

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

**Contract:** \_\_\_\_\_ **Project No.:** 202100135  
**Project Description:** Professional Services Agreement with Lawley Service, Inc. and Authorization for CFO to bind insurance coverage

**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 Authorization for CFO to bind insurance coverage

**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 Authorization to bind Authority

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<u>Russell J. Stoll</u>	Date: <u>5/19/2021</u>
<input checked="" type="checkbox"/> Executive Engineer	<u>Joseph F. Koralick</u>	Date: <u>05/19/2021</u>
<input checked="" type="checkbox"/> Director of Administration	<u>Teranya Lester</u>	Date: <u>05/19/2021</u>
<input checked="" type="checkbox"/> Risk Manager	<u>Molly Op Musarra</u>	Date: <u>05/19/2021</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u>Karen A. Bendegast</u>	Date: <u>05/19/2021</u>
<input checked="" type="checkbox"/> Legal	<u>Margaret A. Murphy</u>	Date: <u>05/19/2021</u>

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority	<u>TCE</u>	Date: <u>05-19-21</u>
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**Remarks:** \_\_\_\_\_  
 \_\_\_\_\_

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



**ERIE COUNTY WATER AUTHORITY  
INTEROFFICE MEMORANDUM**

To: Jerome D. Schad, Chair  
Peggy A. LaGree, Vice Chair  
Michele M. Iannello, Secretary

Cc: Terrence D. McCracken, Secretary  
Russell J. Stoll, Chief Operating Officer  
Leonard F. Kowalski, Executive Engineer  
Lavonya C. Lester, Director of Administration  
Mary J. Musarra, Claims Representative/Risk Manager

From: Karen A. Prendergast, Chief Financial Officer  
Margaret A. Murphy, General Counsel

Date: May 19, 2020

Subject: Annual Insurance Renewal and Extension of Professional Service Agreement with Lawley Services, Inc.

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**Annual Review of Insurance Coverage**

Prior to 2019, the Claims and Risk Management Unit was part of the Finance and Administration Department and supervised by the Comptroller and Deputy Director. Traditionally, this Unit has always had a close working relationship with the Legal Department regarding claim investigations and other matters leading to litigation. The General Counsel and the Legal Department have always reviewed and approved any denial or settlement of a claim, with the General Counsel having the authority to settle any claim for \$5000 or less without Board approval.

In the 2019 Restructuring, the Authority placed the Unit under the direct supervision of the General Counsel as part of the Legal Department. Under the Division Head structure, the General Counsel and the Chief Financial Officer work closely on issues relating to insurance coverage, limits, and premiums. The Chief Financial Officer has primary responsibility to work with the Authority's insurance broker, Lawley Services, Inc. ("Lawley"), to review and recommend changes relating to insurance renewal and premiums.

All brokered insurance policies<sup>1</sup> renew on or before the first day of July. Prior to

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<sup>1</sup> Brokered insurance policies, as used in this staff memorandum, mean insurance policies procured through a

the renewal period, Lawley provides a plan summary and report (the “Report”). Lawley representatives then meet with the Board to present the Report, and to answer questions, relating to carriers, the type and the extent of coverage, and the estimated cost for such coverage.

This year, Lawley will be presenting its preliminary Report at the regular board meeting on June 10, 2021. This preliminary Report will not be posted on the Authority’s website so Lawley may continue to solicit and negotiate rates with potential carriers without revealing preliminary quotes from other carriers.

Karen Prendergast and other Authority personnel have already had informal discussions with Lawley to discuss its brokerage plan and anticipated increases in premiums for certain types of insurance coverage. The Authority is expecting premium increases above 5% for Cybersecurity, Property, and Workers’ Compensation insurance..

Lawley and the Authority will continue to negotiate rates up until the expiration date of the prior policy. Lawley and the General Counsel are again recommending that Karen A. Prendergast, as the Authority’s CFO, be given the authority to sign all insurance documents to bind coverage for the Authority.

### **New Brokerage Agreement**

As previously stated in the Staff Report, dated April 7, 2021, the Executive Staff is also recommending a new professional service agreement with Lawley, for a term of three-years with two, one-year extensions. Lawley has been an invaluable partner and resource to the Authority.

The Authority personnel, initiating a new contract or the procurement of goods and services, now directly contacts Pat Quinn via email to obtain the necessary risk assessment and insurance requirements. Lawley’s quick turnaround has saved significant time in the procurement process.

The Authority and Lawley have also worked together to strengthen the enforceability of bond and insurance covenants by amending and standardizing language found in multiple boiler-type Authority agreements. Most recently, the Authority has amended language in construction-related agreements, transferring litigation expenses and costs to downstream contractors and subcontractors whose action exposes the Authority to Labor Law claims.

