate any available records furnished by the Authority.
  - b. Preparing engineering calculations to support the design of the improvements.
  - c. Preparing engineering data and completing regulatory permit applications as required to obtain local, state, and federal agency approvals for the initiation and construction of the work. Complete wetland functional assessments and Protected Species screenings, Perform an All-Appropriate Inquiry (AAI) compliant Phase 1 Environmental Site Assessment and report. This ESA will comply with 21 ASTM standards. Conduct pre-application meetings with permitting agencies. Assist the Authority in further consultations with such agencies; and revising reports, drawings, and specifications in response to directives from such agencies, as appropriate. Submitting final copies of the revised reports, drawings, and specifications to the appropriate regulatory agencies. If it is determined that a phase II Environmental Site Assessment is necessary, those services would be considered a Special Service.
  - d. Preparing engineering data and completing environmental and cultural agency applications as required to obtain local, state, and federal agency approvals for the initiation and construction of the work. Assist the Authority in consultations with such agencies; and revising reports, drawings, and specifications in response to directives from such agencies, as appropriate. Submitting final copies of the revised reports, drawings, and specifications to the appropriate regulatory agencies.
  - e. Preparing draft and final plans, profiles, and job specific detail drawings that include editing of the Authority's standard detail drawings where appropriate.
3. Prepare contract documents including, but not limited to:
  - a. Preparing contract specifications with edited Authority's standard "front end" specifications and standard technical specifications where appropriate.

- b. Preparing additional technical specifications, as required.
  - c. Obtaining New York State Prevailing Wage Rates and inserting such rates into the specifications.
  - d. Preparing a quantity take-off and opinion of probable construction cost and cash flow projections for budgeting purposes.
4. 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 Consultant shall:

1. Conference with the Authority and other stakeholders related to the Projects, as necessary and as required (minimum three meetings).
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 including status of agency applications/approvals,
  - d. Budget status/percent completed. Provide updated cashflow on a monthly basis,
  - e. Input needed from the Authority or others.
  - f. Updated project schedule,
  - g. Requests for scope changes, and
  - h. Other issues or concerns.
3. Furnish to the Authority three (3) 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 Consultants and operators to discuss and/or review detailed design drawings, specifications, and contract documents. Provide meeting minutes to the Authority within five (5) business days.
5. Attend a final design meeting with the Authority. Provide meeting minutes to the Authority within five (5) business days.

**3.03**      **Phase 2 Construction Services**

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

1. Assist Authority personnel in preparing bid invitation and contract documents.
2. Refrain from discussing the Projects 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. Furnish ten (10) sets of contract drawings, final specifications, and other documents for each contract to the Authority. Provide electronic files of all documents to Avalon Document Services who will provide contract drawings, final specifications, and other documents required for bidding and construction purposes. The cost of documents provided through Avalon Document Services shall be paid by the Contractor.
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, if necessary, publish, and distribute any addendum to the bid invitation and contract documents.
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.
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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall have responsibility over the following:
  - a. Defective Work:
    - i. Based on the Consultant’s observations, if the Consultant believes that the Work is defective under the terms and standards set forth in the Contract Documents, the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions, the Consultant 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 Consultant shall evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor.

f. Change Orders:

- i. The Consultant shall notify the Authority when a change in the Work is proposed, which will cause an adjustment in the contract cost.
- ii. The Consultant 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 Consultant shall discuss changes in the plans or procedures recommended by the Consultant with the Authority prior to implementation.
- iv. The Consultant 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 Consultant 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

Consultant will notify the parties that the Consultant will not resolve the Change Proposal.

ii. Reporting of Claims

- (a) When the Consultant 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 Consultant will promptly report the situation to the Authority.
  - (b) Upon request, the Consultant will assist the Authority’s Legal Department in its investigation and examination of any Claim. The Consultant will provide the names and, if available, addresses and phone numbers of individuals involved or having knowledge of the Claim.
  - (c) The Consultant will also gather information or data to the Authority regarding engineering or technical matters pertaining to the Claim.
4. The Consultant shall consult, report, and advise appropriate Authority personnel as to all relevant and pertinent matters relating or affecting the progress of construction.
  5. The Consultant shall review and determine the acceptability of any and all schedules that the Contractor is required to submit to the Consultant, including a Progress Schedule, Schedule of Submittals, and Schedule of Values.
  6. The Consultant shall supply the Authority with a construction schedule, which has been submitted by the Contractor and approved by the Consultant.
  7. The Consultant will prepare elementary sketches and supplementary sketches, when necessary or required, to resolve issues with actual field conditions encountered.
  8. The Consultant shall interpret Contract Documents and resolve problems as to amount, quality, acceptability, and fitness.
  9. The Consultant will review each Contractors’ 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 Consultant will provide the Contractors and the Authority with detailed stakeout information, including benchmarks, reference and axis lines along the routes of the construction or wherever necessary.

