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

Project Description: Storage Tank Inspections
Item Description: Agreement X Professional Service Contract Amendment Change Order BCD NYSDOT Agreement Contract Documents Addendum Recommendation for Award of Contract Recommendation to Reject Ride
Request for Proposals Other Action Requested:
X Board Authorization to Execute X Legal Approval Board Authorization to Award X 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: X Department Head X Department Head X Risk Manager X Director of Administration
X Director of Administration Michiga / Catter Date: 0///// X Executive Engineer Image: Complete / Catter Date: 8///// APPROVED AS TO FORM: Microart Q. Microart Date: 8///// X Legal Microart Q. Microart Date: 8////// APPROVED FOR BOARD RESOLUTION: Date: 8///// 0///// X Secretary to the Authority Date: 2/////
Remarks: Resolution Date: Item No:



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

August 14, 2019

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Senior Distribution Engineer

Subject: Contract W-032 Storage Tank Inspections ECWA Project No. 2019000192

The following material is attached:

- Blue Authorization Form for Risk Manager and Legal Department approval. The Blue Authorization Form is requesting Board Authorization to execute the attached Professional Service Contract.
- Professional Service Contract for the above referenced project.
- Copy of Interoffice Memorandum from Russell J. Stoll, Executive Engineer, dated July 29, 2019, detailing recommendations for the contract assignment after review of Request for Proposals (PN 201900048).

The project consists of engineering services for the inspection and evaluation of water storage tanks. The work is scheduled to be performed in 2019 (Colvin, Emery, Gartman, Kulp, and Newstead Tank), 2020 (Aurora, Broadway, and East Aurora Tank), and 2021 (Chestnut Ridge, Marilla, Scherff, Violet, Rice Hill, Sandridge, and Veterans Park Tank).

Tank inspections are budgeted under 2502 Construction, Payments to Contractors-Tanks. There is adequate funding in the budget to perform the five inspections scheduled for 2019.

LFK:jmf Attachments cc: R.Stoll L.Lester CONT-W-032-1901-011

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Project No. 201900192 Contract W-032

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this _____ day of _____, 20___, by and between

ERIE COUNTY WATER AUTHORITY 295 Main Street, Room 350

Buffalo, New York 14203

hereinafter referred to as the "Authority", and

WENDEL WD ARCHITECTURE, ENGINEERING, SURVEYING, AND LANDSCAPE ARCHITECTURE, P.C. 375 Essjay Road, Suite 200 Williamsville, New York 14221

hereinafter referred to as "Consultant".

WHEREAS, the Authority desires to contract with the Consultant to render professional services upon the terms and for the consideration hereinafter stated;

WHEREAS, the Consultant represents that it is properly qualified to render such services, and

WHEREAS, the parties desire to set forth herein the terms and conditions under which the said professional services will be furnished,

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties agree as follows:

1. **QUALIFICATIONS OF CONSULTANT:**

The Consultant shall perform its services under this agreement in a skillful and competent manner in accordance with the prevailing standards of the consulting profession. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and failure to perform thereof.

2. SCOPE OF SERVICES:

A. PROJECT DESCRIPTION:

The project consists of engineering services for the inspection and evaluation of the following water storage tanks located throughout the Authority system. The work is scheduled to be performed in 2019, 2020 and 2021.

Name	Scheduled	Owner	MG	Type	Construction
Colvin	2019 fall	ECWA	1.25	hydropillar	steel
Emery	2019 fall	Lease Managed	0.44	ground	concrete

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Name	Scheduled	Owner	MG	Type	Construction
Gartman	2019 fall	ECWA	0.5	ground	steel
Kulp	2019 fall	Lease Managed	0.28	standpipe	steel
Newstead	2019 fall	ECWA	1.5	hydropillar	steel/concrete
Aurora	2020 fall	Lease Managed	0.28	ground	concrete
Broadway	2020 fall	ECWA	4.4	ground	steel
East Aurora	2020 fall	ECWA	2.0	ground	steel
Chestnut Ridge	2021 spring	ECWA	1.5	ground	steel
Marilla	2021 spring	ECWA	1.0	standpipe	steel
Scherff	2021 spring	Lease Managed	0.25	standpipe	steel
Violet	2021 spring	Lease Managed	0.30	ground	steel
Rice Hill	2021 fall	Lease Managed	0.35	standpipe	steel
Sandridge	2021 fall	Lease Managed	1.5	hydropillar	steel
Veterans Park	2021 fall	ECWA	4.0	ground	concrete