Throughout the pandemic, Lawley shared with the Authority information relating to

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brokerage agreement. Lawley does not broker insurance for life, health, dental, or disability.

the best employment practices and plans relating to essential workers and protecting the Authority's critical infrastructure from cyberattacks and other security breaches.

While the Authority continues addressing the management and operational challenges of an aging critical infrastructure, managing Authority staff to optimize productivity, keeping abreast of changes within the insurance industry, and positioning the Authority in the strongest fiscal environment with sufficient insurance coverage to address expected and unexpected losses, the Authority needs to continue its partnership with Lawley more than ever.

Lawley has reviewed the proposed agreement, now submitted to the Board for its approval. Lawley has agreed to the same terms, conditions, and fees as the current agreement, due to expire on June 30, 2021.

The Authority's Executive Staff and Lawley are currently discussing expanding services to include Lawley's Certificate of Insurance (COI) Review Program. Such services, if recommended to the Board by the Executive Staff, would be included in a separate, one-year agreement. The Executive Staff are continuing to discuss this program with Lawley representative. The Board can expect another update as to this program at a future board meeting.

### **Board Approval Sought**

The Office of the Secretary has prepared a resolution authorizing the execution of the new Professional Service Agreement with Lawley and authorizing the CFO to sign all insurance documents to bind coverage for the Authority. At the regular meeting scheduled for June 24, 2021, the CFO will prepare and request the adoption of a resolution setting forth the types of coverage and the carriers with whom the Authority will seek to bind such coverage.

Budget Information:

O&M Budget

Unit: 7510: General Expenses

Item No.: 20 (924053) – General/Insurance

## PROFESSIONAL SERVICES AGREEMENT

This Agreement, effective as of May 27, 2021 (“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

**LAWLEY SERVICE, INC.**

361 Delaware Avenue  
Buffalo, New York 14202

hereinafter referred to as the “Consultant.”

**WHEREAS**, the Authority desires to enter into an agreement with the Consultant to render risk management and insurance broker services upon the terms and for the consideration set forth in this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the Authority and the Consultant agree as follows:

### ARTICLE 1 – SERVICES OF CONSULTANT

#### 1.01 *Standard of Performance*

- A. ***Standard of Care:*** The Consultant shall perform its services under this Agreement in a manner consistent with the level of care and skill customarily exercised by other professionals with the same degree of knowledge and experience under similar circumstances. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and for the failure to perform its services.
- B. ***Technical Accuracy:*** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Consultant’s services. The Consultant shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

#### 1.02 *Compliance with Laws and Regulations, and Policies and Procedures*

- A. The Authority and the Consultant shall comply with all applicable federal, state, or local laws and regulations and all applicable Authority policies and procedures.

- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. The Consultant will submit and sign the Public Authorities Law forms, which are attached to, and incorporated in, this Agreement as Appendix A.
- C. The Consultant shall comply with the provisions set forth in State Finance Law §§ 139(j) and 139 (k). The Consultant will submit and sign Forms A, B, and C, copies of which are attached to, and incorporated in, this Agreement as Appendix A
- D. The Consultant 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. The Consultant will submit and sign the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement, as Appendix A.
- E. The Consultant shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
- F. The Authority shall provide the Consultant in writing any and all Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- G. If the Consultant, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Consultant's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

**1.03 Health Screening Questionnaire:** Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Consultant, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York or the Authority including, but not limited to, completing a health screening questionnaire before entering any Authority worksite.

## 1.04 Scope of Service

### A. Insurance Brokerage Services:

1. The Consultant agrees to provide insurance brokerage services to the Authority and to act as the Authority's insurance and risk management representative in the insurance marketplace.
2. The Authority reserves the right to determine which type of coverage and insurance policy will be placed by the Consultant.
3. For each line of insurance held by the Authority, the Consultant shall agree to the following, as part of the annual insurance marketing process:
  - a. The Consultant will only allow a reduction in policy limits, coverage terms or conditions, or increase in deductibles with the prior written approval of the Authority and when the market conditions do not allow a renewal at similar terms to the Authority's prior policy.
  - b. The Consultant agrees to estimate premium savings or premium increases by policy and by specific coverage enhancements.
  - c. The Consultant agrees to estimate the additional premium (if any) to reduce any of the retention or deductible levels under the existing policies.
  - d. The Consultant agrees to inform the Authority of the principal markets contacted, as well as the advantages and disadvantages of each option.
  - e. The Consultant agrees to determine whether the current policies should be consolidated, changed, or endorsed to obtain premium savings or to increase the breadth of coverage.
  - f. The Consultant agrees all insurance policies shall be placed with insurance companies that are licensed to do business in New York State and have an A.M. Best rating of at least A- with a financial size category rating of VIII, unless the Consultant has obtained the prior written approval of the Authority.
  - g. The Consultant agrees to advise the Authority on the use of wholesalers or other intermediaries.
  - h. The Consultant agrees to conduct an annual risk financing alternatives analysis and to provide advice to the Authority to

achieve the Authority's cost containment and program quality objectives.