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

**D. *Construction Meetings and Reports.***

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

### **3.04 Phase 2 Resident Inspections:**

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

1. *Inspector's duties and responsibilities:* The Consultant, 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 Consultant;
- ii. Exceed limitations of the Consultant'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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant appropriate details relative to the test procedures and systems start-ups;
- x. Report to the Consultant 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 Consultant;
- xi. Advise the Consultant 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 Consultant; 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.

### 3.05 Phase 2 General Services:

#### A. *Contractor's Request for Payment:*

1. As a general service to the Authority, the Consultant will review applications for payment with the facility's 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 sites but not incorporated in the work.
2. Based on the Consultant's observations and on review of Applications for Payment and accompanying supporting documentation, the Consultant shall:
  - a. Determine the amounts that the Consultant recommends Contractor be paid;
  - b. Recommend reductions in payment based on the provisions stated in the Construction Documents;
3. Such recommendations of payment will be in writing and will constitute the Consultant's representation to the Authority, based on such observations and review, that, to the best of the Consultant'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:
  - a. 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
  - b. 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 Consultant;
4. In the case of unit price Work, the Consultant'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 Consultant 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 Consultant 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, and as applicable, the Consultant will verify whether materials certificates 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Projects 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 Consultant will promptly visit the Project site to review the Work and determine the status of completion.
- b. The Consultant 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 Consultant 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 Consultant will determine if the Work is complete and acceptable so that the Consultant may recommend, in writing, final payment to the Contractor.
- b. Accompanying the recommendation for final payment, the Consultant shall also provide a notice to the Authority and the Contractor that the Work is acceptable to the best of the Consultant's knowledge, information, and belief, and based on the extent of the services provided by the Consultant under this Agreement.

**3.06 Phase 2 Record Drawings:**

- A. Upon authorization from the Authority, the Consultant 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.

**3.07 Special Services:**

- A. The Consultant may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
1. Soils investigations including test borings, pavement cores, and the related analysis;
  2. Detailed mill, shop and/or laboratory inspection of materials and equipment;
  3. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
  4. Air, water, and/or soil sampling, testing, and/or analysis;
  5. Hazardous material testing and assessment;
  6. Additional wetlands investigations, delineation, and mitigation;
  7. Technical assistance with operation and maintenance manuals;
  8. Laboratory testing, jar testing, and pilot testing;
  9. Technical assistance with preparing any necessary documents if required by the New York State Environmental Quality Review Act (SEQRA) for Type I or Unlisted actions, including the preparation of an environmental assessment form, and if necessary, an environmental impact statement;
  10. Technical assistance with preparing with Storm Water Pollution Prevention Plans (SWPPP), if required;
  11. Assistance with permit and other applications with the Army Corps of Engineers, New York State Department of Environmental Conservation (DEC), or other applicable agencies;
  12. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
  13. Additional inspection/testing beyond the types and amount identified in this contract;
  14. Extra travel and subsistence for the Consultant and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority

15. 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

16. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officer.

**B. Reliance on Others.** Subject to the standard of care set forth in § 2.01, paragraph A, the Consultant 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.

**C. Expert Witness Assistance.** The Consultant 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.

**3.08 Contingency Allowance:** The Consultant may use the contingency allowance to resolve unforeseen issues encountered during the initial design phase and to allow the incorporation of additional design aspects not included at the inception of the design phase. The Consultant may use the contingency allowance when the original scope of work for the Project was not sufficient to allow for subsequent changes in design to improve the completed Project. The Consultant may use the contingency allowance to accommodate specific design modifications necessary for overall project completeness. The Consultant may only use the contingency allowance following review and approval of the Authority's Engineering Department, Chief Operating Officer and Chief Financial Officer.

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

A. All services under § 3.01, of this Agreement, Basis of Design, shall be completed and delivered to the Authority within 180 days of the issuance of the Authority's notice to proceed. The Design is complete when the Bid Documents are submitted to the Authority;

B. All services under § 3.02 of this Agreement, Phase 2, Site Grading Design, shall be completed and delivered to the Authority within 150 days following the Authority's notice provided under § 3.01, Paragraph J, Item 4 of this Agreement;

C. All other services should be completed by the end of the project with an estimated completion date of December 31, 2024.

## ARTICLE 4 – PAYMENT OF PROFESSIONAL SERVICES

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

- A. ***Basis of Design and Design:*** For services described under § 3.01 and § 3.02 of this Agreement, the Authority shall pay the Consultant 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. ***Construction and General Services:*** For services described under § 3.03 and § 3.05 of this Agreement, the Authority shall the pay Consultant 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. ***Record Drawings:*** For services described under § 3.06 of this Agreement, the Authority shall pay the Consultant 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 § 3.04 of this Agreement, the Authority shall pay the Consultant the payable hourly rates listed under §4.05, 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 §4.05, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

**4.03 Special Services:** For services described under § 3.07 of this Agreement, the Authority shall pay the Consultant 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 Consultant is performing the special services described in § 3.07, paragraph A of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Consultant obtains special services from a third party, the Consultant will be reimbursed based on the actual invoice cost paid by the Consultant, plus 5%.