B. TANK EVALUATIONS

Consultant shall provide all engineering services necessary to fully evaluate the fifteen water storage tanks described in Section 2.A, including, but not limited to, the following:

- 1. Project Coordination:
 - a. Conduct a kick-off meeting with the Authority prior to mobilizing for each round of tank inspections. Engineer shall provide an agenda for the meeting.
 - b. Review available as-built drawings and prior tank inspection reports for use as comparison and for determining inspection locations. Discuss tank history with Authority staff prior to inspecting tank. The historical information shall be reviewed prior to the kickoff meeting for each round of tank inspections.
 - c. Coordinate inspection schedule with the Authority for each round of inspections. The Authority will remove from service and drain each tank as required to complete field assessment. The Authority will open the manway and reinstall the gasket and bolts after the inspection. Consultant shall be responsible for cleaning tank prior to inspection and then cleaning and disinfecting tank after the inspection.
 - d. Perform inspections and evaluations for all tanks, but excluding any tanks deleted by the Authority. It is anticipated that there will be four (4) mobilizations required to complete the inspections. This work shall be completed by the Fall of 2021.
 - e. Tank inspection reporting format, forms, and checklist shall be reviewed and approved by the Authority prior to performing the inspections. Report format, forms, and checklist should be prepared by consultant prior to the kick-off meeting and presented to the Authority at the kick-off meeting.

- An executive summary shall be provided for each tank's inspection report. The executive summary shall include, at a minimum, the following:
 - i. Original tank construction date.
 - ii. Most recent previous inspection date.
 - iii. Most recent tank rehabilitation/recoating year.
 - iv. Summary statement regarding condition of tank exterior.
 - v. Summary statement regarding condition of tank interior.
 - vi. Summary statement regarding ANSI/OSHA and safetyrelated deficiencies.
 - vii. Summary statement regarding AWWA and operational deficiencies.
 - viii. Summary statement regarding the tank foundation.
 - ix. Timeframe (No. of years) for when tank repairs should begin.
 - x. Estimated cost of tank repairs.
 - xi. Summary statement on structural analysis, if applicable.
- 2. Equipment Required for Inspection Services:
 - a. Listed below are the minimum equipment requirements. The list is not intended to be all inclusive:
 - 1) Portable generator and extension cords.
 - 2) Adequate lighting.
 - 3) 2-inch submersible pump.
 - 4) Pressure washer with hoses. Authority will provide water source and power if available.
 - 5) Extension ladder variable lengths shall be available for tank sizes listed above.
 - 6) Scaffolding stationary or rolling. If the use of an extension ladder is not feasible, scaffolding shall be used.
 - 7) Manlift If the use of an extension ladder isn't feasible.
 - 8) PPE.
 - 9) Climbing gear and rappelling equipment.
- 3. Tank Inspections: General
 - a. Tank inspections and evaluations shall be completed in accordance to API 653 (latest edition), all applicable AWWA standards, OSHA standards and as specified herein. The interior and exterior of each tank shall be inspected.
 - b. Tank inspection shall consist of a careful study of tank's interior, exterior, and accessories. Inspections shall include: structural conditions, safety conditions, sanitary conditions, coating system conditions, and security conditions. All necessary surfaces on the tank shall be accessed by rigging and rappelling the interior and exterior as required by the condition and design of each tank.

- 1) Structural investigations include, but are not limited to:
 - a) Anchor bolts.
 - b) Foundations.
 - c) Riser/shell steel.
 - d) Spider rods.
 - e) Roof trusses.
 - f) Weld seams.
- 2) Safety investigations include, but are not limited to:
 - a) All applicable regulations (OSHA, AWWA, FAA, etc.)
 - b) Ladders.
 - c) Fall prevention.
 - d) Guardrails.
 - e) Access manways.
 - f) Confined space.
 - g) Radiation.
- 3) Sanitary investigations include, but are not limited to:
 - a) Roof openings.
 - b) Access hatches.
 - c) Low spots on roofs.
 - d) Vents.
 - e) Overflows.
- 4) Coating system investigations include, but are not limited to:
 - a) Type and general condition.
 - b) Approximate percentage and type of coatings system failure.
 - c) Adhesion.
 - d) Coating system thickness.
 - e) Extent of pitting damage.
 - f) Heavy metal presence.
- 5) Security investigations include, but are not limited to:
 - a) Physical deterrents: fences, locks, barricades, lighting, ladder guards, and vents.
 - b) Telemetry: alarm systems and control systems.

