



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

March 11, 2024

To: Terrence D. McCracken, Secretary to the Authority

From: William W. Wheeler, PE, Senior Distribution Engineer 

Subject: Contract IP-001
Distribution System Level of Service Development
ECWA Project No. 202400022

The following material is attached:

- Authorization Form requesting Board Authorization to execute the attached Professional Service Contract with InfraPLAN, LLC.
- Professional Service Contract for the above referenced project.
- Copy of Interoffice Memorandum from Marc A. Bellacose, Distribution Engineer, dated February 8, 2024, detailing the recommendation for the contract assignment after review of Request for Proposals (PN 202300160).

The project will develop a comprehensive, repeatable machine learning model-based program that can provide justification for future capital planning decisions not only for Authority owned infrastructure, but also similar infrastructure owned by Lease Managed municipalities and operated by Authority staff.

Budget Information:

2024 Engineering Services:
Unit 2590 Eng/Const Distribution Mains
Item 101705 LOS Study

Note that the 2024 ECWA Capital Budget allocated an initial amount of \$250,000 for this effort. This amount will be supplemented in the ECWA 2024 capital budget to account for the balance of the engineering cost.

MJQ:jmf
Attachments
cc: L.Kowalski
M.Quinn
M.Bellacose
L.Lester
CONT-IP-001-2401-X-01



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 8, 2024

To: Terrence D. McCracken, Secretary to the Authority

From: Marc A. Bellacose, Distribution Engineer *MAB*

Subject: Staff Item – Request for Proposal for
Distribution System Level of Service Development
ECWA Project No. 202300160

In order to develop a comprehensive, repeatable machine learning model-based program that can provide justification for future capital planning decisions not only for Authority owned infrastructure, but also similar infrastructure owned by Lease Managed municipalities and operated by Authority staff, a request for proposals (RFP) was issued on December 18, 2023 for engineering services required to develop a comprehensive process for identifying an optimum level of service for the Authority's transmission and distribution systems.

The RFP was issued to the following firms (in alphabetical order):

- Arcadis
- Brown & Caldwell
- Hazen and Sawyer
- InfraPLAN

The RFP was published on the ECWA Website, however no additional proposals were received.

One proposal was received from InfraPLAN and Arcadis, Brown & Caldwell, and Hazen and Sawyer declined to submit proposals for the project.

The InfraPLAN's proposal has been evaluated and discussed by a committee of Engineering staff. Experience, staffing, scope, project approach, and proposed fees were considered. It was determined that this firm possesses relevant qualifications to perform the work proposed, therefore, the Engineering Department will move forward with negotiations with InfraPLAN for the implementation of the above-referenced project.

Budget Information:

2024 Engineering Services:

Unit 2590 Eng/Const Distribution Mains

Item 101705 LOS Study

MJQ:jmf

cc: L.Kowalski, PE

M.Quinn, PE

ECWA-223-2301-X-16

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

Contract: IP-001 **Project No.:** 202400022
Project Description: Distribution System Level of Service Development

Item Description:

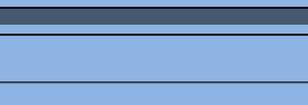
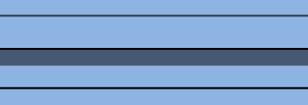
Agreement Professional Service Contract Amendment Change Order
 BCD NYSDOT Agreement Contract Documents Addendum
 Recommendation for Award of Contract Recommendation to Reject Bids
 Request for Proposals
 Other _____

Action Requested:

Board Authorization to Execute Legal Approval
 Board Authorization to Award Execution by the Chairman
 Board Authorization to Advertise for Bids Execution by the Secretary to the Authority
 Board Authorization to Solicit Request for Proposals
 Other _____

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr Distribution Engineer		Date: <u>3/11/2024</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>03/11/2024</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>3/11/2024</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>03/11/2024</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>3/11/2024</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>03/11/2024</u>
<input checked="" type="checkbox"/> Legal		Date: <u>3/11/2024</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>03/12/2024</u>
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Remarks: _____

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

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES**

This Agreement, effective as of March 21, 2024 (“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

infraPLAN, LLC
15 Charles Street
New York, NY 10014

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to the distribution system level of service development project (the “Project”).

