

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

**Contract:** \_\_\_\_\_ **Project No.:** 202100020  
**Project Description:** Washwater Tank Replacement – Sturgeon Point Water Treatment Plant.

**Item Description:**


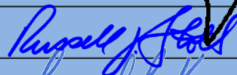
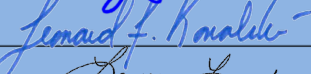




- |   |  |   |                                       |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement                            | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment          | <input type="checkbox"/> 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 checked="" type="checkbox"/> Request for Proposals     |  |   |                                       |
| <input type="checkbox"/> Other _____                          |  |   |                                       |

**Action Requested:**

- |  |  |
|--|--|
| <input type="checkbox"/> Board Authorization to Execute                                  | <input checked="" type="checkbox"/> Legal Approval                   |
| <input type="checkbox"/> Board Authorization to Award                                    | <input 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 checked="" type="checkbox"/> Board Authorization to Solicit Request for Proposals |  |
| <input type="checkbox"/> Other _____   |  |

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input checked="" type="checkbox"/> Sr. Production Engineer		Date: 2/10/21
<input checked="" type="checkbox"/> Chief Operating Officer		Date: 2/10/2021
<input checked="" type="checkbox"/> Executive Engineer		Date: 02/10/2021
<input checked="" type="checkbox"/> Director of Administration		Date: 02/10/2021
<input checked="" type="checkbox"/> Risk Manager		Date: 02/10/2021
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 02/10/2021
<input checked="" type="checkbox"/> Legal		Date: 02/10/2021

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority		Date: 02/10/2021
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**Remarks:** \_\_\_\_\_

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



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

February 10, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: Michael W. Wymer, Senior Production Engineer *MWW*

Subject: Request for Proposals  
Washwater Tank Replacement - Sturgeon Point Water Treatment Plant  
Project No. 202100020

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Attached is a copy of the Request for Proposals for consulting engineering services for the design and construction of a new washwater tank at the Sturgeon Point Water Treatment Plant.

A recently completed Basis of Design Report completed under Contract MP-085 examined options to replace the existing washwater tank, which requires significant repair. The report recommended the construction of a new 500,000-gallon prestressed concrete standpipe style tank as the recommended approach to maintain washwater supply to the filters into the extended future.

The project consists of engineering services for the design and construction of the new washwater tank adjacent to the existing tank. The project will also include an evaluation of the alternatives for wash water supply redundancy following construction of the new tank. The Board shall be aware that, based on the determination of the level of environmental review required under the New York State Environmental Quality Review Act (as established during the design phase of the project), a portion of the contract budget allowance under Special Services may be utilized.

I recommend that the Request for Proposals be issued to the following consulting engineers:

- Arcadis
- Barton & Loguidice
- JM Davidson Engineering
- Wendel
- Nussbaumer & Clarke, Inc.
- LaBella Associates
- GHD

The Engineering Department is requesting a Resolution to Solicit the Request for Proposals. The contact person for the Restricted Period will be Michael W. Wymer, Senior Production Engineer.

The Request for Proposals and Authorization Form will need prior approval by the Legal Department, Chief Financial Officer, and Risk Manager prior to being sent to the Board for consideration.

**Budget Information:**

Department 250 Engineering/Construction  
Unit 2510 Engineering/Construction - Sturgeon Point  
Item No. 101608 (\$200,000.00)

MWW:jmf  
cc: R.Stoll  
L.Kowalski  
SPWA-927-2101-X-16

**REQUEST FOR PROPOSALS  
FOR CONSULTING ENGINEERING SERVICES  
STURGEON POINT WATER TREATMENT PLANT  
WASHWATER TANK REPLACEMENT**

**ECWA Project No. 202100020**

**General**

The Erie County Water Authority (Authority) is seeking Professional Services Proposals for consulting engineering services for the replacement of the 500,000-gallon washwater tank at the Sturgeon Point Water Treatment Plant .

