



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

February 2, 2022

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer

A handwritten signature in black ink, appearing to be 'MJQ', is written over the name 'Michael J. Quinn'.

Subject: Contract LA-006  
Water System Improvements  
City of Tonawanda  
ECWA Project No. 202200060

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The following material is attached:

- Authorization Form requesting Board Authorization to execute the attached Professional Service Contract with LaBella Associates.
- Professional Service Contract for the above referenced project.
- Copy of Interoffice Memorandum Michael J. Quinn, Senior Distribution Engineer, dated January 31, 2022, detailing recommendations for the contract assignment after review of Request for Proposals (PN 202200003).

This project, budgeted for design in 2022 and construction in 2023, will consist of the installation of approximately 13,450 linear feet of new transmission/distribution waterline in the City of Tonawanda. For additional project details and scope of work please refer to the Professional Service Agreement for Engineering Services – Contract LA-006.

**Budget Information:**

Unit: 2590 Eng/Const Distribution Mains  
–Item 101673 Dist Main Replacement D

MJQ:jmf

Attachments

cc: L.Kowalski

S.Denzler

L.Lester

CONT-LA-006-2201-X-01



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

January 31, 2022

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer

A handwritten signature in black ink, appearing to read "MJQ", is written over the "From:" line.

Subject: Request for Proposals  
Distribution Main Design Projects 2022-2023  
(Contracts A, B, C, D, and E)  
ECWA Project No. 202200003

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The Erie County Water Authority (Authority) recently issued a Request for Proposals (RFP) to eleven consulting engineering firms for engineering services for design and construction phase services for several distribution main projects in various locations within the ECWA direct service area. The RFP was also posted to the Authority website. These projects are separated into five different contracts (Contracts A, B, C, D, and E). Of the original firms, ten chose to submit proposals (DuBois & King, Inc. was the only one that did not respond). In addition, four other firms (Clark Patterson Lee, EI Team, Watts Architecture and Engineering, and Michael Baker International) submitted proposals based on Authority's website. Those submitting proposals are listed in alphabetical order below:

- Barton & Logiudice (submitted for A, B, C, D, E,)
- CHA Consulting, Inc. (submitted for A, B, C, D, E)
- Clark Patterson Lee (submitted for B, C, D, E)
- DiDonato Assoc. Eng. and Architecture, PE, PC (submitted for A, B, C, D, E)
- EI Team (submitted for A, B, C, D, E)
- Erdman Anthony & Associates, Inc. (submitted for A, B, C, D, E)
- Greenman-Pedersen, Inc. (submitted for A, B, C, D, E)
- JM Davidson (submitted for C, D)
- LaBella Associates (submitted for A, B, C, D, E)
- Michael Baker International (submitted for A, B, C, D, E)
- Nussbaumer & Clarke, Inc. (submitted for A, B, C, D, E)
- Watts Architecture & Engineering (submitted for A, B, C, D, E)
- Wendel (submitted for A, B, C, D, E)
- Wm. Schutt & Associates (submitted for A, B, C, D, E)

The proposals were reviewed and discussed among the engineering staff. Experience, staffing, scope, and project approach were considered. It was determined that each firm possessed relevant qualifications to perform the work proposed.

The Comprehensive Strategic Plan (CSP) was also taken into consideration during the selection process. The CSP establishes a 15 mile per year replacement goal for transmission and distribution mains. As shown on the table below, these contracts encompass just under 12.5 miles of that goal. In order to achieve this goal, the Authority will have to continue to utilize a variety of consultants to ensure we can consistently design and construct projects in a timely manner.

Based on the review and evaluation of the proposals, projects were assigned based on the qualifications, experience and level of effort proposed by each firm:

<b>Consultant</b>	<b>Contract</b>	<b>Description</b>	<b>2022 Budget Item</b>
Barton & Longuidice, DPC	A	15,550 linear feet of new distribution waterline on multiple streets in the Town of Amherst and Cheektowaga	Unit 2590 Item 101670
DiDonato Associates, Engineering and Architecture, PC	B	10,650 linear feet of new distribution waterline on multiple streets in the Town of Clarence.	Unit 2590 Item 101671
Wm. Schutt & Associates	C	11,000 linear feet of new distribution waterline on one street in the Town of Clarence.	Unit 2590 Item 101672
LaBella Associates	D	13,450 linear feet of new distribution waterline on multiple streets in the City of Tonawanda.	Unit 2590 Item 101673
Watts Architecture & Engineering	E	15,220 linear feet of new distribution waterline on multiple streets in the Town of Hamburg.	Unit 2590 Item 101674

Each firm provided a thorough and detailed project understanding and technical approach for the various projects. In addition, their projected level of effort (manhours, and fees) is competitive and reasonable for the work being proposed. All of the selected firms have a depth of knowledge and experience with Authority standards, design procedures, construction standards and procedures, and technical specifications. Furthermore, they have experienced staff to provide the construction phase services and construction oversight required by the Authority. Our staff review also considered overall performance of professional services for these firms with respect to experience with Authority projects.

In order to expedite these projects, the Engineering Department will be requesting approval of the individual Professional Services Agreements with each firm listed above also at the February 10<sup>th</sup> meeting.