4. The Consultant shall report to the Authority's General Counsel and Chief Financial Officer on how the Consultant will issue and update publications describing the Authority's insurance policies. The Consultant agrees to write an insurance summary of each policy including all pertinent information regarding each policy, including, but not limited to policy limits, deductibles, perils, and exclusions.
5. The Consultant agrees to conduct the following activities in conjunction with the Authority annually, prior to the renewal date of the Authority's existing or new insurance policies:
  - a. Review insurance market conditions in terms of capacity, pricing, and limitations or extensions of coverage.
  - b. Conduct a financial review of present or proposed insurance companies to confirm the companies meet the Authority's financial stability requirements.
  - c. Conduct an exposure analysis and prepare reports of all exposures to accidental event risk loss which can be covered by insurance.
  - d. Review all identified risks to determine if risks have increased or decreased.
  - e. Compile information for underwriters in order for them to be able to fairly evaluate their exposures and accept the transfer of the Authority's risks.
6. The Consultant agrees to conduct the following activities annually, after renewal of the Authority's insurance policies:
  - a. Review and document all placed policies, cover notes and binders to ensure they contain the correct information on pricing terms, conditions, and other relevant information.
  - b. Forward the policies to the Authority within 45 days of the date they are obtained from underwriters by the Consultant.

**B. Workers' Compensation Claim Management:**

1. **Workers' Compensation Claim Management:** The Consultant agrees to provide the following services:



- a. Conduct quarterly Workers' Compensation claim reviews with the Authority's Workers' Compensation carrier to mitigate the Authority's losses.
  - b. Conduct an annual experience modification analysis utilizing ModMaster software to verify the accuracy of the Authority's experience modification factor.
  - c. Manage the Authority's first aid claim program by processing and fee scheduling the Authority's first aid claims (medical only per New York State Workers' Compensation Law § 110).
2. **Administrative Services for Workers' Compensation Claims:** In consultation with the Authority's Workers' Compensation carrier, the Consultant agrees to provide the following services:
- a. Coordinate with Authority personnel transmission of the names of witnesses, recorded or written statements, maps, photographs or other relevant documents relating to the Workers' Compensation Claims.
  - b. Create special handling instructions with the carrier.
  - c. Review open claims and provide the Authority with a sorted list of claims to be settled and claims to be reimbursed.
  - d. Advise on disposition strategies and reserves.

C. **Loss Control Services:**

1. **General Loss Assistance Services:** In consultation with the Authority's Security Unit, the Consultant agrees to provide upon request the following loss control services:
  - a. Conduct site safety reviews.
  - b. Provide lockout program updates.
  - c. Attend Authority safety meetings.
  - d. Conduct necessary training to Authority personnel.
  - e. Advise on safety program development and implementation.
  - f. Review written safety program updates.

- g. Advise on safety benchmarking.
  - h. Assist in accident investigation.
  - i. Analyze loss history.
  - j. Assist with grant writing, as necessary.
  - k. Review insurance company inspection reports.
  - l. Maintain loss prevention information including detailed information on loss prevention recommendations, the Authority's responses, and follow-up activities.
2. **Auto Liability Risk Assessment.** The Consultant agrees to provide the following services:
- a. Review the Authority's fleet management program.
  - b. Evaluate exposures and current controls relative to the fleet management program.
  - c. Recommend enhancements to the Authority's fleet management program, as necessary.
3. **Review of Carrier Recommendations.** The Consultant agrees to assist the Authority with the following services:
- a. Reviewing and assessing carrier recommendations.
  - b. Negotiating with carriers control alternatives, if necessary.
  - c. Categorizing recommendations in a reviewable format, including status updates and follow-up activities for the Consultant or the Authority personnel.
4. **Claim Management:** The Consultant agrees to the following
- a. Review open property and liability claims with Authority personnel and the Authority's insurance carrier.
  - b. Assist and advise the Authority on issues relating coverage disputes between carriers or between the Authority and a carrier.
5. **Risk Assessment:** The Consultant agrees to provide the following services:

- a. Conduct risk assessments and recommend bond and insurance coverage requirements between the Authority and third-party vendors and services providers.
  - b. Assess coverage alignment in relationship to contractual requirements, upon request.
6. **Loss Analysis.** The Consultant will combine, categorize, and assess past losses for trends, specific high-activity locations, high dollar claims, time periods for open claim resolutions, and will provide the Authority claim history summaries, when deemed necessary.