Entire tank floor and first shell ring (at a minimum) on steel tanks shall be cleaned using a high-pressure pump, as necessary, to remove any sediment, scaling, etc. to allow for a thorough inspection of the surfaces. Entire tank floor and fifteen (15) ft. of tank wall of concrete tanks shall be cleaned using a high-pressure pump, as necessary, to remove any sediment, scaling, etc. to allow for a thorough inspection of the surfaces. The Authority will provide drums to the Contractor, the Contractor will place the sediment that is removed from the bottom of the tank into the drums, and the Authority will dispose of the material.

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The tanks shall be inspected, from several standpoints, to provide an accurate evaluation of its condition and to identify sanitary,

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safety and/or structural deficiencies and to provide detailed recommendations for required remedial work.

A structural analysis of the tank shall be performed if the inspection of the tank deems that further evaluation is required. Written authorization from the Authority shall be required prior to performing the structural analysis. Assess condition of interior and exterior tank surfaces and evaluate effect of corrosion. The evaluation shall include an analysis of the roof, floor, nozzles, vents and shell for the intended design conditions and determine the tank's suitability for service, based on the existing roof, floor and shell plate thickness and material. The analysis shall take into consideration all anticipated loading conditions, including pressure due to fluid static head, internal and external pressures, wind loads, roof live nozzle loads. settlement. loads. and attachment/accessories loads. All assumptions used in the analysis shall be provided to the Authority in detail for review and approval.

Personnel Requirements: Inspections shall be performed by an inspection team consisting of a Team Leader (TL) and an Assistant Team Leader (ATL). The use of additional ATL's may be required based on the complexity and size of the tank being inspected. All field personnel assigned to the project must be physically capable of performing the task associated with their positions. All field personnel must be able to work at heights, on ladders, on scaffolding and on aerial lifts, or other tank inspection access equipment. They must be able to climb, work in confined spaces, and be able to work under adverse weather conditions as required. All field personnel shall satisfy OSHA requirements.

- 1) The Team Leader shall have, at a minimum, the following certifications:
 - a) API 653 Mechanical Integrity
 - b) NACE Level II/III Coatings Inspection
- 2) The Assistant Team Leader(s) shall have, at a minimum, one of the following certifications:
 - a) NACE Level II/III Coatings Inspection
 - b) SNT-TC-1A Nondestructive
 - c) API 653 Mechanical Integrity
 - d) AWS CWI Mechanical Integrity
 - e) NICET Level III General Construction

All work performed by field personnel shall be reviewed by a New York State Licensed Professional Engineer (PE) with a minimum of five (5) experience with the design, construction, and maintenance of water storage tanks. The PE is responsible for checking all field reports for completeness, accuracy and conformance with this document. The PE must be present at a minimum of one tank inspection during each round of tank

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inspections to observe the inspection work being performed. The PE shall verify that the TL and ATL(s) meet the requirements listed above.

- 4. Tank Inspections: Exterior.
 - a. Exterior of tanks may be inspected while the tank is in service. Coordinate with Owner to determine what equipment would not be accessible while the tank is in service.
 - b. Inspect, record and evaluate the tank site and special considerations, such as, but not limited to security, site drainage, electrical service, and proximity to buildings.
 - c. Discuss repair history with Authority staff to determine if there have been any signs of leakage since the last inspection; especially in areas of seams, foundations, welds, and/or rivets.
 - d. Inspect, record and evaluate concrete surfaces for spalling, cracking, exposed reinforcing wire, evidence of leakage, and other items requiring rehabilitation.
 - e. Inspect, record and evaluate tank foundation for spalling, cracking, settling, etc. Note evidence of anchor bolt corrosion, distortion or loose/missing anchor bolt nuts.
 - f. Inspect, record and evaluate tank roof and shell for distortion, bulging, blistering, leakage, pitting, corrosion of outside stiffeners and wind girders, cracking of attachment welds, etc.
 - g. Inspect, record and evaluate tank ladders, fall protection systems, walkways, platforms, and/or stairways for corroded, bent, broken, or missing structural parts; loose or missing bolting; worn stair treads and/or rungs; safety latches are in place and are operational.
 - h. Inspect, record and evaluate tank nozzles and penetrations for distortion, bulging, blistering, leakage, corrosion, and pitting.
 - i. Inspect, record and evaluate tank grounding connections, as applicable, to ensure good electrical contact and condition of grounding bolts, bands, straps and rods.
 - j. Inspect, record and evaluate the overall coating condition with description of chalking, peeling, coating faults, along with dry film thickness and overall coating adhesion conditions to the surface. Determine the anticipated remaining useful life of the coating system(s).
 - Estimate percentage of coating failure and corrosion on all coated surfaces.
 - Test adhesion of coating as per ASTM D3359.
 - k. Summarize and describe the overall configuration and coatings history of the tank based on available record information and site observations.
 - 1. Obtain paint chip samples of the existing coating system(s) and analyze for lead, cadmium, and chromium content. Repair coating as directed by ECWA.