MJQ:jmf

cc: R.Stoll  
L.Kowalski  
L.Lester  
S.Denzler  
ECWA-223-2201

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

**Contract:** LA-006 **Project No.:** 202200060  
**Project Description:** Water System Improvements, City of Tonawanda.

**Item Description:**




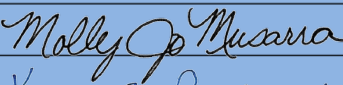


- Agreement  Professional Service Contract  Amendment  Change Order  
 BCD  NYSDOT Agreement  Contract Documents  Addendum  
 Recommendation for Award of Contract  Recommendation to Reject Bids  
 Request for Proposals  
 Other \_\_\_\_\_

**Action Requested:**

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

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

- Sr Distribution Engineer  Date: 2/2/2022  
 Chief Operating Officer  Date: 2/2/22  
 Executive Engineer \_\_\_\_\_ Date: \_\_\_\_\_  
 Director of Administration  Date: 02/02/2022  
 Risk Manager  Date: 2/2/2022  
 Chief Financial Officer  Date: 02/02/2022  
 Legal  Date: 2/2/2022

**APPROVED FOR BOARD RESOLUTION:**

- Secretary to the Authority  Date: 2/2/22

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

**Resolution Date:** \_\_\_\_\_

**Item No:** \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT  
FOR ENGINEERING SERVICES**

This is an Agreement effective as of February 10, 2022 (“Effective Date”) by and between

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

hereinafter referred to as the “Authority,” and

**LABELLA ASSOCIATES, DPC**  
300 Pearl Street, Suite 130  
Buffalo, New York 14202

hereinafter referred to as “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to the installation of new distribution mains and replacement of distribution mains in direct service areas, specifically, the City of Tonawanda (the “Project”).

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

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 The Project**

- A. The Engineer shall provide engineering services for the Project which will consist of the installation of approximately 13,450 linear feet of new distribution waterline on multiple streets in the City of Tonawanda.
- B. The Engineer shall provide engineering services for the replacement of existing waterline on the following streets:
  - 1. Fillmore Avenue from Wales Avenue to Exolon Drive in the City of Tonawanda;
  - 2. From the intersection of Fillmore Avenue and Exolon Drive north (through various easements) to East Niagara Street in the City of Tonawanda;

3. East Niagara Street from 1000 East Niagara Street to Hanover Street in the City of Tonawanda;
  4. Hanover Street from East Niagara Street to a location south of the existing dead-end and railroad in the City of Tonawanda;
  5. Two Mile Creek Road from the existing gate valve across from 201 Two Mile Creek Road to Fletcher Street in the City of Tonawanda;
  6. Elm Street from Delaware Street to Killewald Avenue in the City of Tonawanda;
  7. Killewald Avenue from Elm Street to Harriet Street in the City of Tonawanda;
  8. Frederick Road from Penarrow Drive to Willowbend Road in the City of Tonawanda;
  9. Willowbend Road from Frederick Road to Westbourne Road in the City of Tonawanda;
  10. Westborne Drive from Penarrow Drive to Willowbend Road in the City of Tonawanda;
- C. The project also includes an abandonment of an existing connection in front of 328 Youngs Street.
- D. The Engineer agrees the following conditions apply to all work performed for the Project:
1. A Stormwater Pollution Prevention Plan (SWPPP) will be required for this project.
  2. The existing waterlines will be abandoned in place. The sizes and types of the new waterlines will be determined as a part of the design project but will be a minimum 8-inch diameter.
  3. All valving, hydrants, abandonments, interconnections, and appurtenances shall be included in the design.
  4. The Project includes a hydraulic analysis to demonstrate functionality and redundancy of existing and proposed waterlines in case of a waterline failure in the area.
  5. Pipe materials to use, sizes, and interconnection details to various existing pipes will be necessary during the design.

6. Incorporation of all Authority standard details to be included in the drawing set along with completion of all necessary tables and other design information as required.
7. During design, the Consultant will be required to assist with resident notification and public outreach required for the transfer of services and abandonment of the existing 4-inch main located in the easement between Koster Row and Fairlawn Drive.

## **1.02 Standard of Performance**

- A. **Standard of Care:** The Engineer shall be held to the same standard of care applicable to any consultant providing professional engineering and related services. The Engineer shall use the same care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. **Technical Accuracy:** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Engineer's services. The Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Authority-furnished information.
- C. **Special Services:** The Engineer may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
  1. Soils investigations including test borings, pavement cores, and the related analysis;
  2. Detailed mill, shop and/or laboratory inspection of materials and equipment;
  3. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
  4. Air, water, and/or soil sampling, testing, and/or analysis;
  5. Hazardous material testing and assessment;
  6. Wetlands investigations, delineation, and mitigation;
  7. Technical assistance with preparing the necessary documents required by the New York State Environmental Quality Review Act (SEQRA) for Type I or Unlisted actions;

8. Technical assistance with operation and maintenance manuals;
  9. Start-up services relating to equipment to be installed by contractor;
  10. Legal services, as deemed necessary and approved by the Authority's General Counsel, for acquiring lands, easements and rights-of-ways or other Project-related services; or
  11. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officers.
- D. ***Reliance on Others:*** Subject to the standard of care set forth in § 1.02, paragraph (A) of this Agreement, the Engineer and its special services consultants may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers and the publishers of technical standards.
- E. ***Expert Witness Assistance:*** The Engineer agrees to assist the Authority as an expert witness in litigation arising from the project development and construction, even if such assistance is requested by the Authority after the expiration or termination of this Agreement.
- F. ***Compliance with Laws and Regulations, and Policies and Procedures:***
1. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
  2. The Engineer shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Public Authorities Law forms, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
  3. The Engineer shall comply with the provisions set forth in State Finance Law §§ 139-j and 139-k. In response to the Authority's Request for Proposals, the Engineer submitted and signed Forms A, B, and C, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
  4. By executing this Agreement, the Engineer affirms under the penalties of perjury that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
  5. The Engineer shall comply with the provisions of the Human Rights Law, codified as Executive Law § 290, *et. seq.*, and Labor Law § 201-g of the



laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement as Appendix A.