## ARTICLE 2 – COMPENSATION

**2.01** The Consultant agrees to accept commissions paid by the Authority’s insurance carriers as its compensation for Insurance Brokerage Services to the Authority.

**2.02** The Consultant agrees to accept an annual lump sum payment \$70,000.00 for the following services:

- A. \$10,000 for Workers’ Compensation Claim Management.
- B. \$20,000 for Administration Services for the Workers’ Compensation Claims.
- C. \$40,000.00 for Loss Control Services.

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

## ARTICLE 3 – GENERAL PROVISIONS

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

**3.02** ***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.

**3.03** ***Right to Terminate:*** The Authority reserves the right to terminate the Consultant’s services at any time, without cause, based on seven (7) days’ written notice. The Consultant shall not be

entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

**3.04 Indemnification:**

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

**3.05 Confidential Information:**

- A. To assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performance of services including but not limited to information relative to the services to be performed.
- B. The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Consultant's benefit or for the benefit of others shall be permitted.
- C. All data and information in any format submitted or made available to the Consultant by the Authority or any other person on behalf of the Authority, unless otherwise publicly available, and all data and information, and other work developed by the Consultant under this Agreement, shall be utilized by the Consultant solely in connection with the performance of services under this Agreement only and shall not be made available by the Consultant to any other person.
- D. 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 Authority-approved 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.

- E. The terms of this paragraph shall be binding during and following the termination of this Agreement.

**3.06 Insurance:**

- A. The Consultant 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 B.
- B. The Consultant agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Consultant agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant 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 requires the name of the employee, the employee's phone number and email address.

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

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

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

**3.11 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.

**3.12 Independent Status:**

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

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

**3.14 Force Majeure:** The Consultant shall not be liable to the Authority for any failure to perform the Services if any such failure is caused by forces beyond Consultant's reasonable control, including without limitation, actions or inactions of any governmental agencies, changes in law, strikes, lockouts, or other industrial disturbances, acts or omissions of third-parties, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics, including issues arising out of the COVID-19 pandemic, which may include without limitation, workforce shortages, lack of necessary supplies or Personal Protective Equipment, travel restrictions, and other restrictions resulting from public guidance and emergency orders.

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

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

#### **ARTICLE 4 – SEVERABILITY**

**4.01** 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 5 – DURATION**

**5.01** All services to be provided under this Agreement shall be provided over a three-year period from July 1, 2021 through June 30, 2024 with two potential one-year extensions, at the sole discretion of the Authority, at mutually agreed upon terms.

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

**THIS PAGE INTENTIONALLY ENDS HERE**

**IN WITNESS WHEREOF**, the parties do hereby enter and execute this Agreement effective **27th** day of **May, 2021**, the date of the Authority's adopting resolution authorizing its execution.

**ERIE COUNTY WATER AUTHORITY**

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

**LAWLEY SERVICE, INC.**

By \_\_\_\_\_  
Michael R. Lawley, Principal



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

On the \_\_\_\_\_ day of May, in the year 2021, 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 NEW YORK     ) ss:**

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2021, before me personally came Michael R. Lawley, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Principal of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

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

**APPENDIX A**

**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 \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_

FIRM NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_ ZIP \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

TYPED NAME OF AUTHORIZED SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_ TELEPHONE No. \_\_\_\_\_

**APPENDIX A**

**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.

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

## APPENDIX A

### 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

**APPENDIX A**

is empowered to compel the attendance of witnesses and examine them under oath.

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

## APPENDIX A

### 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.

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

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

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

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

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX A**

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

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

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

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

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**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:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

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)



## APPENDIX A

### 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(1).

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

<p>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.</p>
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**APPENDIX A**

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

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

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

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

Offerer Address: \_\_\_\_\_

\_\_\_\_\_

## APPENDIX B

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES AGREEMENT

#### INSURANCE BROKERAGE SERVICES

##### ECWA Project No. 202100135

###### Insurance Specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the "Authority"). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract. These requirements include but are not limited to the minimum insurance requirements.

###### Insurance Requirements:

**a. Workers Compensation:**

Part 1: Workers Compensation: Statutory

Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

**b. New York Disability Benefits Liability:** Statutory coverage if New York State domiciled employees are used.

**c. Commercial General Liability:**

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Per Project/Job Aggregate Limit Required
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

**d. Automobile Liability:**

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

**e. Professional Liability:**

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

## APPENDIX B

### **f. Cyber and Privacy & Security Liability:**

- \$1,000,000 Per Claim
- \$1,000,000 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](mailto:mmusarra@ecwa.org) or mailed to Ms. Molly Jo Musarra, Claim Representative/Risk Manager, Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.