**4.04 Contingency Allowance:** For services described under § 3.08 of this Agreement, the Authority shall pay the Consultant for services reviewed by the Authority's Engineering Department and pre-approved by the Authority's Chief Operating Officer in an amount pre-approved by the Authority's Chief Financial Officer.

- A. When the Consultant is performing the services described in § 3.08 of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.

- B. When the Consultant obtains services required as part of a contingency item from a third party, the Consultant will be reimbursed based on the actual invoice cost paid by the Consultant, plus 5%

**4.05 Consultant Cost Schedule:**

**A. *Engineering Costs:***

1. Lump Sum – Basis of Design and Design Cost	\$576,400.00
2. Lump Sum – Construction and General Services Cost	26,900.00
3. Lump Sum – Record Drawings Cost	4,100.00
<b>TOTAL LUMP SUM COST:</b>	<b>\$607,400.00</b>

**B. *Resident Inspections Costs:***

	Payable	Employee Direct
	Hourly Rate	Hourly Rate
Inspector	\$114.00	\$40.82

The Dollar amount for Estimated Resident Inspection is based fixed hour estimate of 640 hours of 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	\$73,000.00
2. TOTAL NOT TO EXCEED RESIDENT INSPECTION:	\$80,000.00

**C. *Special Services (not to exceed)* \$150,000.00**

**D. *Contingency Allowance* \$150,000.00**

**E. *Other Costs:***

The following costs are only applicable to expenses incurred under § 3.04, Resident Inspection, and § 3.07, Special Services, of this Agreement. All other direct non-salary costs are to be included with the costs listed in the lump sum payments listed in § 4.05, Paragraph A of this Agreement.

1. Estimated Mileage (IRS rate)	\$0.655/mile
2. Estimated Copy Costs (per copy)	\$0.15 sheet
3. Prints (per print)	\$5.00/print
4. Subcontractor Expenses, invoiced as special services	Cost plus 5% maximum
5. Other Direct Non-Salary Costs	At cost

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

## **ARTICLE 5 – GENERAL PROVISIONS**

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

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

### **5.04 Indemnification:**

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

### **5.05 Insurance:**

- A. The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of

injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C-1.

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

**5.06 Confidential Information:**

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

**5.07 Copyrights, Trademarks and Licensing:** The Consultant agrees all materials or work produced under this Agreement, whether produced by the Consultant alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, pursuant to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.

**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 Consultant and the Authority shall be governed, interpreted, and decided by a court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

**5.09 Conflicts of Interest:** The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without being subject to further obligations under its terms, except for the payment of services already rendered by the Consultant. So long as the Consultant reports such a conflict as required by this section, the Consultant will have no further obligations for completing the scope of services under the terms of this Agreement.

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

**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 Consultant, an owner, member, officer, partner, employee, or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

- B.** The Consultant is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 4.
- C.** Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements, or distributions of the Authority.
- D.** In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state, and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

**5.14 Force Majeure:** Consultant shall not be liable to the Authority for any failure to perform the Services if any such failure is caused by forces beyond Consultant'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 Consultant shall prohibit its agents, employees, and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

**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 Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this Agreement.

**ERIE COUNTY WATER AUTHORITY**

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

**LABELLA ASSOCIATES, DPC**

By \_\_\_\_\_  
Mark E. Kukuvka, AIA, Vice President

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2023, 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 \_\_\_\_\_**         ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2023, before me personally came Mark E. Kukuvka, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is the Vice President of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

\_\_\_\_\_  
Notary Public

**APPENDIX A**  
**RESPONSE TO RFP**  
**REQUIRED FORMS**

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

**NON-COLLUSIVE BIDDING CERTIFICATION**  
**as mandated by Public Authority Law § 2878**

By submission of this bid or proposal, each bidder/respondent and each person signing on behalf of any bidder/respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- (1) The prices in this bid or proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/respondent or with any competitor; and
- (2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder/respondent and will not knowingly be disclosed by the bidder/respondent prior to opening, directly or indirectly, to any other bidder/respondent or to any competitor; and
- (3) No attempt has been made or will be made by the bidder/respondent to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**NOTICE**

(Penal Law § 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

**BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:**

Affirmed under penalty of perjury this 17th day January, 20 23

FIRM NAME LaBella Associates, DPC

ADDRESS 300 Pearl Street, Suite 130Buffalo, NY

Buffalo, NY ZIP 14202

AUTHORIZED SIGNATURE 

TYPED NAME OF AUTHORIZED SIGNATURE Jeffrey Kloetzer, AIA, NCARB

TITLE Vice-President TELEPHONE No. 716.551.6281

**SECTION 2875 OF THE PUBLIC AUTHORITIES LAW**

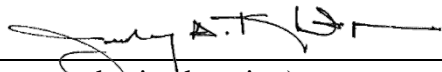
**§2875. GROUND FOR CANCELLATION OF CONTRACT BY PUBLIC AUTHORITY.**

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

- (a) Such person, and any firm, partnership, or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
  
- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation termination shall be paid.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

LaBella Associates, DPC  
(Name of Individual, Partnership or Corporation)

By   
(Person authorized to sign)

(SEAL)

## SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

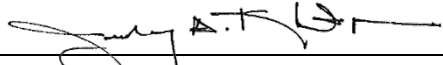
### §2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this article.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

Jeffrey Kloetzer, AIA, NCARB  
(Name of Individual, Partnership or Corporation)

By   
(Person authorized to sign)

(SEAL)

## **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.



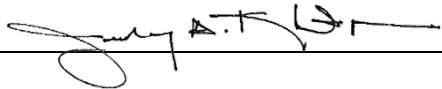
**FORM A**

**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: 01/17/2023

Name: Jeffrey Kloetzer, AIA, NCARB

Title: Vice-President

Contractor Name: LaBella Associates, DPC

Contractor Address: 300 Pearl Street, Suite 130, Buffalo, NY 14202

\_\_\_\_\_

\_\_\_\_\_

**FORM B**

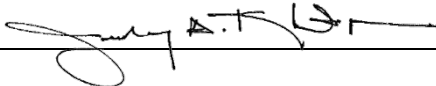
**Offerer's Certification of Compliance  
With State Finance Law §139-k(5)**

**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: 01/17/2023

Name: Jeffrey Kloetzer, AIA, NCARB

Title: Vice-President

Contractor Name: LaBella Associates, DPC

Contractor Address: 300 Pearl Street, Suite 130, Buffalo, NY 14202

\_\_\_\_\_  
\_\_\_\_\_

**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:

LaBella Associates, DPC

Address: 300 Pearl Street, Suite 130, Buffalo, NY 14202

Name and Title of Person Submitting this Form: Jeffrey Kloetzer, AIA, NCARB

Contract Procurement Number: 202200119

Date: 01/17/2023

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:

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.

Governmental Entity: \_\_\_\_\_

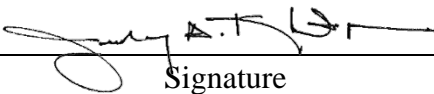
Date of Termination or Withholding of Contract: \_\_\_\_\_

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: 01/17/2023 \_\_\_\_\_  
Signature

Name: Jeffrey Kloetzer, AIA, NCARB \_\_\_\_\_

Title: Vice-President \_\_\_\_\_

## **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**

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.

**OFFERER’S STATEMENT REGARDING PREVENTION OF  
UNLAWFUL DISCRIMINATORY PRACTICES**

The Erie County Water Authority (the “Authority”), as an employer in New York State, is subject to the Human Rights Law, codified as Executive Law §290, *et. seq.*, and Labor Law §201-g. The Authority seeks to provide a work environment that is free from unlawful discriminatory practices as they are defined in Executive Law §296, as well as from inappropriate harassing conduct even if not deemed unlawful, to its employees, contractors, subcontractors, vendors, consultants, and any other person providing services on Authority premises. Pursuant to the Human Rights Law, it shall be unlawful to discriminate against an individual, or to subject an individual to harassment, due to age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence. Accordingly, the Authority requires that any Offeror of a proposal or bid, agree to sign the following statement regarding unlawful discriminatory practices, including, but not limited to sexual harassment, under penalty of perjury. This statement should be provided to the Authority as early as possible in the procurement process, but not later than at the time of execution of a contract with the Authority. Failure to agree to sign the statement may result in the Authority deeming the bid or proposal withdrawn by the Offerer.

**Offerer Statement:**

*I certify, under penalty of perjury, that the following statements are accurate:*

- *Offerer is aware of its obligations under the Human Rights Law (Executive Law §290, et. seq.*
- *Offerer complies with the provisions of Executive Law §290, et. seq., including Executive Law §296, and does not permit unlawful discriminatory practices or harassment based on an individual’s age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence in its workplace.*
- *Offerer complies with the provisions of Labor Law §201-g, has implemented a written policy addressing sexual harassment in the workplace which meets the minimum standards of Labor Law §201-g, and provides annual sexual harassment prevention training to all of its employees.*