In consideration of the mutual promises set forth in this Agreement, the Authority and the Engineer agrees to perform work through a single contract as follows:

ARTICLE 1 – THE PROJECT

1.01 The base project consists of the development of a comprehensive process for identifying an optimum level of service for the Authority’s transmission and distribution systems. In general, the project will include the identification of future optimal repair and replacement (R&R) strategies and investment levels for Authority owned Direct Service and Lease Managed buried infrastructure using a combination of risk tolerance and level of service expectations including but not limited to factors such as break rate, likelihood and consequence of failure using a validated machine learning-powered model.

ARTICLE 2 – COMPLIANCE STANDARDS

2.01 *Standard of Performance*

- A. *Standard of Care:* The Engineer shall be held to the same standard of care applicable to any consultant providing professional engineering and related services. The Engineer shall use the same care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the time and in the same locality.

- B. **Technical Accuracy:** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Engineer's services. The Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

2.02 Compliance with Laws and Regulations, and Policies and Procedures

- A. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Engineer shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Public Authorities Law forms, a copy of which are attached to and incorporated in this Agreement as Appendix A.
- C. The Engineer 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 Engineer submitted and signed Forms A, B, and C, a copy of which is attached to, and incorporated in, this Agreement as Appendix A.
- D. By executing this Agreement, the Engineer affirms under the penalties of perjury that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
- E. The Engineer shall comply with the provisions of the 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 Engineer 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 Engineer shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
- G. The Authority shall provide the Engineer in writing any and all Authority policies and procedures applicable to the Engineer's performance of services under this Agreement. The Engineer agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- H. If the Engineer, 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 Engineer's employees, representatives, and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

2.03 Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Engineer, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York, 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 worksite.

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

ARTICLE 3 – SCOPE OF SERVICE

3.01 **Task 1 – Project Management.** The Engineer agrees to provide project management of Tasks 2-9 of the project. Monthly billing to be provided as services are rendered.

3.02 **Task 2 – Kickoff and Project Deployment.** The Engineer agrees to conduct a kickoff meeting where the Project scope and tasks shall be introduced to the Authority. Authority and the Engineer agree that during such kickoff meeting responsibilities of both parties shall be defined, a project schedule shall be established, and the project process shall be finalized.

3.03 **Task 3 – Data Gathering and Formatting.** The Engineer agrees to collect all necessary data (pipe, break, environmental, operations, and cost); identify data gaps; create infraSOFT input files.

A. Data Review:

- a. The Engineer shall provide a clear list of the data necessary to conduct the study. Prior to obtaining such documents, the Engineer shall be required to sign a confidentiality agreement with the Authority as the documents relate to its critical infrastructure. The Confidentiality Agreement is included as Appendix D.
- b. All data shall then be collected and reviewed and any data issues shall be identified and the source of any issues, impact and suggestions for remedies shall be provided.
- c. The Engineer shall also provide recommendations on improving data quality for this project as well as for future model updates.

- B. Bi-weekly Progress Meetings: The Engineer shall hold bi-weekly progress meeting to discuss Project progress and schedule, data needs, concerns and etc. For each progress meeting, the Engineer shall provide and agenda and develop and distribute meeting minutes. Progress meetings can be either virtual (MS Teams, Zoom, etc.) or in person as necessary.

3.04 Task 4 – Pipe and Break Data Issues Cleaning: The Engineer agrees to identify all incoherent pipe and break data and to complete a first level of cleanup (bringing data issues below 10%).

3.05 Task 5 – Descriptive Statistical Analysis: The Engineer agrees to complete an analysis pertaining to the physical condition of the system as well as the performance of the past program of replacement (STATS module of infraSOFT). This task incorporates advanced analytics enabling a better understanding of machine learning results.