The Authority reserves the right to modify or cancel this Request for Proposals and/or the project; to reject any or all proposals; and to waive any or all irregularities. This Request for Proposals does not obligate the Authority to award a contract for the project or to reimburse any costs associated with the preparation of any proposal.

Any response to the Request for Proposals (RFP) is subject to the restrictions set forth in the New York State Finance Law §§139-j and 139-k and the Erie County Water Authority's Purchasing Policy, as amended. The Purchasing Policy is available by accessing the Erie County Water Authority's web site – <http://www.ecwa.org>, under the caption "Doing Business with ECWA."

**Project Description**

The Sturgeon Point Water Treatment Plant utilizes a 500,000-gallon elevated steel washwater tank for filter backwash operations. The tank was constructed in 1987 (replacing the original tank constructed in 1958) and requires immediate maintenance including the recoating of the interior bowl. Removal of the tank from service to complete the necessary maintenance cannot be accomplished as there is no alternate means to supply backwash water.

A recently completed Basis of Design Report completed under Contract MP-85 identified the construction of a new 500,000-gallon prestressed concrete (AWWA D-110 Type III) standpipe style tank as the recommended approach to maintain washwater supply to the filters into the extended future.

The project consists of engineering services for the design and construction of the new washwater tank adjacent to the existing tank. The consultant shall complete an evaluation of the alternatives for wash water supply redundancy following construction of the new tank including rehabilitation of the existing tank versus installation of a new valved interconnection riser. [Note: In preparation of the consultant's proposed design document labor effort and fee, the consultant shall assume the demolition of the existing tank and installation of the interconnection riser.] The project also consists of interconnection of the existing 42-inch washwater line with the new tank, including all related piping, valves, vaults, and appurtenances, as well as all related site grading, access and landscaping improvements.

The work will be performed through a single contract.

Drawings of the existing washwater tank and piping system will be made available to interested consultants.

### **Scope of Work**

The general scope of work is described in the example Professional Services Contract included as Attachment 1. The methods of payment shall be per the Professional Services Contract.

### **Information Requests**

All questions and requests for information are to be directed to the designated ECWA Contact Person, Michael W. Wymer, PE at 716-685-8292 (email: mwymr@ecwa.org), in accordance with New York State Finance Law §§139-j and 139-k. An optional pre-proposal meeting will be held virtually via video conference (no in-person meeting) on \_\_\_\_\_, 2021 at 10:00 a.m. local time to discuss the project. All prospective bidders that wish to attend the virtual meeting must email above referenced designated ECWA Contact Person by \_\_\_\_\_, 2021. The video conference invitation shall be sent via email on \_\_\_\_\_, 2021. Individual site inspections can be requested by prospective bidders which will require the individual to clear the Authorities COVID-19 policies prior to the visit.

### **Proposal Requirements**

Proposals are to be concise, specific and straightforward. All pertinent information is to be contained in the proposal. The use of artwork, special covers, and extraneous information in the proposals is discouraged. Proposals are to remain valid for a minimum of 60 days. Each proposal is to include the following:

- Item 1 - Qualifications and related experience, particularly on the design and construction of prestressed concrete water tanks. Consultant shall demonstrate completion of directly applicable projects involving the key personnel included in Item 3 below. Include a minimum of three references for similar work including project name, location, contact person, budget, date of completion and state the relevance to this project.
- Item 2 - Project understanding, technical approach and detailed scope of services. Identify any suggested revisions to and expand upon the detail of the general scope of work as outlined herein. Identify innovative ideas to improve upon the quality of the work, reduce schedule and optimize costs.
- Item 3 - Project staffing for all key personnel and subcontractors. Identify the proposed role of all staff proposed for this project. Provide a table of the current and projected workload of each proposed project staff member as it relates to availability to perform the proposed work. Provide the office of each proposed project staff member and the location(s) where work will be performed.

Provide resumes of the proposed personnel with listed experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.