By:  Date: 01/17/2023

Name: Jeffrey Kloetzer, AIA, NCARB

Title: Vice-President

Offerer Name: LaBella Associates, DPC

Offerer Address: 300 Pearl Street, Suite 130, Buffalo, NY 14202

## APPENDIX B

### FIXED RATES FOR SPECIAL SERVICES

<b>Grade</b>	<b>Hourly Billing Rate</b>
Principal Engineer/Architect	\$227.00
Senior Project Manager	\$185.00
Project Manager	\$159.00
Senior Engineer/Architect	\$162.00
Project Engineer/Architect	\$114.00
Administrative Support	\$73.00
Senior Designer/Technician	\$123.00
Junior Engineer/Junior Architect	\$108.00
Designer/Tech III	\$80.00
Drafter/Tech I/II	\$60.00
Senior Environmental Manager	\$150.00
Environmental Analyst/Tech IV	\$108.00
Crew Chief/Licensed Surveyor	\$152.00
Instrument Assistant	\$100.00
Senior Planner	\$175.00
Planner	\$127.00



## APPENDIX C-1

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

#### NEW ECWA OPERATIONS CENTER ECWA Project No. 202300077

#### 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.

**f. Umbrella Liability:**

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate

- Per Project/Job Aggregate Limit Required
- Erie County Water Authority to be scheduled as an Additional Insured

**g. Professional Liability:**

- \$5,000,000. Per Claim
- \$5,000,000. Policy Aggregate

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

ACORD 25 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](mailto: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.





### ADDITIONAL REMARKS SCHEDULE

AGENCY <b>Paris-Kirwan Associates, Inc.</b>		NAMED INSURED <b>LaBella Associates, DPC &amp; LaBella Associates, PC</b> 300 State Street, Suite 201 Rochester, NY 14614	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

**Description of Operations/Locations/Vehicles:**  
subrogation applies on the General Liability, Auto, Umbrella and Workers' Compensation policies, only if required in a written contract. A 30-day notice of cancellation applies.



# NEW YORK CONSTRUCTION CERTIFICATE OF LIABILITY INSURANCE ADDENDUM

DATE (MM/DD/YYYY)  
3/28/2023

THIS ADDENDUM SUMMARIZES SOME OF THE POLICY PROVISIONS IN THE REFERENCED INSURANCE POLICIES AND IS ISSUED AS A MATTER OF INFORMATION ONLY; IT CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. ALL TERMS, EXCLUSIONS AND CONDITIONS IN THE ACTUAL POLICY SHOULD BE CONSULTED FOR A MORE DETAILED ANALYSIS OF COVERAGE, AS THIS ADDENDUM DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES.

AGENCY <b>Paris-Kirwan Associates, Inc.</b>		NAMED INSURED(S) <b>LaBella Associates, DPC &amp; LaBella Associates, PC</b>	
POLICY NUMBER <b>CPA5365357-15</b>	EFFECTIVE DATE <b>11/7/2022</b>	CARRIER <b>Continental Western Insurance Co</b>	NAIC CODE <b>10804</b>

**ADDENDUM INFORMATION**      **CERTIFICATE NUMBER:** \_\_\_\_\_      **REVISION NUMBER:** \_\_\_\_\_

**A. Insurer**

- Admitted / authorized
- Excess line or free trade zone

**B. General Liability (GL) policy form**

- ISO / ISO modified
- Other

**C. Specific operations excluded or restricted (GL policy)**

- Location: All work performed on the behalf of LaBella Environmental LLC (FEIN: 32-0413322)
- Type of construction: ISO Endorsement CG 21 34 01 07
- Building height: \_\_\_\_\_
- Classifications [see attached declarations / endorsement]
- Designated work [see attached endorsement]

**D. Additional insured endorsement (GL policy)**

- CG 20 10     CG 20 26     CG 20 32     CG 20 33     CG 20 37     CG 20 38
- Other:    #: CLCG0493    Title: GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

**E. According to the terms of this GL policy, the additional insured has primary and noncontributory coverage**

- Yes     No and     no other option is available with this insurer

**F. Additional insured will receive advance notice if insurer cancels (GL policy)**

- Yes     No and     no other option is available with this insurer

**G. Blanket contractual liability located in the "insured contract" definition (Section V, Number 9, Item f. in the ISO CGL policy) is removed or restricted**

- Yes and     no other option is available with this insurer     No changes made

**H. "Insured contract" exception to the employers liability exclusion is removed or modified (GL policy)**

- Yes and     no other option is available with this insurer     No changes made

**I. GL policy (including endorsements) does not cover the additional insured for claims involving injury to employees of the named insured or subcontractors (not workers' compensation)**

- Yes and     no other option is available with this insurer     No changes made

**J. Earth movement, excavation or explosion / collapse / underground property damage is excluded or restricted (GL policy)**

Yes and  no other option is available with this insurer  No changes made

**K. Insured vs. insured suits (cross liability in the ISO CGL policy) are excluded or restricted (other than named insured vs. named insured)**

Yes and  no other option is available with this insurer  No changes made

**L. Property damage to work performed by subcontractors (exception to the "damage to your work" exclusion in the ISO CGL policy) is excluded or restricted**

Yes and  no other option is available with this insurer  No changes made

**M. Excess / umbrella policy is primary and non-contributory for additional insureds**

Yes, by specific policy provision  Yes, by endorsement  No and  no other option is available with this insurer