3.06 Task 6 – Likelihood of Failure Model Development: The Engineer agrees to generat likelihood of Failure score for each pipe and each year in the future using PREDICT, the machine learning-powered break prediction module of infraSOFT. Curves will be developed predicting the future break rate.

3.07 Task 7 – Monetized Consequence of Failure – Cost of Replacement - Risk: The Engineer agrees to develop two cost equations, cost of pipe failure and cost of pipe replacement. Risk scores will be computed for each pipe within the system.

3.08 Task 8 – Scenarios of R&R: The Engineer agrees to compute replacement priority scores for each pipe (taking into account non-failure-related replacement factors). Pipes will be strategically regrouped to constitute valid contracting projects. Scenarios of water pipes replacement will be simulated (PLAN module of infraSOFT) showing the impact (cost, break rate, risk score) of various replacement strategies, and allowing ECWA to select the scenarios that best meet their objectives and constraints.

- A. The model shall identify, for each scenario, the specific pipes recommended for replacement each budget year.
- B. Within the model, pipes shall be prioritized based on:
- a. Various factors including Level of Failure (LOF), Consequence of Failure (COF) and risk.
 - b. Constraints Level of Service (LOS) such as maximum tolerable break rate, risk level, or cost.
 - c. Other Capital Improvement Plan (CIP) priorities such as, for example, hydraulic capacity or coordination with other infrastructure projects or fire flow.

- C. Model output results shall include the resulting:
 - a. Break rate and estimate cost of failure
 - b. Risk score
 - c. Scope, and duration of R&R alternatives
- D. Results shall be generated using the infraSOFT platform to easily create a scenario, visualize and download previously generated results. Results shall be in the form of downloadable charts or excel spreadsheets that identify the pipes to be replaced at a given year and the resulting break rate, risk score, cost and replacement rate.

3.09 Task 9 - Report: The Engineer agrees to provide a detailed report containing methodology and results. This report shall also provide references, guidance and support for future updates.

3.10 Additional Engineering Services: The Engineer agrees to provide the following additional services including associated project management at the Authority's request and discretion based upon a negotiated scope of work and fee determined at the time of the Authority's request. All additional engineering services are subject to review and approval of the Authority's Engineering Department, Chief Operating Officer, and Chief Financial Officer.

- A. Level 2 Cleanup:** The Engineer shall address the remaining data issues (everything left below 10%), as well as the structural data issues that stem from the way data is collected and managed; if any.
- B. Input Files Preparation:** The Engineer shall write, test, and finalize scripts, which would facilitate the gathering of necessary data, and creation of all input files and equations (for infraSOFT modules, COF, rehabilitation cost, priority scores, and regrouping of pipes).
- C. Output Results Integration:** Consultant to assist ECWA in their effort to integrate results in existing software and dashboards.

3.11 Contingency Allowance: The Engineer may use contingency allowance when the original scope of work for the Project was not sufficient to allow for subsequent changes in scope to improve the completed Project. The Engineer may use the contingency allowance to accommodate specific scope modifications necessary for overall project completeness. The Engineer may only use contingency allowance following review and approval of the Authority's Engineering Department, Chief Operating Officer, and Chief Financial Officer.

ARTICLE 4 – PAYMENT OF PROFESSIONAL SERVICES

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

- A. ***Engineering Service:*** For services described under §3.01, §3.02, §3.03, §3.04, §3.05, §3.06, §3.07, §3.08, and §3.09 of this Agreement, the Authority shall the pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.

4.02 Additional Engineering Services and Contingency Allowance: For services described under §3.10 and §3.11, of this Agreement, the Authority shall pay the Engineer for services pre-approved by the Authority’s Chief Operating Officer or in their absence the Executive Engineer in an amount approved by the Authority’s Chief Financial Officer or in their absence the Comptroller.