- Item 4 - Qualifications of resident inspector(s) including applicable education, training, experience, and certification.
- Item 5 - Work performed for the Water Authority in 2018, 2019, and 2020.
- Item 6 - Current remaining workload with the Water Authority.
- Item 7 - Completed Section 139 of State Finance Law per Attachment 1, Appendix C (pp. 34-42).
- Item 8 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix B-1.
- Item 9 - Proposed project schedule, showing duration of all tasks from design through construction completion.
- Item 10 - Fee proposal which is to include a breakdown of engineering fees for each task showing personnel (including title/grade), hours, hourly rates (billing and direct labor), overhead rates, and subcontractor costs for each task. Include subtask items as necessary to convey effort provided by individual personnel.

Provide an estimate of cashflow for engineering fees over the duration of the project.

Provide information on direct costs including estimated total direct cost for non-lump sum tasks. Note that the direct labor multiplier for resident inspection shall be limited to 2.80. Consultant shall utilize their proposed construction duration as the basis for the cost shown below for Resident Inspection. Consultant shall state specifically the number of manhours assumed for onsite Resident Inspection services.

All consultants shall include Special Services lump sum cost of \$50,000 for the purposes of this proposal. Provide fixed hourly billing rates for applicable personnel to be included in the Professional Services Contract as Appendix C.

Consultant shall utilize their proposed construction duration as the basis for the cost shown below for Resident Inspection. Consultant shall state specifically the number of manhours assumed for onsite Resident Inspection services.

Proposals shall include the form on the following page for comparison purposes:

<b>Project 202100020</b>	
<b>RFP for Sturgeon Water Treatment Plant</b>	
<b>Washwater Tank Replacement</b>	
<b>Preliminary Design and Design</b>	<b>\$</b>
<b>Construction and General Services</b>	<b>\$</b>
<b>Resident Inspection</b>	<b>\$</b>
<b>Record Drawings</b>	<b>\$</b>
<b>Authority Program/Procedure Updates</b>	<b>\$</b>
<b>Special Services</b>	<b>\$ 50,000.00</b>
<b>TOTAL:</b>	<b>\$</b>

**Proposals will be accepted until 4:00 p.m. on Friday \_\_\_\_\_, 2021.** Five hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, NY 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: "PROPOSAL: STURGEON POINT WTP – WASHWATER TANK REPLACEMENT."

### **Evaluation and Selection**

All proposals will be evaluated by a small in-house committee made up of Water Authority personnel familiar with the proposed project. Interviews and/or presentations of the proposals will be requested if needed. The proposals will be evaluated based on the criteria listed above.

The final scope of work and fee for the engineering services for the project will be negotiated with the selected firm(s). Professional Service Contracts will then be executed pending successful negotiation and authorization by the Water Authority Board of Commissioners. All firms submitting a proposal will be notified of the selection results. It is anticipated that the selection process will be completed in March 2021, and that the agreement will be executed in April 2021.

## ATTACHMENT 1

Project No. \_\_\_\_\_

Contract \_\_\_\_\_

### PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

This Agreement, effective as of \_\_\_\_\_, 2021 (“Effective Date”), is by and between

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

295 Main Street, Room 350

Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

#### **Consultant Name**

Consultant Address

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to design and construction of a 500,000-gallon prestressed concrete washwater tank at the Sturgeon Point Water Treatment Plant (the “Project”).

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

### **ARTICLE 1 – THE PROJECT**

**1.01** The Engineer agrees to providing engineering services for the Project to construct new 500,000-gallon prestressed concrete water storage tank at the Sturgeon Point Water Treatment Plant as a replacement to the existing tank. The new tank shall be constructed to be consistent with the hydraulic elevations and associated available backwash volume of the existing tank. The Project shall include all related piping, fittings, valves, vaults, and interconnections to incorporate the new tank into the washwater supply line.