*Lauren Stanney*

AUTHORIZED REPRESENTATIVE SIGNATURE

03/28/2023

DATE (MM/DD/YYYY)



# NEW YORK CONSTRUCTION CERTIFICATE OF LIABILITY INSURANCE ADDENDUM

DATE (MM/DD/YYYY) <b>3/28/2023</b>
---------------------------------------

**THIS ADDENDUM SUMMARIZES SOME OF THE POLICY PROVISIONS IN THE REFERENCED INSURANCE POLICIES AND IS ISSUED AS A MATTER OF INFORMATION ONLY; IT CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. ALL TERMS, EXCLUSIONS AND CONDITIONS IN THE ACTUAL POLICY SHOULD BE CONSULTED FOR A MORE DETAILED ANALYSIS OF COVERAGE, AS THIS ADDENDUM DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES.**

AGENCY <b>Paris-Kirwan Associates, Inc.</b>		NAMED INSURED(S) <b>LaBella Associates, DPC &amp; LaBella Associates, PC</b>	
POLICY NUMBER <b>CUA5365359-15</b>	EFFECTIVE DATE <b>11/7/2022</b>	CARRIER <b>Acadia Insurance Company</b>	NAIC CODE <b>31325</b>

**ADDENDUM INFORMATION      CERTIFICATE NUMBER:      REVISION NUMBER:**

**A. Insurer**

- Admitted / authorized
- Excess line or free trade zone

**B. General Liability (GL) policy form**

- ISO / ISO modified
- Other

**C. Specific operations excluded or restricted (GL policy)**

- Location: \_\_\_\_\_
- Type of construction: \_\_\_\_\_
- Building height: \_\_\_\_\_
- Classifications [see attached declarations / endorsement]
- Designated work [see attached endorsement]

**D. Additional insured endorsement (GL policy)**

- CG 20 10     CG 20 26     CG 20 32     CG 20 33     CG 20 37     CG 20 38
- Other:    #: \_\_\_\_\_    Title: \_\_\_\_\_

**E. According to the terms of this GL policy, the additional insured has primary and noncontributory coverage**

- Yes     No and     no other option is available with this insurer

**F. Additional insured will receive advance notice if insurer cancels (GL policy)**

- Yes     No and     no other option is available with this insurer

**G. Blanket contractual liability located in the "insured contract" definition (Section V, Number 9, Item f. in the ISO CGL policy) is removed or restricted**

- Yes and     no other option is available with this insurer     No changes made

**H. "Insured contract" exception to the employers liability exclusion is removed or modified (GL policy)**

- Yes and     no other option is available with this insurer     No changes made

**I. GL policy (including endorsements) does not cover the additional insured for claims involving injury to employees of the named insured or subcontractors (not workers' compensation)**

- Yes and     no other option is available with this insurer     No changes made

**J. Earth movement, excavation or explosion / collapse / underground property damage is excluded or restricted (GL policy)**

Yes and  no other option is available with this insurer  No changes made

**K. Insured vs. insured suits (cross liability in the ISO CGL policy) are excluded or restricted (other than named insured vs. named insured)**

Yes and  no other option is available with this insurer  No changes made

**L. Property damage to work performed by subcontractors (exception to the "damage to your work" exclusion in the ISO CGL policy) is excluded or restricted**

Yes and  no other option is available with this insurer  No changes made

**M. Excess / umbrella policy is primary and non-contributory for additional insureds**

Yes, by specific policy provision  Yes, by endorsement  No and  no other option is available with this insurer

*Lauren Stanney*

AUTHORIZED REPRESENTATIVE SIGNATURE

03/28/2023

DATE (MM/DD/YYYY)



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GENERAL LIABILITY ULTRA PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SUMMARY OF COVERAGE EXTENSIONS**

Provision	Name Of Coverage Extension	Included or Limit of Insurance
<b>A.</b>	Miscellaneous Additional Insureds	Included
<b>B.</b>	Expected Or Intended Injury Or Damage	Included
<b>C.</b>	Knowledge Of Occurrence	Included
<b>D.</b>	Legal Liability – Damage To Premises Rented To You (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)	\$300,000
<b>E.</b>	Medical Payments	See Declarations
<b>F.</b>	Mobile Equipment Redefined	Included
<b>G.</b>	Newly Formed Or Acquired Organization, Partnership Or Limited Liability Company And Extended Period Of Coverage	Included
<b>H.</b>	Who Is An Insured – Amendment	Included
<b>I.</b>	Non-Owned Watercraft (Increased to maximum length of less than 51 feet)	Included
<b>J.</b>	Supplementary Payments – Increased Limits	
	1. Bail Bonds	\$ 3,000
	2. Loss Of Earnings	\$ 1,000
<b>K.</b>	Unintentional Omission Or Unintentional Error In Disclosure	Included
<b>L.</b>	Waiver Of Transfer Of Rights Of Recovery Against Others	Included
<b>M.</b>	Liberalization Clause	Included
<b>N.</b>	Incidental Medical Malpractice	Included

The above is a summary only. Please consult the specific provisions that follow for complete information on the extensions provided.