6. The Engineer shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
  7. The Authority shall provide the Engineer in writing any and all Authority policies and procedures applicable to the Engineer's performance of services under this Agreement. The Engineer agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements; and
  8. If the Engineer, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Engineer's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.
- G. ***Health Screening Questionnaire:*** Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Engineer, its employees, and agents shall comply with all health and safety rules and regulations adopted by the State of New York, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using personal protective face masks, or complying with any testing or vaccination requirements before entering any Authority property.
- H. ***Unknown Conditions:*** The Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. The Authority agrees not to make resolution of any dispute with the Engineer for payment on any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- I. ***General Conditions:*** The general conditions for any construction contract document prepared here under are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents

Committee (EJCDC C-700, latest Edition) unless both parties mutually agree to use other general conditions.

**1.03 Scope of Service:** The Engineer shall provide all engineering services necessary to design and install the Project improvements including, but not limited to, the following:

- A. **Survey:** Upon authorization from the Authority, the Engineer shall obtain field topographic survey data for the preparation of construction plans required for final design of the project. Survey data is to be according to NAD83 and NAVD88 standards.
- B. **Design:** Upon authorization from the Authority, the Engineer shall complete the following services:
  - 1. Prepare detailed design drawings, specifications and contract documents. Tasks include, but are not limited to:
    - a. Attend meetings with the Authority and other related Project entities, as necessary and as required;
    - b. Report to the Authority bi-weekly on the progress of the design work via email, with the following information:
      - i. Design work performed during the previous two weeks;
      - ii. Design work scheduled for the next two weeks;
      - iii. Schedule status/deliverable status, attaching an updated project schedule (in Microsoft Project format) identifying all project milestones and current project status;
      - iv. Budget status/percent completed;
      - v. Input needed from the Authority or others;
      - vi. Requests for scope changes; and
      - vii. Other issues or concerns.
    - c. Review of available drawings and records furnished by the Authority;
    - d. Solicitation of all required cost quotations and coordination of subconsultants and/or contractors required to provide any necessary Special Services.

- e. Prepare base drawings in AutoCAD version 2018 from the survey data obtained in the survey phase and the available records furnished by the Authority and other agencies;
- f. Complete a hydraulic analysis to determine the size(s) of the proposed watermains, and recommend waterline sizes to the Authority for review;
- g. Evaluate the use of temporary waterlines to facilitate the installation of the proposed waterlines in areas where extensive rock excavation is anticipated;
- h. Evaluate the use of trenchless technologies such as re-lining and pipe bursting;
- i. Prepare engineering calculations to support the design of the improvements, including related civil, hydraulic, mechanical, electrical, structural, and architectural features of the project;
- j. Submit plans to various utility companies and regulatory agencies to incorporate all existing utilities within the project limits;
- k. Prepare final plans, profiles, and job specific detail drawings that include editing of the Authority's standard detail drawings where appropriate;
- l. Prepare a "Project Manual", including contract specifications that include editing of the Authority's standard "front end" specifications and standard technical specifications where appropriate, preparation of additional technical specifications as required, and inclusion of necessary appendices providing supporting information;
- m. Obtain New York State Prevailing Wage Rates and inserting them into the specifications;
- n. Prepare a quantity take-off and a construction cost estimate;
- o. Prepare an engineering report meeting the Authority's format and including all design parameters, summary of hydrants added, standards utilized, and hydraulic calculations performed for the design. Once approved, submit with contract specifications, drawings, application forms and fees to Erie County Health Department as necessary to obtain Health Department approval;

- p. Preparing stamped site-specific Maintenance and Protection of Traffic (MPT) plans meeting all New York State Department of Transportation (NYSDOT) standards for inclusion in the bid set;
  - q. Provide project drawings/specifications/construction cost estimate to the Authority at 30%, 70%, 95%, and 100% design, with incorporation of comments received into following submissions, and
  - r. Attend a final design meeting with the Authority;
- 2. Prepare engineering data, where necessary, for regulatory permit applications as required to obtain local, state, federal and public utility approval for the initiation and construction of the work;
  - 3. Furnish to the Authority five (5) sets of drawings, specifications and other contract documents, for final review by the Authority and other approving agencies. Supply electronic (.pdf) versions of drawings and the Project Manual to the Authority;
  - 4. Prepare appropriate documentation for SEQRA and any Stormwater Pollution Prevention Plan (SWPPP) reports including calculations; and
  - 5. Prepare a schedule for the Project utilizing the Authority's standard format. The Project schedule shall be updated as needed.
- C. **General Services:** Upon authorization from the Authority, the Engineer shall complete the following services:
- 1. Furnish twenty (20) sets of stamped and signed contract drawings, final specifications, and other documents required for bidding and construction purposes for each contract;
  - 2. Conduct a pre-bid meeting when appropriate;
  - 3. Prepare and distribute addenda;
  - 4. Provide assistance to the Authority in securing bids, tabulating bid results, analyzing bid results, and making recommendations on the award of each construction contract;
  - 5. Provide a pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested parties, conduct a pre-construction meeting and distribute minutes;
  - 6. Supply an approved contractor's schedule for construction of the project;