- m. Inspect, record and evaluate all equipment, antennas, cables, mounting brackets, penetrations, etc. of the various cellular phone companies. Consultant must be cognizant about working in close proximity to cellular antennas and other communication antennas.
- 5. Tank Inspections: Interior.
 - a. Upon tank draining, inspect and record evidence of excessive sedimentation prior to removal.
 - b. Interior and exterior tank surfaces and tank internal parts shall be cleaned, as needed, prior to the inspection. All scale, etc. shall be removed so that a thorough inspection may be conducted, and satisfactory operation can be achieved. All floor welds and the bottom 4-feet of all shell welds shall be cleaned.
 - c. Baffles and attachments shall be inspected for deterioration, damage, and/or proper installation.
 - d. Inspect, record and evaluate tank nozzles and penetrations for distortion, bulging, blistering, leakage, corrosion, and pitting.
 - e. Inspect, record and evaluate tank roof for mechanical integrity and leaks.
 - f. Based on visual observation, ultrasonic thickness measurements shall be taken at plates with evident (at the Authority's discretion) corrosion and pitting. At a minimum, obtain ultrasonic thickness measurements, for each steel tank, as follows:
 - 1) A minimum of three (3) thickness readings, per shell plate, shall be obtained from ten (10) shell plates.
 - 2) A minimum of four (4) shell plate thickness readings shall be obtained from each heavily corroded shell plate.
 - 3) Thickness readings shall be made about the internal circumference of each accessible nozzle. Nozzles having too small an internal diameter to permit access shall be tested from the outside of the tank.
 - 4) A band of ultrasonic thickness measurements shall be taken around the tank circumference, 2-inches above the bottom to shell weld, spacing the measurements four (4) per shell plate, at a minimum. Note additional measurements shall be obtained in all areas of apparent corrosion, or as the Inspector determines necessary to determine tank's overall suitability for service.
 - 5) A band of ultrasonic thickness readings shall be taken around the tank circumference, 3-feet above the bottom to shell weld, spacing the readings two (2) per shell plate. Note additional measurements shall be obtained in all areas of apparent corrosion, or as the Inspector determines necessary to determine tank's overall suitability for service.
 - 6) Tank regions, including regions of the bottom, shell, roof or nozzles, that exhibit visually detectable metal loss shall require multiple ultrasonic thickness measurements to determine the

thinnest area within the region and to define the dimensions of the affected region. Localized thinning shall be evaluated per API 653.

- 7) A representative number of areas on the floor shall be scanned (ultrasonic) to determine if soil side corrosion is occurring.
- 8) Tank ultrasonic thickness measurements shall also be recorded and located on a drawing(s) of the tank. For badly pitted areas, pit gauges shall be used to determine the depths of the deepest pits within each steel wall and floor plate. Location of pit filler shall be identified and located on drawing of the tank. Localized and random pitting shall be evaluated per API 653. ECWA will provide all existing tank drawings, as required.
- g.

Inspect, record, and evaluate all tank roof components, including roof supports, roof trusses, vents and rafters, for mechanical integrity, corrosion, leaks, evidence of buckling, distortion, and/or deterioration. Thickness measurements of apparently badly corroded areas shall be obtained using ultrasonic thickness equipment. A minimum of four (4) measurements per roof plate (exterior side) shall be obtained. Additional measurements shall be obtained to the extent necessary to determine tank's overall suitability for service.

