

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

Contract: _____ Project No.: 201900289
Project Description: Geotechnical Engineering Services for Ball Pump Station Bypass Piping.

Item Description:

- | | | | |
|---|---|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input checked="" type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	Type text here	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<i>Russell J. Hall</i>	Date: 1-8-2020
<input checked="" type="checkbox"/> Executive Engineer	<i>James J. Bonelli</i>	Date: 1-8-2020
<input checked="" type="checkbox"/> Director of Administration	<i>Janet A. Lester</i>	Date: 1/8/2020
<input checked="" type="checkbox"/> Risk Manager	<i>Molly P. Musana</i>	Date: 1/8/2020
<input checked="" type="checkbox"/> Chief Financial Officer	<i>Karen A. Pendugast</i>	Date: 01/08/2020
<input checked="" type="checkbox"/> Legal	<i>Margaret A. Murphy</i>	Date: 1/8/2020

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<i>T. J. [Signature]</i>	Date: 1/8/2020
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Remarks: _____

PAEMERGWP201900289\2020-01-08 Authorization Form Prof Sve Cont.docx

Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

January 8, 2020

To: Terrence D. McCracken, Secretary to the Authority
From: Leonard F. Kowalski, Executive Engineer *LFK*
Subject: Board Authorization to Execute Professional Services Contract
Geotechnical Engineering Services
Ball Pump Station Bypass Piping
ECWA Project No. 201900289

Geotechnical Engineering services are required for the emergency bypass piping work that is being performed at Ball Pump Station. Due to the settlement issues that have occurred at the site over the years, it is critical that these services are used during the installation of the bypass piping.

The Professional Services are being procured under the Declaration of State of Emergency issued on 12/18/2019.

McMahon & Mann Consulting Engineering and Geology, PC is an experienced local firm that will assist the Authority to identify the cause of the settlement and to develop recommendations for installing the bypass piping to avoid future settlement issues. They are familiar with the site and have worked on other projects in the vicinity of the pump station.

Attached are the following documents:

1. Blue Authorization Form indicating the requested Board action and approvals needed.
2. Professional Service Contract with McMahon & Mann Consulting Engineering and Geology, PC.
3. Declaration of State of Emergency, 12/18/2019

LFK:jmf
Attachments
cc: R.Stoll
L.Lester
AMTN-048-1901

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this _____ day of _____, 20____, by and between:

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority”, and

McMahon & Mann Consulting Engineering and Geology, PC

2495 Main Street, Suite 432
Buffalo, New York 14214

hereinafter referred to as “Consultant”.

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

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

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

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

1. QUALIFICATION OF CONSULTANT:

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

2. SCOPE OF SERVICES:

A. GEOTECHNICAL SERVICES

Task 1 – Information Review and Site Visit

Visit the site to observe the site conditions and meet with the Authority’s personnel to discuss the settlement history and issues at the site. Attend a project kickoff meeting. After the meeting, mark the locations of test borings so that the underground utility location service and the Authority’s personnel can clear the boring locations.

Review relevant project related documents provided by the Authority including:

- Borings from the original pump station design.
- Geotechnical report by Empire GeoServices for replacement of the South Tank, dated August 1, 2014.
- Geotechnical report by Terracon for replacement of the North Tank, dated August 20, 2019.
- Record drawings for the pump station construction and any photographs of construction (if available).
- Borings and geotechnical information for the recently replaced electrical substation and nearby projects.

Initial review of boring logs shows that the rock formation underlying the site (Camillus Shale) consists of a hard “caprock” that is a few feet thick. The boring logs show that the “caprock” is underlain by decomposed rock, soil and possibly voids for about 8 to 10 feet below the “caprock”. Voids in the bedrock could be caused by solutioning of gypsum deposits that are prevalent in the Camillus Shale. Below the decomposed rock and soil zone is more competent shale with gypsum seams.

Most of the structures including the tanks, the pump station building, and the venturi chambers appear to be founded on the more competent shale, while some of the pipelines are founded in the decomposed rock, soil and void zone.

Task 2 – Subsurface Explorations

When the Authority is excavating test pits, the Consultant will be on-site to observe the ground conditions and locate any potential voids or fractures in the soil and rock.

Following test pit observations, the Consultant will engage a drilling contractor to drill two test borings in the area of the planned by-pass piping. The drilling contractor will contact the underground utility location service and work with the Authority’s personnel so that the boring locations do not interfere with the locations of underground utilities.

Drilling contractor will use a truck-mounted drill and hollow stem augers to advance the borings and will collect split spoon soil samples continuously to the top of rock following ASTM D 1586. EDI will collect rock cores from the top of rock to approximate El. 565 (about 5 feet below the elevation of Bizer Creek). During coring, we will work with drilling contractor to identify zones where the drilling rods drop or face little resistance which could indicate the presence of soil zones or voids in the rock.

Drilling contractor will construct standpipe piezometers in the borings to allow us to measure the elevation of groundwater following completion of the borings. This information will provide data on the flow of groundwater from the site toward Bizer Creek.