7. Provide detailed initial stakeout (once only), including benchmarks, reference and axis lines along the routes of the construction or where necessary;
8. Give consultation and advice to the Authority during construction;
9. Prepare elementary sketches and supplementary sketches, if required, to resolve actual field conditions encountered;
10. Interpret contract documents and resolve problems as to amount, quality, acceptability, and fitness;
11. Review the contractor's submittals of material and/or equipment for compliance with the Engineer's design concept and take appropriate action such as, but not limited to: "approved," "approved as corrected," "revise and resubmit," or "not approved";
12. Furnish general construction inspection as to quality and quantity of the contractor's work as the construction progresses in order to recommend partial payment;
13. Coordinate with all Authority's customers within the Project area regarding the construction work;
14. Schedule and attend progress meetings;
15. Report via email to the Authority bi-weekly on the progress of the construction work with the following information:
  - a. Summary of the construction work performed in the previous two-week period;
  - b. Updated project schedule (in Microsoft Project format) identifying all project milestones and current project status;
  - c. Forecast of all upcoming work and project costs expected for the project, including identification of any contract items which may exceed bid quantities; and
  - d. Copies of final inspection reports (in .pdf format) for reports in the previous two-week period;
16. Notify the Authority when a change in the work is proposed which will cause an adjustment in the contract cost. Evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders,

field directives, and make recommendations for approval. Discuss changes in the plans or procedures authorized by the Engineer with the Authority prior to implementation. Obtain approval for all change orders from the Authority's Board of Commissioners prior to implementation;

17. When new waterlines are placed into service, notify the appropriate fire districts in writing, identifying addresses of new hydrants placed into service and existing hydrants soon to be removed from service. A copy of this letter shall also be sent to the Authority;
18. Check line and grade for preparation of record drawings;
19. Make a final inspection, furnish a report on project completion, and make recommendations for final payments to contractors and for the release of retained amounts, if any;
20. Assist the Authority as an expert witness in litigation arising from Project design, development or construction.

D. ***Resident Inspections:*** Upon authorization from the Authority, the Engineer shall furnish a full-time Resident Project Engineer (RPE) having a minimum NICET II certification or equivalent experience, and who will conduct technical inspection of the construction work relating to the Project;

1. ***Engineer's duties and responsibilities:*** The Engineer, through the RPE's observations, shall protect the Authority against defects and deficiencies in the construction work.
2. ***RPE's duties and responsibilities:***
  - a. The RPE shall not:
    - i. Authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), without written approval by the Authority and the Engineer;
    - ii. Exceed limitations of Engineer's authority as set forth in this Agreement;
    - iii. Undertake any of the responsibilities of the construction contractors, subcontractors, or suppliers;

- iv. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the contractor's work;
- v. Advise on, issue relating, or assume control over security or safety practices, precautions, and programs in connection with the activities of the Authority or its contractors;
- vi. Participate in specialized field or laboratory tests or inspections conducted off-site by others; or
- vii. Accept shop drawings or sample submittals from anyone other than the contractor.

b. The RPE shall:

- a. Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values prepared by the contractor and consult with the Engineer concerning acceptability;
- b. Attend meetings with contractor and subcontractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings;
- c. Provide email updates to the Engineer and the Authority regarding meetings with contractor and subcontractors;
- d. Conduct daily on-site inspections of all construction work in progress;
- e. Prepare daily inspection reports to determine if the construction work is progressing in accordance with contract documents;
- f. Report to the Authority and the Engineer whenever the RPE believes any portion of the construction work will not produced a completed Project, conforming with the contract documents or will imperil the integrity of the Project design as a functioning whole as indicated in the contract documents, or has been damages, or does not meet the requirements of any inspection, test or approval required to be made;
- g. Advise the Authority and the Engineer whether any part of the construction work in progress should be corrected or rejected or

should be uncovered for observations, or requires special testing, inspection, or approval;

- h. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Authority personnel, and that the contractor maintains adequate records relating to the same;
- i. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups;
- j. Report to the Engineer and the Authority when clarifications and interpretations of the contract documents are needed and transmit to the contractor clarifications and interpretations as issued by Engineer;
- k. Advise the Engineer and the contractor of the commencement of any portion of the construction work requiring a Shop Drawing or Sample submittal for which RPE believes that the submittal has not been approved by the Engineer;
- l. Shall conduct all necessary Stormwater Pollution Prevention Plan (SWPPP) field inspections as directed by codes and as authorized by the Authority. Inspector shall also provide and maintain all record documentation on site for review using a construction mailbox or other approved method, and
- m. Submit via email bi-weekly updates to the Authority summarizing the resident inspection costs and projecting further resident inspection costs for the duration of the construction work.

E. **Record Drawings:** Upon authorization from the Authority, the Engineer shall complete the following services:

- 1. Provide record drawings, including the base mapping, (on AutoCAD Version 2018) of all completed work according to the latest ECWA As-Built Standards. Update the existing Authority valve and hydrant details to reflect the completed work. Furnish one set of mylar transparencies and all AutoCAD files on CD of these drawings to the Authority.
- 2. Provide horizontal and vertical coordinates using survey grade Real Time Kinematic (RTK) GPS with horizontal centimeter level accuracy and best possible vertical precision given the environmental conditions during collection for all mainline valves, hydrants, hydrant valves, permanent blow-offs, and meter pits. Coordinates shall be presented as points within



an ESRI geodatabase feature class, or provided in Microsoft Excel, Microsoft Access, or .dbf format. At a minimum, the coordinate file shall contain a Northing, Easting, Elevation, horizontal precision, vertical precision, and Description for each feature.

3. Record Drawings and coordinates to be based on the NY State Plane Coordinate System – West Zone. Data is to be according to NAD83 and NAVD88 datums. Coordinates shall be provided in Microsoft Excel, Microsoft Access, or .dbf format. At a minimum, the coordinate file shall contain a Northing, Easting, Elevation, and Description for each feature.
4. Submit two stamped/signed full size sets, AutoCAD files, .pdf version of the drawings (with stamp and seal) and Project Manual (with addenda) and GPS coordinates no later than one month after final payment of the Construction Contract is recommended for approval and in accordance with Authority Standards.