- h. Inspect, record and evaluate all tracks, rollers, ladders, rolling ladders for mechanical integrity, corrosion/deterioration, leaks, evidence of buckling, distortion, and/or deterioration. Internal ladders or "painters ring" shall not be used for inspection purposes.
- i. Take elevation measurements (survey) around the tank circumference and across the tank diameter, in accordance with API 653 Appendix B, to gain a baseline for tank bottom settlement.
- j. Inspect, record and evaluate all concrete surfaces for spalling, cracking, exposed reinforcing wire, evidence of leakage, wall/floor seam condition, and other items requiring rehabilitation.

k. Inspect, record and evaluate the overall coating condition with description of chalking, peeling, coating faults, along with dry film thickness and overall coating adhesion conditions to the surface. Determine the anticipated remaining useful life of the coating system(s).

- Estimate percentage of coating failure and corrosion on all coated surfaces.
- 1. Summarize and describe the overall configuration and coatings history of the tank based on available record information and site observations.
- m. Obtain samples of the existing coating system(s) and analyze for lead, cadmium, and chromium content.

- n. Obtain measurements and identify components, configuration, and condition of the tank overflow system. A hands-on inspection of the tank overflow system is required.
- o. After the interior inspection is complete, disinfect the tank according to AWWA Standard C652-02 Method 2. The Authority will be responsible for filling each tank, collecting bacteriological samples, and having the samples analyzed. If the bacteriological tests fail, the Contractor is responsible for all costs associated with draining/refilling the tank, disinfecting the tank, any additional bacteriological testing, and any other work necessary to bring the tank into compliance with applicable regulations.

6. Records, Documentation and Report Format

- a. Provide a drawing(s) of each tank which accurately illustrates the identifying points which have been marked on the tank. Inspection findings shall be reported relative to their location in/on the tank, with sufficient detail to permit relocation and evaluation of the reported condition(s). Provide additional notes, sketches, or documents appended to the report, as necessary, to more fully describe the inspection findings.
- b. Provide photographic record of observations to adequately portray the overall findings of the inspection of each tank.
- c. Provide recommendations, as necessary, for repairs and modifications to bring each tank inspected into compliance with present AWWA, OSHA, NYSDOH, DHS, FAA and sanitary standards and regulations.
- d. Identify and prioritize the need for structural, site, and coating repairs. If applicable, offer alternatives that may extend the tank's useful life prior to the need for major rehabilitation.
- e. Identify items to be detailed in the preparation of contract documents for repairs and rehabilitation and provide recommendations and alternatives for repair methods and techniques. Provide details of the advantages and disadvantages of each alternative given.
- f. Evaluate impact of coatings containing lead, cadmium, or chromium, if found, on repair procedures.
- g. Prepare present worth cost analyses for the recommended repairs, modifications, and painting options. Provide the replacement cost of the tank for cost comparison.
- h. Provide three copies and one (1) electronic copy of the Draft Engineering Report for each tank for review and comment by the Authority, including the observations and recommendations for rehabilitation and maintenance as well as budget cost estimates.
- i. Provide three copies and one (1) electronic copy of the Final Engineering Report for each tank that addresses the Authority's comments from the draft reports. Reports shall be certified by a New York State Licensed Professional Engineer (PE) familiar with

the design, construction, and maintenance of water storage tanks. See paragraph 3f for personnel requirements.

C. SPECIAL SERVICES

The Authority may require the Consultant to provide or arrange for and assist in obtaining one or more of the following special services in carrying out the project. Because it is not possible to determine in advance the need for or the cost of such services, these are included as separate elements of cost which shall be separately negotiated. These services include:

- a. Additional copies of reports.
- b. Extra travel and subsistence for the Consultant and his staff beyond that normally required under ordinary circumstances, when authorized by the Authority.
- c. TCLP testing of tank sediment.
- d. Disposal of tank sediment characterized as hazardous.
- e. Underwater evaluations by a Certified Commercial Diver.
- f. Vacuum truck removal of sediment.
- g. Remotely operated vehicle (ROV) inspection services.
- h. Magnetic flux leakage detection, magnetic particle testing, penetrant testing, radiographic testing, and vacuum box testing.
- i. Certified welding inspection services.
- j. Ground penetrating radar.
- k. Thawing/deicing equipment.
- 1. Potable water tank.
- m. 2'' 6'' centrifugal or submersible pump rental.
- n. Disinfection of tanks that are not included in this scope of work.
- o. Inspection and evaluation of additional water storage tanks.
- p. If, after the inspection is performed, additional inspection (at the Authority's discretion) is required due to the condition of the tank then additional cleaning and rigging services shall be provided under this item.