- A. When the Engineer is performing the services described in § 3.10 of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains services required as part of the contingency allowance from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

4.03 Engineering Cost Schedule:

A. ***Engineering Costs:***

1. Task 1 Cost:	\$24,836.00
2. Task 2 Cost:	\$8,814.00
3. Task 3 Cost:	\$29,546.00
4. Task 4 Cost:	\$30,644.00
5. Task 5 Cost:	\$13,574.00
6. Task 6 Cost:	\$30,359.00
7. Task 7 Cost:	\$48,175.00
8. Task 8 Cost:	\$48,369.00
9. Task 9 Cost:	\$15,602.00

TOTAL LUMP SUM COST: \$249,919.00

- B. *Contingency Allowance (not to exceed):* **\$20,000.00**
- C. *Additional Engineering Services (not to exceed):* **\$55,000.00**

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

ARTICLE 5 – GENERAL PROVISIONS

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

5.02 Amendments: Any modification or variation from the terms of this Agreement must be in writing, authorized by a resolution of the Board of Commissioners of the Authority, and signed by all parties to be effective.

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

5.04 Indemnification:

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

5.05 Insurance:

- A. The Engineer agrees to secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C.
- B. The Engineer agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Engineer agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Engineer agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email address.

5.06 Confidential Information:

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

- D. The Engineer agrees to abide by the terms and conditions of the Authority's Confidentiality and Non-Disclosure Agreement, which is attached to and incorporated in this Agreement as Appendix D.
- E. 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 Engineer agrees all materials or work product produced under this Agreement, whether produced by the Engineer alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Engineer shall, during and after the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.

5.08 New York Law and Jurisdiction: Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Engineer and the Authority shall be governed, interpreted and decided by a court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

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

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

5.11 Entire Agreement: This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No subsequent agreement made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound by such agreement.

5.12 Independent Status:

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Engineer, an owner, member, officer, partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Engineer shall remain an independent contractor responsible for its own actions. The Engineer is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Engineer is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 4.
- C. Neither the Engineer nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Engineer represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Engineer agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Engineer further represents and warrants that any income accruing to the Engineer and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

5.14 Gratuities: The Engineer shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Engineer or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

5.15 Notice: Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

ARTICLE 6 – SEVERABILITY

6.01 Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agrees that the Agreement shall be reformed to

replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

ARTICLE 7 – TERMINATION

7.01 The Authority reserves the right to terminate this Agreement in the event it is found that the Certification filed by the Engineer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Engineer in accordance with the written notification terms of this Agreement.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

infraPLAN, LLC

By _____
Annie Vanrenterghem, CEO

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of March, in the year 2024, 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 2024, before me personally came Annie Vanrenterghem, to me known, who, being by me duly sworn, did depose and say that she resides in _____, New York, that she is the CEO of the Corporation described in the above instrument; and that she signed her 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.

Affirmed under penalty of perjury this 11th day of January, 2024

FIRM NAME infraPLAN LLC

ADDRESS 15 Charles Street New York, NY 10014

ZIP _____

AUTHORIZED SIGNATURE 

TYPED NAME OF AUTHORIZED SIGNATURE Annie Vanrenterghem

TITLE CEO TELEPHONE No. 917-3496386

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.

infraPLAN LLC
(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.

infraPLAN LLC

(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: January 11, 2024

Name: Annie Vanrenterghem

Title: CEO

Contractor Name: infraPLAN LLC

Contractor Address: 15 Charles Street New York, NY 10014

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: January 11, 2024

Name: Annie Vanrenterghem

Title: CEO

Contractor Name: infraPLAN LLC

Contractor Address: 15 Charles Street New York, NY 10014

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:

infraPLAN LLC

Address: 15 Charles Street New York, NY 10014

Name and Title of Person Submitting this Form: Annie Vanrenterghem CEO

Contract Procurement Number: _____

Date: January 11, 2024

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: 
Signature

Date: January 11, 2024

Name: Annie Vanrenterghem

Title: CEO

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: January 11, 2024

Name: Annie Vanrenterghem

Title: CEO

Offerer Name: infraPLAN LLC

Offerer Address: 15 Charles Street New York, NY 10014

APPENDIX B

FIXED RATES FOR CONTINGENCY ITEMS

Grade	Hourly Billing Rate
CEO; Statistician	\$295.00
Data Scientist	\$100.00
Utilities Planning Leader	\$250.00
GIS Specialist/Geographer	\$175.00
Hydraulic Modeler	\$130.00

APPENDIX C

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

DISTRIBUTION SYSTEM LEVEL OF SERVICE DEVELOPMENT

ECWA Project No. 202400022

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). 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.