F. ***Contractor's Request for Payment:*** As a general service to the Authority, the Engineer will review applications for payment with contractor for compliance with the established procedure for their submission and forward recommendation to the Authority, noting particularly the relationship of the payment requested to the schedule of values, work completed, and materials and equipment delivered to the Project site but not incorporated in the work.

G. ***Certificates, Operation and Maintenance Materials:*** During the course of construction, as a general service, the Engineer will verify that materials and equipment certificates, operation and maintenance manuals and other data required by the contract documents to be assembled and furnish by the contractor are applicable to the items actually installed and in accordance with the contract documents, Ann have these documents delivered to the authority prior to the payment for such work.

H. ***Completion:*** Upon authorization from the Authority, as general services, the Engineer shall:

1. Participate in visits to the project to determine substantial completion, assist in the determination of substantial completion and the preparation of lists to be completed or corrected;
2. Participate in a final visit to the Project with Authority personnel; and prepare a final list of items to be completed and deficiencies to be remedied;
3. Observe whether all items on the final list have been completed or corrected and make recommendations to the Authority concerning acceptance of the Project and final payment.

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

**1.05 Start of Construction:** Unless otherwise extended by mutual agreement of the parties, the professional services to be rendered in this Project shall be performed within the following timeframe:

- A. All survey services should be completed by May 1, 2022;
- B. All design services should be completed by October 1, 2022; and
- C. All other services should be completed by the end of construction with an estimated completion date of December 1, 2023.

## **ARTICLE 2 – PAYMENT OF PROFESSIONAL SERVICES**

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

- A. ***Survey:*** For services described under § 1.03, paragraph A of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- B. ***Design:*** For services described under § 1.03, paragraph B of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor, and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. After submission by the Engineer to the Authority of a draft set of contract documents, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount. The balance will be paid when the final contract documents are submitted to the Authority.
- C. ***General Services:*** For services described under § 1.03, paragraphs C, F, G and H of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this task. Payment will be made

monthly based on the percentage of completion up to 100% of the total lump sum amount.

- D. ***Record Drawings:*** For services described under § 1.03, paragraph E of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. After submission by the Engineer to the Authority of draft record drawings, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount. The balance will be paid when the final record drawings are submitted to the Authority.

**2.02 Resident Inspection:** For services described under § 1.03, paragraph D of this Agreement, the Authority shall pay the Engineer the payable hourly rates listed under § 2.04, paragraph B and direct non-salary expenses. Overtime premium will be paid at 50% of the Resident Inspectors' direct hourly rate in addition to the payable hourly rate listed under § 2.04, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

**2.03 Special Services:** For services described under § 1.02, paragraph C of this Agreement, the Authority shall pay the Engineer for special services pre-approved by the Authority's Chief Operating Officer in an amount approved by the Authority's Chief Financial Officer.

- A. When the Engineer is performing the special services described in § 1.02, paragraph C of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains special services from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

**2.04 Contingency Allowance:** For services described under § 1.04 of this Agreement, the Authority shall pay the Engineer for services reviewed by the Authority's Engineering Department and pre-approved by the Authority's Chief Operating Officer in an amount pre-approved by the Authority's Chief Financial Officer.

- A. When the Engineer is performing the services described in § 1.04 of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains services required as part of a contingency item from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

**2.05 Engineering Cost Schedule:**

**A. *Engineering Costs:***

1. Lump Sum Survey Cost	\$48,420.00
2. Lump Sum Design Cost	\$121,050.00
3. Lump Sum General Service Cost	\$53,800.00
4. Lump Sum Record Drawings Cost	\$22,865.00
<b>TOTAL LUMP SUM COST:</b>	<b>\$246,135.00</b>

**B. *Resident Inspection Costs:***

	Payable Hourly Rate	Employee Direct Hourly Rate
Resident Project Engineer	\$95.00	\$35.00

The Dollar amount for Estimated Resident Inspection is based on a fixed hour estimate of 2,300 hours of Project Engineer Payable Hourly Rate during the duration of the Project. Payment will be made for actual hours worked during the duration of construction. Actual hours will vary based on production rates of the Contractor during construction, unforeseen circumstances that develop during construction, and weather conditions.

1. Estimated Resident Inspection	\$218,500.00
2. TOTAL NOT TO EXCEED RESIDENT INSPECTION:	\$256,500.00

**C. *Special Services (not to exceed)*                   **\$50,000.00****

**D. *Contingency Allowance (not to exceed)*           **\$50,000.00****

**E. *Other Costs:***

The following are only applicable to expenses incurred under § 1.02, paragraph C, Special Services, and § 1.03, paragraph D, Resident Inspection, of this Agreement. All other direct non-salary costs are to be included in the lump sum payments as set forth in § 2.01 of this Agreement.

1. Estimated Mileage (IRS rate)	58.5 cents per mile
2. Estimated Copy Costs (per copy)	At cost
3. Prints (per print)	At cost
4. Subcontractor Expenses, invoiced as special services	Cost plus 5% maximum
5. Other Direct Non-Salary Costs	At cost

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

### **ARTICLE 3 – GENERAL PROVISIONS**

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

**3.02 Amendments:** 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.

**3.03 Right to Terminate:** The Authority reserves the right to terminate the Engineer's services at any time, without cause, based on seven (7) days' written notice. Engineer 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 Engineer agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors and employees may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Engineer's performance of professional services provided under this Agreement and those of its subcontractors or anyone for whom the Engineer is legally liable.
- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Engineer harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its contractors, engineers, or anyone for whom the Authority is legally liable.