### **ARTICLE 2 – COMPLIANCE STANDARDS**

#### **2.01 Standard of Performance**

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

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

**2.02 Compliance with Laws and Regulations, and Policies and Procedures**

- A. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Engineer shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed Forms A, B, and C, a copy of which is attached to, and incorporated in, this Agreement as Appendix C.
- C. 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.
- D. The Engineer shall comply with the provisions of State Finance Law § 139-L of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Sexual Harassment Bidding Certification, a copy of which is attached to, and incorporated in, this Agreement, as Appendix C.
- E. 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.
- F. 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.
- G. If the Engineer, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Engineer's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

**2.03 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 safety rules and regulations adopted by the State of New York or the Authority including, but not limited to, completing a health screening questionnaire before entering any Authority worksite.

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

### **ARTICLE 3 – SCOPE OF SERVICE**

**3.01 Kick-off Meeting.** Prior to rendering any professional services, the Engineer will conduct a kickoff meeting with Authority personnel to take place at the same time as the site walkthrough referenced in § 3.02 of this Agreement.

**3.02 Preliminary Investigation and Due Diligence.** The Engineer shall provide all engineering services necessary to design and install the Project improvements including, but not limited to, the following:

#### **A. *Basis of Design (“BOD”):***

1. In contemplation of the basis of design, the Engineer shall:

- a. Review reports, drawings, specifications, and other records furnished by the Authority.
- b. Conduct project kick-off meeting with Authority personnel and provide associated meeting minutes. Provide meeting minutes to the Authority within 5 business days of the meeting date.
- c. Verify site conditions at the tank location.
  - i. Complete a site walkthrough and conduct meetings with operating staff to discuss current operational strategies and challenges.
  - ii. Review applicable operating records.
  - iii. Determine the condition of any equipment to remain in relation to the improvements described in § 1.01 of this Agreement.
- d. Complete an evaluation of alternatives available to the Authority for redundancy of wash water supply following construction of the new tank. Alternatives shall include rehabilitation of the existing wash water tank versus installation of a new valved interconnection riser in which an alternate wash water source (portable pumps, temporary

interconnection piping, etc.) may be connected. Evaluation shall include physical and economic (net present worth) considerations.

2. 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 NGCD29 standards.
3. Confirm the process design parameters and criteria established in the Basis-of-Design report, previously completed by others. Establish additional process design parameters and criteria as necessary to complete the design.
4. Prepare preliminary design documents for the new tank. Preliminary design documents should include:
  - a. Final design criteria including but not limited to tank dimensions, elevations, and tank appurtenances.
  - b. Geotechnical information requirements for design of the tank. Geotechnical sampling and analysis would be considered a Special Service, subject to the provisions of paragraph B of this Section.
  - c. Hazardous material testing requirements related to demolition of the existing tank and applicable appurtenances. Hazardous material sampling and analysis would be considered a Special Service, subject to the provisions of paragraph B of this Section.
  - d. Preliminary design drawings including
    - i. Site plan indicating selected location for the new tank, piping interconnection and construction activities (cast bed locations, staging areas, site access etc.).
    - ii. Elevation/section drawings of the new tank.
    - iii. Details of interconnection with existing backwash line and emergency interconnection riser.
    - iv. Demolition plan for the existing tank.
  - e. Describe the construction sequencing (maintenance of tank operations and incorporation of the new tank into system operations).
  - f. State an opinion of probable project costs.
  - g. Set forth a Project schedule identifying the duration of final design, bid, and construction phases.

5. The Engineer shall prepare a draft BOD Report, setting the factors considered by the Engineer including, but not limited to, those specifically identified in paragraph A, subparagraph 1 of this section. The Engineer shall supply the Authority with four (4) copies of the draft BOD Report with supporting documentation, along with a digital .pdf file of the draft BOD Report with supporting documentation.
6. The Engineer shall meet with the Authority to review the draft BOD Report and will incorporate all comments into a final version. The Engineer shall supply the Authority with an electronic (pdf) file and three hard copies of the final BOD Report with supporting documentation, along with a digital .pdf file of the final BOD Report with supporting documentation.
7. The Engineer will conduct at least two (2) review meetings with the Authority. Provide meeting minutes to the Authority within ten (10) calendar days.