The provisions of the Commercial General Liability Coverage Part apply except as otherwise provided in this endorsement. This endorsement applies only if such Coverage Part is included in this policy.

**A. MISCELLANEOUS ADDITIONAL INSUREDS**

1. **Section II – Who Is An Insured** is amended to include as an insured any person or organization (referred to as an additional insured below) described in Paragraphs **A.1.c.(1)** through **A.1.c.(9)** below when you and such person or organization have agreed

in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, provided that:

- a. The written contract or written agreement is:
  - (1) Currently in effect or becoming effective during the term of this policy; and
  - (2) Fully executed by you and the additional insured prior to the "bodily

injury", "property damage" or "personal and advertising injury".

- b. The insurance afforded by this provision does not apply to any person or organization included as an additional insured by a separate endorsement issued by us and made a part of this policy or coverage part.
- c. Only the following persons or organizations are additional insureds under this provision, with coverage for such additional insureds limited as provided herein:

**(1) Persons or Organizations For Whom Operations Are Performed**

- (a) Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured to your policy; and
- (b) Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph (a) above.
- (c) Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (i) Your acts or omissions; or
  - (ii) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

- (d) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (i) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1.1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(1.2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

(ii) "Bodily injury" or "property damage" occurring after:

(1.1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(1.2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**(2) Managers Or Lessors Of Premises**

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to

you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(3) Mortgagee, Assignee Or Receiver**

A mortgagee, assignee, or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a covered premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(4) Owners Or Other Interests From Whom Land Has Been Leased**

An owner or other interest from whom land has been leased to you but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(5) Lessor Of Leased Equipment**

Any person(s) or organization(s) from whom you lease equipment but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their written

contract or written agreement with you for such leased equipment ends.

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**(6) State, Municipality, Governmental Agency Or Subdivision Or Other Political Subdivision – Permits Or Authorizations Relating To Premises**

Any state, municipality, governmental agency or subdivision or other political subdivision subject to the following additional provisions:

(a) This insurance applies only with respect to:

(i) The following hazards for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

(1.1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

(1.2) The construction, erection or removal of elevators; or

(1.3) The ownership, maintenance or use of any elevators covered by this insurance.

(ii) Operations performed by you or on your behalf for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization.

- (b) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality, governmental agency or subdivision or other political subdivision.

**(7) Controlling Interest**

Any person(s) or organization(s) with a controlling interest in the Named Insured but only with respect to their liability arising out of:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such person(s) or organization(s).

**(8) Co-Owner Of Insured Premises**

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owner's liability as co-owner of such premises.

**(9) Vendors**

- (a) Any person(s) or organization(s) (referred to as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- (i) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a written contract or written agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the written contract or written agreement;
- (ii) Any express warranty unauthorized by you;

- (iii) Any physical or chemical change in the product made intentionally by the vendor;

- (iv) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (v) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (viii) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1.1) The exceptions contained in Sub-paragraphs (iv) or (vi); or

- (1.2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS: AUTOMATIC STATUS**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II - Who Is An Insured** is amended to include as an additional insured any person or organization for whom you have agreed to add as an additional insured on your policy in a written contract or written agreement, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".

The coverage provided to the additional insured by this endorsement does not apply to "bodily injury" or "property damage" beyond:

1. The period of time required by the written contract or written agreement governing "your work", or 10 years from the date of the completion of "your work" described above, whichever is less; or
  2. Two years from the date of the completion of "your work" described above, if the written contract or written agreement does not specify the period of time.
- B.** With respect to coverage provided under this endorsement, the following is added to the end of **Section III - Limits Of Insurance**:

The limits of insurance for any additional insured are the limits in this coverage form or the limits you agreed to in the written contract or written agreement governing "your work", whichever is less. These limits of insurance are inclusive of and are not in addition to the Limits of Insurance shown in the Declarations.

- C.** With respect to coverage provided under this endorsement, the following exclusion is added to Paragraph 2. Exclusions of **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

This insurance does not apply to "bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in having supervised, hired, employed, trained or monitored others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- D.** With respect to the coverage provided under this endorsement, the following replaces paragraphs 2.a. and 2.b. of **Section IV - Commercial General Liability Conditions**:

- a.** You and any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b.** If a claim is made or "suit" is brought against any insured, the insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

**(2)** Notify us as soon as practicable.

the insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

This insurance does not apply unless the written contract or written agreement has been executed prior to the "bodily injury" or "property damage".