**3.05 Confidential Information:**

- A. In order to assist the Engineer in the performance of this Agreement, the Authority may provide the Engineer with confidential information including, but not limited

to information relative to the services to be performed. All information received by the Engineer in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Engineer shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performing of services including but not limited to information relative to the services to be performed. The Engineer shall hold in confidence and not disclose to any person or any entity, any information related to the materials or work produced under this Agreement.

- B. The Engineer shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Engineer shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Engineer's benefit or for the benefit of others shall be permitted.
- C. In no event is the Engineer authorized to disclose confidential information without the prior written approval of the Authority. Engineer may provide such information to its subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- D. The terms of this section shall be binding during and after the expiration or termination of this Agreement.

### **3.06 Insurance:**

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

- E. The Engineer agrees to require all direct or indirect subcontractors to procure and maintain insurance in accordance with the Insurance Requirements, as set forth in the Addendum Agreement, attached as Appendix D.

**3.07 Copyrights, Trademarks and Licensing:**

- A. All materials produced under this Agreement, whether produced by the Engineer alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Engineer shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.
- B. In performing work under this agreement, the Engineer may be granted access to the Authority's GIS data, documents, and other information. The Engineer understands and agrees that the use of such data, documentation and information shall be treated as confidential information and the Engineer shall abide by the terms and conditions of the Confidentiality and Copyright Licensing Agreement, attached and incorporated in this Agreement as Appendix E.

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

**3.09 Conflicts of Interest:** The Engineer represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Engineer from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Engineer will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Engineer, except to pay for services rendered.

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

**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 Engineer, an owner, member, officer, partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Engineer shall remain an independent contractor responsible for its own actions. The Engineer is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Engineer is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 2.
- C. Neither the Engineer nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Engineer represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Engineer agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Engineer further represents and warrants that any income accruing to the Engineer and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

**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 – TERMINATION**

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

#### **ERIE COUNTY WATER AUTHORITY**

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

#### **LABELLA ASSOCIATES, DPC**

By \_\_\_\_\_  
Timothy M. Webber, PE, Vice President,  
Director of Civil Engineering

**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 Timothy M. Webber, PE, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is the Vice President, Director of Civil Engineering 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

**ERIE COUNTY WATER AUTHORITY**

**APPENDIX A**

**RESPONSE TO RFP REQUIRED FORMS**

*[Consultant's RFP response including the following required forms to be inserted here]*

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

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

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

**NOTICE**

(Penal Law § 210.45)

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

**BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:**

Affirmed under penalty of perjury this 17th day December, 20 21

FIRM NAME LaBella Associates, DPC

ADDRESS 300 Pearl Street, Suite 130

Buffalo, NY ZIP 14202

AUTHORIZED SIGNATURE 

TYPED NAME OF AUTHORIZED SIGNATURE Timothy Webber, PE

TITLE Vice President TELEPHONE No. 716-551-6281

**SECTION 2875 OF THE PUBLIC AUTHORITIES LAW**

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


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

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

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

**LaBella Associates, DPC**

(Name of Individual, Partnership or Corporation)

By  **Timothy Webber, PE**  
(Person authorized to sign)

(SEAL)

**SECTION 2876 OF THE PUBLIC AUTHORITIES LAW**

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


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

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

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

**LaBella Associates, DPC**

(Name of Individual, Partnership or Corporation)

By  **Timothy Webber, PE**  
(Person authorized to sign)

(SEAL)

**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: December 17, 2021

Name: Timothy M. Webber, PE

Title: Vice President, Director of Civil Engineering

Contractor Name: LaBella Associates, DPC

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

\_\_\_\_\_

\_\_\_\_\_

**FORM B**

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

**Instructions:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a Certification that the information submitted for a procurement contract is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to sign the Certification, under penalty of perjury, and to provide the Certification to the Authority. The Certification should be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

**Offerer Certification:**

*I certify that all information provided to the Authority relating to the awarding of a procurement contract is complete, true, and accurate.*

By:  Date: December 17, 2021

Name: Timothy M. Webber, PE

Title: Vice President, Director of Civil Engineering

Contractor Name: LaBella Associates, DPC

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

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



**FORM C****Offerer's Disclosure of Prior  
Non-Responsibility Determinations****Background:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §§139-j(1) and §139-k(1). These sections also set forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement, as that term is defined in State Finance Law §§ 139-j(1)(b) and 139-k(1)(b), within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

**Instructions:**

The Authority must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Authority conducting the Governmental Procurement no later than when the Offerer submits its proposal.

**FORM C (Continued)**

**Offerer's Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

LaBella Associates , DPC

Address: 300 Pearl Street, Suite 130

Buffalo, NY 14202

Name and Title of Person Submitting this Form: Timothy M. Webber, PE

Vice President, Director of Civil Engineering

Contract Procurement ECWA Project No. 202200003

Number: 12/17/2021

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):  No  Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):  No  Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle)  No  Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

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

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

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

(Add additional pages as necessary)

**FORM C (Continued)**

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):  No  Yes

6. If yes, please provide details below.

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

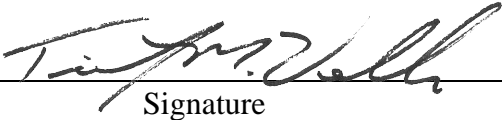
Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

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

(Add additional pages as necessary)

Offerer certifies that all information provided to the Erie County Water Authority with respect to State Finance Law §139-k is complete, true, and accurate.