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
- 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
- Coverage shall be included for allegations of Sexual Abuse/Molestation

d. Automobile Liability:

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

e. Umbrella Liability:

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured

f. Professional Liability

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

APPENDIX C2

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

ADDENDUM AGREEMENT

This Addendum to the Agreement (“Addendum Agreement”) between [**Insert name of Upstream Contractor or Upstream Subcontractor**] (hereinafter referenced as “Contractor”) and [**Insert name of Downstream Subcontractor**] (hereinafter referenced as “Subcontractor”) is being entered into by the parties for any and all work done for, with, or on behalf of **the Erie County Water Authority** (hereinafter the “Authority”) under the Primary Contract No. _____, Project No. _____ [**Insert Project Description**] with [**Insert name of Contractor**], a copy of which may be obtained from [**Insert name and contract information of the entity**].

In accordance with the terms and conditions of the Primary Contract No. _____ 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.

H. Professional Liability:

- \$1,000,000 per claim
- \$1,000,000 aggregate

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:

APPENDIX D

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT (hereinafter “Agreement”) is hereby executed between:

ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority”, and

infraPLAN
15 Charles Street
New York, NY 10014

hereinafter referred to as the “Consultant.”

Certification & Affirmation

[Name of Authorized Representative], an individual who is Consultant’s duly authorized representative (hereafter “Authorized Representative”), by signing this Agreement in the name and on behalf of the Consultant, subscribes and affirms the following:

1. that he/she is signing this Agreement on behalf of Consultant intending to bind said Consultant to the representations made in this Agreement,
2. that Consultant will comply with all requirements of this Agreement, and
3. that Consultant will certify the return or destruction of Confidential Information received as specified in this Agreement, if applicable.

Purpose

This Agreement is being entered into regarding services being provided by Consultant in response to a Request for Proposals (Project No. 202400022) and the contract resulting from the RFP.

PART 1. DEFINITIONS

A. Confidential Information

Confidential Information shall be defined to include any information, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or the source of information (e.g., electronic systems licensed by third-party contractors), which the Authority provides to



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

Consultant, or which Consultant obtains, discovers, derives, or otherwise becomes aware solely because of Consultant's contractual relationship with the Authority.

Confidential information does not include the following:

- (a) information that is previously rightfully known to Consultant without restriction on disclosure,
- (b) information that is or becomes, from no act or failure to act on the part of Consultant, generally known in the relevant industry or in the public domain, or
- (c) information that is independently developed by Consultant without the use of Confidential Information.

Title to all Confidential Information remains the property of the Authority. Confidential Information is provided on an "as is" basis, and the Authority makes no warranties, guarantees or representations of any kind express or implied, or arising by custom or trade usage, as to any matter whatsoever, without limitation, and specifically makes no implied warranty of fitness for any particular purpose or use, including but not limited to adequacy, accuracy, completeness or conformity to any representation, description, sample, or model.

B. Authorized Use

"Authorized Use" shall be defined as the use of Confidential Information by Consultant, its employees, or agents, solely for the purpose of performing the services as agreed to, as now or hereafter modified, or amended. Disclosure, display, use, duplication, storage, or transmittal of Confidential Information, in any form, for any purpose other than as agreed to, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an "unauthorized use."

C. Authorized Person

"Authorized Person" shall be defined as those persons within Consultant's employ or control identified by Consultant to the Authority as having a need to receive, possess, store, access, or view Confidential Information for an Authorized Use.



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PART 2. CONFIDENTIALITY & NON-DISCLOSURE REQUIREMENTS

A. Duty to Protect Confidential Information

Upon proper execution of this Agreement, Consultant will be granted a non-exclusive, non-transferable license to display, use, duplicate, store, and disclose Confidential Information only for an Authorized Use. Consultant shall safeguard all Confidential Information which is delivered from the Authority to Consultant to ensure its authorized use and to protect and prevent its unauthorized use or disclosure.