**B. *Special Services:***

1. The Engineer may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
  - a. Soils investigations including test borings, pavement cores, and the related analysis;
  - b. Detailed mill, shop and/or laboratory inspection of materials and equipment;
  - c. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
  - d. Air, water, and/or soil sampling, testing, and/or analysis;
  - e. Hazardous material testing and assessment;
  - f. Wetlands investigations, delineation, and mitigation;
  - g. Technical assistance with operation and maintenance manuals;
  - h. Start-up services relating to equipment to be installed by the contractor;
  - i. Assistance with permit and other applications with the New York State Department of Environmental Conservation (DEC);

- j. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
  - k. Laboratory testing, jar testing, and pilot testing;
  - l. Technical assistance with preparing any necessary documents if required by the New York State Environmental Quality Review Act (SEQRA) for Type I or Unlisted actions, including the preparation of an environmental assessment form, and if necessary, an environmental impact statement;
  - m. Extra travel and subsistence for the Engineer and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority;
  - n. 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
  - o. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officer.
2. **Reliance on Others.** Subject to the standard of care set forth in § 2.01, paragraph A, 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.
3. **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.

**3.03 *Design:*** The Engineer will complete design documents for the design, bid and construction for the new Washwater Tank. The Engineer shall assume the demolition of the existing tank and construction of the interconnection riser in development of their labor effort and fee.

**A. *Detailed Design Drawings, Specifications and Contract Documents:*** Upon authorization from the Authority, the Engineer shall complete the following design services:

- 1. Visit the site as needed to assist in preparing the drawings and specifications.
- 2. Prepare detailed design drawings, specifications and contract documents at 60%, 90%, and 100% design stages. Tasks include, but are not limited to:
  - a. Preparing base drawings in AutoCAD version 2018 from the available records furnished by the Authority;

- b. Preparing engineering calculations to support the design of the improvements, including related civil, mechanical, electrical/instrumentation, and structural features of the project;
  - c. Preparing 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;
  - d. Preparing draft and final plans, profiles, and job specific detail drawings that include editing of the Authority's standard detail drawings where appropriate.
- 3. Prepare contract documents including, but not limited to:
  - a. Preparing contract specifications with edited Authority's standard "front end" specifications and standard technical specifications where appropriate;
  - b. Preparing additional technical specifications, as required;
  - c. Obtaining New York State Prevailing Wage Rates and inserting such rates into the specifications;
  - d. Preparing a quantity take-off and opinion of probable construction cost;
  - e. Submitting the contract specifications, drawings, application forms and fees to Erie County Health Department for approval.
- 4. Recommend to the Authority's Board of Commissioners the appropriate level of environmental review required under the New York State Environmental Quality Review Act, including but not limited to the identification of other involved agencies and the appropriate classification for the action to be taken (i.e., Type I, II or Unlisted).
- 5. Determine the requirement for a project specific SWPPP and if required completing all associated SWPPP documentation (as applicable).
- 6. Assist the Authority in filing applications for permits with applicable regulatory agencies, having jurisdiction to review and approve the design; assisting the Authority in consultations with such agencies; and revising the drawings and specifications in response to directives from such agencies, as appropriate. Submitting final copies of the revised reports, drawings, and specifications to the appropriate regulatory agencies.
- 7. Assist the Authority with assembling known reports and drawings of existing conditions, and identifying the technical data contained in such reports and drawings upon which bidders may rely.