By:  Date: December 17, 2021  
Signature

Name: Timothy M. Webber, PE

Title: Vice President, Director of Civil Engineering

## **CONTRACT TERMINATION PROVISION**

### **Instructions:**

A Contract Termination Provision will be included in each procurement contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the governmental entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Government Entity” and “procurement contract” are defined in State Finance Law §§ 139 j(1) and 139-k(l).

This required clause will be included in a covered procurement contract.

A sample of the Termination Provision is included below. If a contract is terminated in accordance with State Finance Law §139-k(5), the Erie County Water Authority, as a governmental entity, is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

### **Sample Contract Termination Provision**

The Erie County Water Authority, as a governmental entity, reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

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

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

**Offerer Statement:**

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

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

By:  Date: 2/2/22

Name: MICHAEL ROGALSKI

Title: VICE PRESIDENT

Offerer Name: LaBella Associates D.P.C.

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

**ERIE COUNTY WATER AUTHORITY**

**APPENDIX B**

**FIXED RATES FOR SPECIAL SERVICES**

**APPENDIX B**

**FIXED RATES FOR SPECIAL SERVICES**

<b>Grade</b>	<b>Hourly Billing Rate</b>
Project Manager	\$140.00
Senior Project Engineer	\$120.00
Senior Designer	\$100.00
Administrative Assistant	\$65.00
Resident Engineer	\$95.00

**ERIE COUNTY WATER AUTHORITY**

**APPENDIX C**

**INSURANCE REQUIREMENTS**



## APPENDIX C

### INSURANCE REQUIREMENTS

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 lifetime use of vendors "Product" and/or applicable statute of limitation. 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. Umbrella Liability:**

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate
- Per Project/Job Aggregate Limit Required
- Erie County Water Authority to be scheduled as an Additional Insured

**f. Professional Liability:**

- \$2,000,000. Per Claim
- \$2,000,000. 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.





## ADDITIONAL REMARKS SCHEDULE

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

## ADDITIONAL REMARKS

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

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

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

## **GENERAL LIABILITY ULTRA PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SUMMARY OF COVERAGE EXTENSIONS**

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

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

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

**A. MISCELLANEOUS ADDITIONAL INSUREDS**

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

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

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

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

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

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

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

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

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

This insurance does not apply to:

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

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

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

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

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

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

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

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

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

you and subject to the following additional exclusions:

This insurance does not apply to:

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

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

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

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

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

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

This insurance does not apply to:

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

**(5) Lessor Of Leased Equipment**

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

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

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

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

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

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

(a) This insurance applies only with respect to:

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

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

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

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

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

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

**(7) Controlling Interest**

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

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

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

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

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

**(9) Vendors**

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

The insurance afforded the vendor does not apply to:

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

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

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

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

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

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

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

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

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



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

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

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD

**CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE**

<p>1a. Legal Name and address of Insured (Use street address only)</p>   <p>Work Location of Insured <i>(Only required if coverage is specifically limited to certain locations in New York State, i.e. a Wrap-Up Policy)</i></p>	<p>1b. Business Telephone Number of Insured</p> <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured</p> <p>1d. Federal Employer Identification Number of Insured or Social Security Number</p>
<p><b>2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</b></p>	<p>3a. Name of Insurance Carrier</p> <p>3b. Policy Number of entity listed in box "1a":</p> <p>3c. Policy effective period:</p> <p>3d. The Proprietor, Partners or Executive Officers are:</p> <p><input type="checkbox"/> <b>included.</b> (Only check box if all partners/officers included)</p> <p><input type="checkbox"/> <b>all excluded or certain partners/officers excluded.</b></p>

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under **Item 3A** on the INFORMATION PAGE of the workers' compensation insurance policy). The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

*The Insurance Carrier will also notify the above certificate holder within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) **Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.***

**Please Note:** Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

**Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.**

Approved by: \_\_\_\_\_  
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: \_\_\_\_\_  
(Signature) (Date)

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

Telephone Number of authorized representative or licensed agent of insurance carrier:

**Please Note:** Only insurance carriers and their licensed agents are authorized to issue the C-105.2 form. Insurance brokers are **NOT** authorized to issue it.

## **Workers' Compensation Law**

### **Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.**

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.



CERTIFICATE OF INSURANCE COVERAGE
NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

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

1a. Legal Name & Address of Insured (use street address only)
LaBella Associates D.P.C.
300 State Street
Rochester, NY 14614
1b. Business Telephone Number of Insured
(585) 402-7085
1c. Federal Employer Identification Number of Insured or Social Security Number
16-1115731
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
Erie County Water Authority
295 Main Street – Room 350
Buffalo, NY 14203
3a. Name of Insurance Carrier
Sun Life and Health Insurance Company (U.S.)
3b. Policy Number of Entity Listed in Box 1a
948963
3c. Policy Effective Period
01/01/2022 to 12/31/2022

4. Policy provides the following benefits:
[X] A. Both disability and Paid Family Leave benefits.
[ ] B. Disability benefits only.
[ ] C. Paid Family Leave benefits only.
5. Policy covers:
[X] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
[ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS disability and/or Paid Family Leave benefits insurance coverage as described above.

Date Signed 01/05/2022 By Nancy Moss
(Signature of insurance carrier's authorized representative or NYS licensed insurance agent of that insurance carrier)

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

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.
If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be emailed to PAU@wcb.ny.gov or it can be mailed for

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4B, 4C or 5B have been checked)

State of New York
Workers' Compensation Board
According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law(Article 9 of the Workers' Compensation Law) with respect to all of their employees.
Date Signed By
(Signature of Authorized NYS Workers' Compensation Board Employee)
Telephone Numbers Name and Title

Please Note: Only insurance carriers licensed to write NYS disability and Paid Family Leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. Insurance brokers are NOT authorized to issue this form.