3. <u>PAYMENT FOR SERVICES:</u>

A. ENGINEERING SERVICES – TANK EVALUATIONS

For services described under Section 2A and 2B, the Authority shall pay Consultant a lump sum which will include all expense, labor, and cost associated with each tank. Payment will be made monthly based on the percentage of completion up to 70% of the lump sum amount for each tank. After submission by the Consultant to the Authority of a draft report, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount for each tank. The balance of the lump sum amount for each tank will be paid when the final report is submitted to the Authority.

B. SPECIAL SERVICES

For services described under Section 2C, Special Services, the Authority shall pay Consultant an amount to be negotiated at the time such service is required. Costs for such Special Services shall not exceed \$100,000.00.

C. 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, Consultant agrees to refund the excess.

	Inspection, Records.	Tank Cleaning			
	Documentation,	and			
	and Report	Disinfection	Structural	Lump Sum Fee	
Tank Evaluation Costs:	Costs	Costs	Analysis Costs	per Tank	Notes
Colvin	\$18,552.00	\$11,915.00	\$7,500.00	\$37,967.00	1&5
Emery	\$18,537.00	\$7,092.00	\$7,500.00	\$33,129.00	1&5
Gartman	\$20,402.00	\$7,092.00	\$7,500.00	\$34,994.00	1&5
Kulp	\$16,715.00	\$4,308.00	\$7,500.00	\$28,523.00	1&5
Newstead	\$18,552.00	\$11,915.00	\$7,500.00	\$37,967.00	1&5
Aurora	\$18,537.00	\$7,092.00	\$7,500.00	\$33,129.00	2 & 5
Broadway	\$18,537.00	\$7,092.00	\$7,500.00	\$33,129.00	2&5
East Aurora	\$20,402.00	\$7,092.00	\$7,500.00	\$34,994.00	2&5
Chestnut Ridge	\$20,402.00	\$7,092.00	\$7,500.00	\$34,994.00	3&5
Marilla	\$18,537.00	\$7,092.00	\$7,500.00	\$33,129.00	3&5
Scherff	\$16,716.00	\$4,308.00	\$7,500.00	\$28,524.00	3&5
Violet	\$18,537.00	\$7,092.00	\$7,500.00	\$33,129.00	3&5
Rice Hill	\$18,581.00	\$4,308.00	\$7,500.00	\$30,389.00	4 & 5
Sandridge	\$18,552.00	\$11,915.00	\$7,500.00	\$37,967.00	4 & 5
Veterans Park	\$18,552.00	\$11,915.00	\$7,500.00	\$37,967.00	4 & 5
TOTAL ENGINEERING COST \$509,931.00					

D. ENGINEERING COST SCHEDULE

Lump Sum Fee Notes:

- 1 Lump sum fee shall reduce by \$3,600.00 if all five tanks can be inspected with one mobilization and there are no delays caused by Owner once inspections have started.
- 2 Lump sum fee shall reduce by \$2,800.00 if all three tanks can be inspected with one mobilization and there are no delays caused by Owner once inspections have started.
- 3 Lump sum fee shall reduce by \$2,900.00 if all four tanks can be inspected with one mobilization and there are no delays caused by Owner once inspections have started.
- 4 Lump sum fee shall reduce by \$2,800.00 if all three tanks can be inspected with one mobilization and there are no delays caused by Owner once inspections have started.
- 5 Lump sum fee shall reduce by \$7,500.00 if structural analysis is deemed not necessary based on the results of the inspection.