**B. *Design Phase Meetings and Reports.*** The Engineer shall:

1. Conference with the Authority and other related Project stakeholders, as necessary and as required.
2. Report to the Authority bi-weekly on the progress of the design work via email, with the following information:
  - a. Design work performed during the previous two weeks;
  - b. Design work scheduled for the next two weeks;
  - c. Schedule status/deliverable status, attaching an updated project schedule in Microsoft Project format, identifying all project milestones and current project status;
  - d. Budget status/percent completed;
  - e. Input needed from the Authority or others;
  - f. Requests for scope changes; and
  - g. Other issues or concerns.
3. Furnish to the Authority five (5) hardcopy sets of review copies of the drawings, specifications, and other contract documents, during 60%, 90%, and 100% design.
4. Conduct at least three meetings with the Authority engineers and operators to discuss and/or review detailed design drawings, specifications and contract documents. Provide meeting minutes to the Authority within five (5) business days.
5. Attend a final design meeting with the Authority. Provide meeting minutes to the Authority within five (5) business days.

**3.04 Construction Services**

**A. *Construction Bids.*** Upon authorization from the Authority, the Engineer shall:

1. Assist Authority personnel in preparing bid invitation and contract documents.
2. Refrain from discussing the Project or the bid process with anyone outside of the Authority prior to the advertisement of bids and during the restricted period for the submission and award of bids.
3. Furnish ten (10) sets of contract drawings, final specifications, and other documents for each contract to the Authority. Provide electronic files of all

documents to Avalon Document Services who will provide contract drawings, final specifications, and other documents required for bidding and construction purposes. The cost of documents provided through Avalon Document Services shall be paid by the Contractor.

4. Conduct, at the appropriate time, a pre-bid meeting:
  - a. Prepare and distribute addenda for pre-bid meeting;
  - b. Record, publish, and distribute minutes from the pre-bid meeting; and
  - c. Prepare, if necessary, publish, and distribute any addendum to the bid invitation and contract documents.
5. Evaluate and determine whether substituted materials and equipment proposed in a bid submission of a prospective contractor is acceptable and at least equal to the materials and equipment set forth in bid and contract documents.
6. Assist the Authority in securing bids, bid results, analyzing bid results, and making recommendations on the award of each construction contract.

**B. *Pre-Construction.*** Prior to construction, the Engineer shall:

1. Provide pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested stakeholders.
2. Conduct a pre-construction meeting:
  - a. Prepare and distribute agenda for pre-bid meeting; and
  - b. Record, publish, and distribute minutes from the pre-bid meeting.

**C. *Construction.***

1. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work (the “Work”). The Engineer shall not be held liable to the Authority for the failure of the construction contractor (the “Contractor”) to execute the Work in accordance with the contract documents (the “Contract Documents”).
2. The Engineer shall notify the Authority of all permanent Work which does not conform to the result required in the Contract Documents, prepare a written report describing any apparent non-conforming permanent Work and make recommendations to the Authority for its correction and when requested by the Authority, have recommendations implemented by the Contractor.

3. The Engineer shall have responsibility over the following:

a. Defective Work:

- i. Based on the Engineer's observations, if the Engineer believes that the Work is defective under the terms and standards set forth in the Contract Documents, the Engineer shall reject the Work and provide the Authority with its recommendations regarding whether the Contractor should correct such Work or remove and replace such Work, or whether the Authority should consider accepting such Work as provided in the Contract Documents.

b. Compatibility with Design Concept:

- i. If the Engineer has actual knowledge a specific part of the Work, although not defective under the terms and standards set forth in the Contract Documents, but nonetheless is not compatible with the design concept of the completed Project as a functioning whole, the Engineer will inform the Authority of such incompatibility, and provide recommendations for addressing such Work.

c. Clarifications and Interpretations:

- i. When the Contractor and the Authority submits to the Engineer any question concerning the requirements of the Contract Documents, including any requests for information (RFIs), or relating to the acceptability of the Work under the Contract Documents, the Engineer shall, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents.

d. Differing Site Conditions:

- i. When the Contractor notifies the Engineer of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions, the Engineer shall promptly review the condition and prepare findings, conclusions, and recommendations to the Authority as to how to address the condition.

e. Substitutes and "Or-equal":