The drilling contractor's geologist will observe the conditions in the borings and will prepare boring logs. Consultant will monitor the completion of the borings full-time to review the conditions and adjust the scope, if conditions necessitate. Consultant will also visit the site following completion of the borings to measure water levels in the piezometers and to complete a slug test in the piezometers to measure the hydraulic conductivity of the formation surrounding the well screen.

The Consultant will ship selected soil samples to a geotechnical testing laboratory to test the soils for gradation and Atterberg Limits (if clayey). This will provide information regarding the potential for the soils to erode when subject to groundwater flow.

Task 3 – Design Recommendations

The results of the data review, the Consultant's discussions with the Authority's personnel, site observations and data from the subsurface explorations will be used to develop a theory regarding the pipeline settlement. The Consultant will prepare a brief report to the Authority describing our opinion on the settlement cause(s) and with recommendations for installing the by-pass piping to avoid the settlement issue.

The Consultant shall submit report and conceptual design recommendations to the Authority and meet to discuss the report and recommendations. After this meeting, the Consultant will adjust the recommendations to incorporate the Authority's comments.

The Consultant will then work with the Authority to incorporate the final installation recommendations into the by-pass piping plans and specifications.

Task 4 – Construction Phase Services

The Consultant will review any requests for information, questions and material submittals associated with the by-pass piping installation. During construction the Consultant's personnel will be on-site as necessary to check that the pipelines are installed as designed.

B. SPECIAL SERVICES

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

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. Additional copies of reports, contract drawings and documents.
5. Extra travel and subsistence for the Consultant and his staff beyond that normally required under ordinary circumstances, when authorized by the Authority.
6. Assistance to the Authority serving as an expert witness in litigation arising from project development or construction.
7. New York State SEQR (Type I and Unlisted Actions).
8. Air, water, and/or soil sampling, testing, and/or analysis.
9. Operation and maintenance manuals.
10. Start-up services.
11. Hazardous material testing and assessment.
12. Wetlands investigations, delineation, and mitigation.
13. Storm Water Pollution Prevention Plans
14. Applications for NYSDEC permitting

3. PAYMENT FOR SERVICES:

The Consultant shall be paid for hours worked times the hourly rates for each respective category of work being performed. The Consultant shall also be paid for direct expenses shown below. The Consultant shall submit monthly invoices to the Authority. The Consultant shall complete all services as needed.

Costs for the services provided under Tasks 1 through 4 shall not exceed \$30,000.00.

Personnel Category	Hourly Rate \$/hr.
1. Principal Engineer	200.00
2. Senior Engineer	160.00
3. Project Engineer	120.00
4. Staff Engineer	100.00
5. Technical Support Staff	65.00
6. Administrative	50.00

Direct expenses shall include reproduction, travel, mileage, long distance telephone, rental equipment, materials, and may be invoiced at cost plus 5%. Direct expenses shall not exceed \$1,000.

B. SPECIAL SERVICES

For services described under Section 2B, Special Services, the Authority shall pay Consultant an amount to be negotiated at the time such service is required. Costs for such special services shall not exceed \$15,000.00.

C. AUDIT

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

4. **SUBCONTRACT AND ASSIGNMENT**: The Consultant may not subcontract or delegate any of the work, services, and/or other obligations of the Consultant without the express written consent of the Authority. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.
5. **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.
6. **RIGHT TO TERMINATE**: The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days written notice. Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.
7. **INDEMNIFICATION**: To the fullest extent permitted by law, the Consultant agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors and employees may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Consultant's performance of professional services provided under this Agreement and those of its subcontractors or anyone for whom the Consultant is legally liable.

To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Consultant harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its contractors, consultants or anyone for whom the Authority is legally liable.

8. **CONFIDENTIAL INFORMATION:** In order to assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, is considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performing of services including but not limited to information relative to the services to be performed.

The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the consultant's benefit or for the benefit of others shall be permitted.

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

9. **INSURANCE:** The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting there from in the amounts indicated on Exhibit A. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.

10. **COPYRIGHTS, TRADEMARKS, AND LICENSING:** All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant 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 or not registered.

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

11. **NEW YORK LAW AND JURISDICTION:** Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a Court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.
12. **CONFLICTS OF INTEREST:** The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Consultant, except to pay for services actually rendered.
13. **ADDITIONAL CONDITIONS:** The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.
14. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby.
15. **INDEPENDENT STATUS:** Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant a partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

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

Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.

In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

- 16.1 COMPLIANCE:** The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York.
- 16.2** The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.
- 16.3** The Consultant agrees that the Agreement herein shall be in compliance with the provisions of Section 139-L of the State Finance Law (attached as Exhibit C).
- 17. GRATUITIES:** The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.
- 18. 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.
- 19. SEVERABILITY:** If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.
- 20. TERMINATION:** The Authority reserves the right to terminate this contract in the event it is found that the Certification filed by the Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this contract.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chairman

McMahon & Mann Consulting Engineering and Geology PC

By _____
Michael J. Mann, PE, President

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 Michael J. Mann, PE, to me known, who, being by me duly sworn, did depose and say that he resides in _____, New York, that he is the President 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