## Additional Instructions for Form DB-120.1

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

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

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

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

**Please Note: Upon the cancellation of the disability and/or Paid Family Leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Insurance Coverage for NYS disability and/or Paid Family Leave Benefits or other authorized proof that the business is complying with the mandatory coverage requirements of the NYS Disability and Paid Family Leave Benefits Law.**

### NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

#### §220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

**ERIE COUNTY WATER AUTHORITY**

**APPENDIX D**

**ADDENDUM AGREEMENT**



## APPENDIX D

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

### ADDENDUM AGREEMENT

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

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

#### **Insurance Requirements**

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

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

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

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

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

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

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

**B. Commercial General Liability:**

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

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

The coverage must include the following:

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

subject to this Addendum Agreement or in any contract or agreement to which this Addendum Agreement is attached.

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

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

**C. Commercial Automobile Liability Insurance:**

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

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

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

**E. Pollution Liability:**

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

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

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

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

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

**JOB-SITE SAFETY:**

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

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

**WORKERS COMP IMMUNITY WAIVER:**

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

**HOLD HARMLESS / INDEMNIFICATION:**

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

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

**MISCELLANEOUS:**

If any term or provision of this Addendum Agreement conflicts with or is otherwise inconsistent with any term or provision in the Primary Contract or any prior written agreement entered between the parties, the terms and provisions contained herein shall govern and control. This Addendum Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. This Addendum Agreement, its terms and any claims arising therefrom, shall be interpreted and construed in accordance with the laws of the State of New York.

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

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

**[ Insert name of Upstream Contractor  
or Upstream Subcontractor]**

**[Insert name of Downstream  
Subcontractor]**

\_\_\_\_\_  
[Insert Name of Representative]

\_\_\_\_\_  
[Insert Name by Representative]

(Print name and title)

(Print name and title)

Date:

Date:

**ERIE COUNTY WATER AUTHORITY**

**APPENDIX E**

**ERIE COUNTY WATER AUTHORITY  
CONFIDENTIALITY AND COPYRIGHT LICENSING  
AGREEMENT**

## APPENDIX E

### ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY AND COPYRIGHT LICENSING AGREEMENT

#### **LICENSE:**

Upon execution of this Agreement, the Engineer acquires from the Authority a license to use the proprietary and intellectual property of the Authority for the purpose of completing the work under this Agreement.

The Authority reserves the right to incorporate any Engineer-created data into the Authority's database.

#### **OWNERSHIP:**

This License Agreement does not constitute a transfer of title or interest in the data. Any portion of the data that is modified or merged into another computer file or program by the Engineer or is integrated with other programs or data to form derivative products, shall continue to be subject to the provisions of this License Agreement. The Authority retains ownership of the data and all such portions.

#### **CONFIDENTIALITY CLAUSE:**

The Engineer agrees that all digital data and hard copy from the ECWA GIS Basemap Features provided to the Engineer are copyrighted by the Authority, are protected by the copyright laws of the United States and are furnished to the Engineer with all rights reserved. Therefore, the Engineer is hereby permitted to use the digital data and hard copies thereof only for the purposes allowed under this Agreement. The Engineer agrees not to otherwise copy, reproduce or use the digital data, hard copy, or the information contained therein for any other purpose whatsoever.

#### **COPYRIGHT NOTICE:**

The copyright notice included in each of the files is not only to be retained in those files but is also to be included in any copies made of those files. No part of the files may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photographing and recording, or by any information storage or retrieval system, except as expressly permitted in writing by the Erie County Water Authority.

Upon notification by the Authority of any changes in copyright requirements, the Engineer will make said changes to all subsequent maps or reports, as required.

**LIMITATION OF LIABILITY:**

ECWA GIS Basemap Features are compiled to National Map Accuracy Standards for 1"=100' scale mapping by Woolpert, Dayton, Ohio, using Stereo photogrammetric methods from aerial photography dated April, May, and/or November, 1990. The control grid is based on New York State Plane Coordinates and North American Datum 1983. The parcels are from Erie County Tax Maps which were available in the County Finance office in June of 1993.

The Authority makes no claims as to the accuracy of the ECWA GIS Basemap Features and assumes no responsibility for their positional or content accuracy. The Authority makes no claims as to the ability of the ECWA GIS Basemap Features to fulfill Engineer application requirements. In providing data, the Authority assumes no obligation to assist the Engineer in the use of the data, or in the development, use, or maintenance of any applications applied to the data.

Engineer recognizes and agrees that the Authority makes NO REPRESENTATIONS OF ANY KIND INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, NOR ARE ANY SUCH WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE DATA OR INFORMATION FURNISHED.

**TERMINATION:**

The License to use data terminates upon completion of the work under this Agreement.

**LIQUIDATION OF DAMAGES FOR BREACH OF AGREEMENT:**

The parties agree that if Engineer breaches the Agreement and uses or discloses any of the copyrighted information in any way other than that allowed, during or subsequent to the terms of this Agreement for any purpose whatsoever, the damages of the Authority shall be deemed liquidated at three times the amount of the total value of the data as determined by the Erie County Water Authority.

In addition to treble damages for breach of Agreement, Engineer will additionally forfeit the license acquired to use copyrighted property of the Authority.

**SPECIFIC TERMS OF ACCEPTANCE:**

This Agreement constitutes the entire agreement between the parties.