- i. The Engineer shall evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor.
- f. Change Orders:
  - i. The Engineer shall notify the Authority when a change in the Work is proposed, which will cause an adjustment in the contract cost.
  - ii. The Engineer will evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval by the Authority’s Board of Commissioners.
  - iii. The Engineer shall discuss changes in the plans or procedures recommended by the Engineer with the Authority prior to implementation.
  - iv. The Engineer must obtain approval for all change orders from the Board of Commissioners prior to implementation.
- g. Change Proposals and Claims:
  - i. Review and respond to Change Proposals.
    - (a) The Engineer shall review each submitted Change Proposal from Contractor and either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part.
    - (b) Such actions shall be in writing, with a copy provided to the Authority and Contractor.
    - (c) If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, the Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
  - ii. Reporting of Claims
    - (a) When the Engineer becomes aware of a situation from which a legal dispute or claim (“Claim”) could be filed by a contractor, subcontractor, property owner or other

third party against the Authority, the Engineer will promptly report the situation to the Authority.

(b) Upon request, the Engineer will assist the Authority's Legal Department in its investigation and examination of any Claim. The Engineer will provide the names and, if available, addresses and phone numbers of individuals involved or having knowledge of the Claim.

(c) The Engineer will also gather information or data to the Authority regarding engineering or technical matters pertaining to the Claim.

4. The Engineer shall consult, report and advise appropriate Authority personnel as to all relevant and pertinent matters relating or affecting the progress of construction.
5. The Engineer shall review and determine the acceptability of any and all schedules that the Contractor is required to submit to the Engineer, including a Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. The Engineer shall supply the Authority with a construction schedule, which has been submitted by the Contractor and approved by the Engineer.
7. The Engineer will prepare elementary sketches and supplementary sketches, when necessary or required, to resolve issues with actual field conditions encountered.
8. The Engineer shall interpret Contract Documents and resolve problems as to amount, quality, acceptability, and fitness.
9. The Engineer will review the Contractor's submittals of material and/or equipment for compliance with the design concept and take appropriate action such as but not limited to: "approved", "approved as corrected", "revise and resubmit"; or "not approved."
10. The Engineer will provide the Contractor and the Authority with detailed stakeout information, including benchmarks, reference and axis lines along the routes of the construction or wherever necessary.
11. The Engineer shall check installation for preparation of record drawings.

**D. *Construction Meetings and Reports.***

1. The Engineer will schedule and attend progress meetings with the pertinent Authority personnel, the Contractor, subcontractors and other interested stakeholders at a minimum every two (2) weeks.
2. The Engineer will report to the Authority monthly on the progress of the Work with a written monthly summary including daily inspector reports.
3. The Engineer will report, via email, to the Authority bi-weekly on the progress of the Work with the following information:
  - a. Summary of the Work performed in the previous two-week period;
  - b. Updated project schedule, attached and 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 the identification of any contract items which may exceed bid quantities; and
  - d. Copies of final inspection reports attached in .pdf format for reports in the previous two-week period.
4. As previously stated in paragraph C, subparagraphs 3f and 3g of this section, the Engineer shall notify the Authority when a change in the work is proposed which will cause an adjustment in the contract cost and will:
  - a. Evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval.
  - b. Discuss changes in the plans or procedures authorized by the Engineer with the Authority prior to implementation.
  - c. Obtain approval for all change orders from the Authority's Board of Commissioners prior to implementation.
5. The Engineer will 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.

### **3.05 Resident Inspections:**

A. Upon authorization from the Authority, the Engineer shall furnish a full-time Resident Project Inspector (RPI) who will conduct technical inspection of the Work relating to the Project;

1. *Inspector's duties and responsibilities:* The Engineer, through the RPI's observations, shall protect the Authority against defects and deficiencies in the Work.