Storage Tank Inspections				
2019 Hourly Rates				
Team Leader	\$185.00			
Assistant Team Leader	\$110.00			
Licensed Professional Engineer	\$243.00			
2020 Hourly Rates				
Team Leader	\$188.70			
Assistant Team Leader	\$112.20			
Licensed Professional Engineer	\$248.00			
2021 Hourly Rates				
Team Leader	\$192.50			
Assistant Team Leader	\$114.44			
Licensed Professional Engineer	\$253.00			

- 4. <u>SUBCONTRACT AND ASSIGNMENT</u>: 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. 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. <u>AMENDMENTS</u>: No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.
- 6. <u>**RIGHT TO TERMINATE</u>**: The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days' written notice. Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.</u>
- 7. **INDEMNIFICATION:** The Consultant shall indemnify the Authority against any and all claims arising from the services performed by the Consultant herein and shall defend and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees based upon or arising out of damage to property or injury to persons or other tortious conduct caused or contributed to it by the Consultant or anyone under its direction or control or on its behalf in the course of its negligent performance under this Agreement. The Consultant further agrees to indemnify, defend and hold harmless the Authority from any and all claims in reference to the services performed by the Consultant hereunder which may infringe on a patent, copyright, trade secret or other proprietary right of any third party.
- 8. <u>CONFIDENTIAL INFORMATION</u>: In order 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 performing of services including but not limited to information relative to the services to be performed.

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.

In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. Consultant may provide such information to its subconsultants 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. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

- **9.** <u>INSURANCE</u>: 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 Exhibit A. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.
- 10. COPYRIGHTS, TRADEMARKS, AND LICENSING: All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered the property of the Consultant. The Consultant hereby grants the Authority an irrevocable, exclusive, royalty-free license in perpetuity, granting the Authority permission to copy; sell; distribute; provide to other consultants, contractors, and municipal customers; and utilize for any of the Authority's purposes; copies of all materials produced under this agreement, including but not limited to reports, photographs, analyses, evaluations, assessments, summaries, measurements, and recommendations, and to incorporate the copyright work, in whole or in part, into derivative works for sale and distribution. The Consultant further agrees that the Authority shall be the sole licensee, and the Consultant shall not enter into any additional licenses or sublicenses of any of the material produced under this Agreement. Further, the Consultant agrees that it shall not copy, sell, or distribute the material provided under this agreement, except for retaining a copy for the Consultant's records, without the express written consent of the Authority, where such consent shall not be unreasonably withheld.

In performing work under this agreement, the Consultant may be granted access to the Authority's GIS data, documents, and other information. The Consultant understands and agrees that the use of such data, documentation and information shall be treated as confidential information and the Consultant shall abide by the terms and conditions of any confidentiality and copyright leasing agreements (attached as Exhibit B).

- 11. <u>NEW YORK LAW AND JURISDICTION</u>: 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.
- 12. <u>CONFLICTS OF INTEREST</u>: 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 further liability of the Consultant, except to pay for services actually rendered.
- **13.** <u>ADDITIONAL CONDITIONS</u>: 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.
- 14. **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 agreement hereafter 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 thereby.
- 15. <u>INDEPENDENT STATUS</u>: Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant a 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.

The Consultant is free to choose the aggregate number of hours worked and substantially all of the scheduling of such hours as it shall see fit at its discretion within the limitations set forth hereinbefore in Paragraph 2.

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.

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.

- **16.1** <u>**COMPLIANCE:**</u> The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York.
- **16.2** The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.
- **16.3** The Consultant agrees that the Agreement herein shall be in compliance with the provisions of Section139-L of the State Finance Law (attached as Exhibit C).
- 17. <u>GRATUITIES</u>: The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance 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 to influence the recipients in the conduct of the recipients in the conduct of their official duties.
- 18. <u>NOTICE</u>: 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.
- **19.** <u>SEVERABILITY:</u> If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.

20. <u>**TERMINATION:**</u> The Authority reserves the right to terminate this contract 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 contract.

Form Rev.04/17/19

ERIE COUNTY WATER AUTHORITY

By

Jerome D. Schad, Chairman

WENDEL WD ARCHITECTURE, ENGINEERING, SURVEYING, AND LANDSCAPE ARCHITECTURE, P.C.

By___

Stewart C. Haney, PE, President/CEO

STATE OF NEW YORK) COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 20___, 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 Chairman 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

STATE OF NEW YORK) COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 20___, before me personally came Stewart C. Haney, PE, to me known, who, being by me duly sworn, did depose and say that he resides in ______, New York, that he is the President/CEO of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Notary Public

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EXHIBIT A

INSURANCE REQUIREMENTS

ERIE COUNTY WATER AUTHORITY