“Safeguard all Confidential Information” shall be defined as Consultant taking either one, or a combination of the following security measures, whichever standard is higher:

- (a) Where Consultant has established security procedures for its own confidential, sensitive business information which impose security requirements for the protection of its own trade secret, proprietary or confidential information, Consultant shall protect the Confidential Information using the same means; and/or
- (b) Where Consultant has not established such internal procedures, Consultant shall take the commercial measures defined below, to protect the Confidential Information.

Commercial Measures to Protect Confidential Information

For purposes of this Agreement, “commercial measures” shall be defined and will include each of the following responsibilities to be undertaken by Consultant:

1. Use Restriction

Confidential Information shall only be received, possessed, stored, accessed and/or viewed by Authorized Persons.

2. Access by Authorized Person(s)

- a. Consultant shall be responsible for identifying those persons within its employ or control (e.g., employees and agents) who have a need to receive, possess, store, access, or view Confidential Information for an authorized use (hereinafter “Authorized Person(s)”).
- b. Consultant shall be required to take commercially reasonable steps to inform each Authorized Person of their individual obligation to protect the security of Confidential Information in accordance with the requirements of this Agreement.



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- c. Consultant shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any Authorized Person until such person has agreed and acknowledged in writing to comply with the required security obligations set forth below.

3. Access by Third-Party Consultant or Subcontractor

- a. Consultant shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any third-party consultant or subcontractor without the express written consent of the Authority's General Counsel.
- b. The Authority's General Counsel may only give such written consent after the legal representative of the third-party consultant or subcontractor has been made aware of and has agreed in writing to comply with the required security obligations of this Agreement.
- c. If such written consent is given by the Authority's General Counsel, the third-party consultant or subcontractor shall not be allowed to further disseminate or distribute Confidential Information, other than to provide access by Authorized Person(s) within third-party consultant's or subcontractor's control and oversight.

4. Security Obligations Regarding Confidential Information

Any person(s) who receive, possess, store, access, or view Confidential Information from either Consultant or its approved third-party consultant or subcontractor (hereinafter "Custodian") shall be subject to the following security obligations:

- a. Custodian is the SOLE entity authorized to duplicate, distribute, or otherwise transmit Confidential Information,
- b. Custodian's legal representative must approve any process used to duplicate, distribute, or otherwise transmit Confidential Information to Authorized Person(s), and may NOT approve or use any process which involves the use of any public internet or other non-secure medium,
- c. Unless otherwise authorized by Custodian's legal representative, Confidential Information may NOT be stored on personal (non-business) computing or other electronic devices (including zip drives, thumb drives, disks, or any similar computing storage or copying device) or taken or removed in any form outside of the physical premises of Custodian.



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- d. Confidential Information may only be duplicated, distributed, or otherwise transmitted “as is”, without alteration of any kind. “Confidential” or “Copyright” notices, whether originally in physical or electronic medium, shall not be removed from and shall be duplicated on Confidential Information when such information is duplicated, distributed, or otherwise transmitted pursuant to (b) above.
- e. Other than as set forth in (a-d), above, Confidential Information may not be duplicated, distributed, stored, or otherwise transmitted or communicated to or by any person or system. Authorized Person(s) may not copy, re-duplicate, re-transmit or re-distribute Confidential Information, in any form, whether whole or in part, or in any medium, whether electronic or hard copy.
- f. Upon termination of employment, or upon completion or expiration of the services performed by Consultant or any third-party party consultant or subcontractor, each Authorized Person(s) shall be required to return Confidential Information to Custodian’s legal representative, and/or to certify that all electronic, optical, or other copies have been destroyed within any electronic storage or other medium, and all device(s) used or provided to and in the possession of such Authorized Person for the possession or storage of Confidential Information shall be surrendered and returned to the Custodian who shall then deliver it to the Authority for whatever forensic review of the activity logged into or disseminated from said device(s) the Authority may determine to implement.