## **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

## NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

**PART 1. To be completed by NYS disability and Paid Family Leave benefits carrier or licensed insurance agent of that carrier**

<p>1a. Legal Name &amp; Address of Insured (use street address only)</p> <p><b>LaBella Associates D.P.C.</b>  <b>300 State Street</b>  <b>Rochester, NY 14614</b></p>	<p>1b. Business Telephone Number of Insured</p> <p><b>(585) 402-7085</b></p> <p>1c. Federal Employer Identification Number of Insured or Social Security Number</p> <p><b>16-1115731</b></p>
<p>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p> <p><b>Erie County Water Authority</b>  <b>295 Main Street – Room 350</b>  <b>Buffalo, NY 14203</b></p>	<p>3a. Name of Insurance Carrier</p> <p><b>Sun Life and Health Insurance Company (U.S.)</b></p> <p>3b. Policy Number of Entity Listed in Box 1a</p> <p><b>948963</b></p> <p>3c. Policy Effective Period</p> <p style="text-align: center;"><u>01/01/2023</u>      to      <u>12/31/2023</u></p>

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 03/27/2023 By Nancy Moss  
(Signature of insurance carrier's authorized representative or NYS licensed insurance agent of that insurance carrier)

Telephone Number 800-247-6875 Name and Titled Nancy Moss Client Advocate Support

**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 emailed to PAU@wcb.ny.gov or it can be mailed for

**PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4B, 4C or 5B have 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(Article 9 of the Workers' Compensation Law) with respect to all of their employees.

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

Telephone Numbers \_\_\_\_\_ 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.**

## Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in Box 1a for disability and/or Paid Family Leave benefits under the NYS Disability and Paid Family Leave Benefits Law. The insurance carrier or its licensed agent will send this Certificate of Insurance Coverage (Certificate) to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled 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 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.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This Certificate may be used as evidence of a NYS disability and/or Paid Family Leave benefits contract of insurance only while the underlying policy is in effect.

**Please Note: Upon the cancellation of the disability and/or Paid Family Leave benefits 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 Insurance Coverage for NYS disability and/or Paid Family Leave Benefits or other authorized proof that the business is complying with the mandatory coverage requirements of the NYS Disability and Paid Family Leave Benefits Law.**

### NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

#### §220. Subd. 8

(a) 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 employment as defined in this article, 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 the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. 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 disability benefits to any such employee if so employed.

(b) 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 employment as defined in this article and 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 the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

## APPENDIX C-2

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

### ADDENDUM AGREEMENT

This Addendum to the Agreement (“Addendum Agreement”) between **LaBella Associates DPC** (hereinafter referenced as “Contractor”) and \_\_\_\_\_ (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. LA-007, Project No. 202300077, New ECWA Operations Center** with **LaBella Associates DPC**, a copy of which may be obtained from \_\_\_\_\_].

In accordance with the terms and conditions of the Primary Contract No. LA-007 entered into with the Erie County Water Authority, an **ACORD25-Certificate of Liability Insurance** and **ACORD 855 NY-NY Construction Certificate of Liability Addendum** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing the Authority as Certificate Holder and additional insured. You should share these requirements with your current insurance agent, broker, or insurance company.

#### **Insurance Requirements**

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

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

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

**Worker’s Compensation & Occupational Disease: Statutory**

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

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

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

**B. Commercial General Liability:**

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

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

The coverage must include the following:

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

work by any insured or additional insured pursuant to work that is subject to this Addendum Agreement or in any contract or agreement to which this Addendum Agreement is attached.

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

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

**C. Commercial Automobile Liability Insurance:**

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

**D. Commercial Umbrella/Excess Liability Insurance:**

Commercial Umbrella/Excess Liability Insurance with limits of \$5,000,000.00 per occurrence and a \$5,000,000.00 aggregate. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis. A “Waiver of Subrogation” in favor of the Authority must be included.

**E. Pollution Liability:**

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

**F. Builder's Risk/Installation Floater:**

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

**G. Owned and/or Rented Tools or Equipment:**

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

**JOB-SITE SAFETY:**

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

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

**WORKERS COMP IMMUNITY WAIVER:**

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

**HOLD HARMLESS / INDEMNIFICATION:**

To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Authority and its heirs, executors, administrators, successors, assigns, affiliates, employees and agents (hereinafter referenced as “Owner Indemnitees”) from and against any and all actions, claims, liabilities, damages, losses and expenses, including but not limited to bodily injury, death and property damage, and reasonable attorney's fees and costs (including those incurred in the

defense of any such underlying claim, as well as those incurred in the enforcement of this Addendum Agreement and/or in the prosecution of any claim for indemnification by Authority) arising out of or resulting from, or alleged to arise out of or result from, the Subcontractor's work (including the work by any of the Subcontractor's subcontractors), except to the extent caused by the negligence or willful misconduct of any Owner Indemnitees.

**MISCELLANEOUS:**

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

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

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

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

[Insert name of Upstream Contractor or  
Upstream Subcontractor]

[Insert name of Downstream Subcontractor]

---

[Print Name and Title of Representative]

---

[Print Name and Title of Representative]

Date:

Date:

(Rev.08/22/2022)