5. Chain of Custody

Consultant shall be required to keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of Consultant, and to any third-party consultant or subcontractor who has a need to access Confidential Information for such authorized use.

Any third-party consultant or subcontractor receiving Confidential Information from Consultant shall, as a condition of accessing such information, certify that such entity shall keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of such entity, and that such entity will provide its written certification of compliance with the provisions of this Agreement to the Consultant as provided in paragraph VI, below.



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6. **Certification by Consultant of Return of Confidential Information**

Consultant and its third-party consultant or subcontractor who have received Confidential Information shall certify the chain of custody of such information as follows:

a. **Consultant:**

Upon termination of the engagement, Consultant shall independently certify, in writing, to the Authority, its compliance, during the period agreed to, with the terms of this Agreement. Consultant shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s), consultants and subcontractors to whom the Confidential Information was duplicated, distributed, or transmitted,
- (ii) As to Authorized Person(s) within the internal employment or control of Consultant, that all copies of Confidential Information have either been returned to the Authority or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage, and Consultant shall attach the certifications of its consultants and subcontractors.

2. **Third-Party Consultant or Subcontractor:**

Upon termination of the engagement, such entity shall independently certify, in writing its compliance with the terms of this Agreement, and shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s) to whom the Confidential Information was duplicated, distributed, or transmitted, and
- (ii) As to such Authorized Person(s) within the internal employment or control of such entity, that all copies of Confidential Information have either been returned to the Authority or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage.

Termination

The license to use, possess, or retain any Confidential Information or any of the devices upon which it was accessed, downloaded, transferred or stored, terminates automatically upon the happening of any of the following: (a) breach of this agreement or (b) completion of Consultant's services as agreed to or (c) any notice of termination by the Authority of the services agreement with or without cause and solely on the demand of the Authority to any



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representative of the Consultant (given orally or in writing in any format) without regard to any other claims, controversies, demands, or alleged legal rights claimed by Consultant, including but not limited to any amounts alleged to be owed for services rendered or any other legal or equitable claims. Consultant and all prior Authorized Users shall be legally liable, both criminally and civilly, for any violation of this provision which shall be deemed a wrongful taking or withholding of the Confidential Information to the same extent as if it had been obtained by all such parties without the Authority's permission and consent in the first instance.

Compliance

Should Consultant breach or threaten to breach this Agreement, the Authority shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorney's fees) for losses or damages resulting from such breach. Consultant is deemed to acknowledge that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information.

Consultant affirms that its employees with access to Confidential Information will not disclose such Confidential Information to anyone, except as provided in this Agreement. In addition, Authorized Persons shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. Consultant shall notify the Authority immediately upon becoming aware that Confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

Governing Laws

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, Consultant has caused this Non-Disclosure Agreement to be signed as of the date set forth below.

By: _____

Print Name: _____

Title: _____

Date: _____



**ERIE COUNTY WATER AUTHORITY
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**CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL
INFORMATION**

Consultant, having a principal place of business at _____
(hereinafter _____), and having entered into a Confidential Non-Disclosure Agreement
(NDA) with the Erie County Water Authority on _____, and having been provided
by the Authority with Confidential Information in accordance with that NDA, now certifies on
behalf of itself and all Authorized Persons provided Confidential Information as agreed to, as to
the following:

- i. that the documented chain of custody, attached hereto, names all Authorized
Person(s) to whom the Confidential Information was duplicated, distributed, or
transmitted, and
- ii. as to such Authorized Person(s), that the Confidential Information provided by the
State has been returned to the State, and that all duplicates, regardless of format, have
been destroyed or permanently deleted from all forms of electronic storage, and
- iii. Consultant has attached certifications of Authorized Person(s) to whom the
Confidential Information was duplicated, distributed or transmitted, that all copies of
Confidential Information have been returned to Consultant and that the Authorized
Person has destroyed or permanently deleted all duplicates of Confidential
Information from all forms of electronic storage.

This Certification is hereby executed

By:

Name

Title

Date