2. *RPI's duties and responsibilities:*

a. The RPI 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 the Engineer's authority as set forth in this Agreement;
- iii. Undertake any of the responsibilities of the 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 RPI shall:

- i. 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;

- ii. Attend meetings with Contractor and subcontractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings;
- iii. Provide email updates to the Engineer and the Authority regarding meetings with Contractor and subcontractors;
- iv. Conduct daily on-site inspections of all Work in progress;
- v. Prepare daily inspection reports to determine if the Work is progressing in accordance with Contract Documents;
- vi. Report to the Authority and the Engineer whenever the RPI believes any portion of the Work will not produce 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 damaged, or does not meet the requirements of any inspection, test or approval required to be made;
- vii. Advise the Authority and the Engineer whether any part of the Work in progress should be corrected or rejected or should be uncovered for observations, or requires special testing, inspection, or approval;
- viii. 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;
- ix. Observe, record, and report to the Engineer appropriate details relative to the test procedures and systems start-ups;
- x. 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 the Engineer;
- xi. Advise the Engineer and the Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPI believes that the submittal has not been approved by the Engineer; and
- xii. 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 Work.

### **3.06     General Services:**

#### **A. *Contractor's Request for Payment:***

1. As a general service to the Authority, the Engineer will review applications for payment with the 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.
2. Based on the Engineer's observations and on review of Applications for Payment and accompanying supporting documentation, the Engineer shall:
  - a. Determine the amounts that the Engineer recommends Contractor be paid;
  - b. Recommend reductions in payment based on the provisions stated in the Construction Documents;
  - c. Such recommendations of payment will be in writing and will constitute the Engineer's representation to the Authority, based on such observations and review, that, to the best of the Engineer's knowledge, information and belief, the Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents:
    - i. Subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation; and
    - ii. Subject to the conditions precedent that permits a Contractor to receive payment based on the Work performed, which has been reviewed and accepted by the Engineer;
  - d. In the case of unit price Work, the Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work subject to any subsequent adjustments allowed by the Contract Documents.

#### **B. *Standards for Certain Construction-Phase Decisions:***

1. The Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Contract for initial interpretations, Change Proposals, and acceptance of the Work.

2. In rendering such decisions and judgments, the Engineer will not show partiality to the Authority or the Contractor, and will not be liable to the Authority, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

**C. *Certificates, Operation and Maintenance Materials:***

1. During the course of construction, as a general service, the Engineer will verify whether materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents.
2. After receipt from the Contractor, the Engineer will review and transmit to the Authority:
  - a. Any maintenance and operating instructions,
  - b. Schedules,
  - c. Guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents,
  - d. Certificates of inspection, tests and approvals, and
  - e. Shop Drawings, Samples, and other data as required.
3. Upon receipt from the Contractor, the Engineer will review and transmit to the Authority the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.
4. The Engineer must deliver to the Authority those documents described in subparagraph 2 of this paragraph, prior to the payment for such work.

**D. *Completion:***

1. Upon authorization from the Authority, as general services, the Engineer shall:
  - a. 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;
  - b. 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; and

- c. 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.

2. *Substantial Completion:*

- a. After a notice has been given by the Contractor as to the substantial completion or completion of Work, the Engineer will promptly visit the Project site to review the Work and determine the status of completion.
- b. The Engineer will follow the procedures in the Contract Document regarding the following:
  - i. the preliminary certificate of Substantial Completion,
  - ii. punch list of items to be completed,
  - iii. objections made by the Authority,
  - iv. notice to Contractor, and issuance of a final certificate of Substantial Completion.
- c. The Engineer will assist Authority regarding any remaining engineering or technical matters affecting Authority's use or occupancy of the Work following Substantial Completion.

3. *Final Notice of Acceptability of the Work:*

- a. After conducting a final visit to the Project, the Engineer will determine if the Work is complete and acceptable so that the Engineer may recommend, in writing, final payment to the Contractor.
- b. Accompanying the recommendation for final payment, the Engineer shall also provide a notice to the Authority and the Contractor that the Work is acceptable to the best of the Engineer's knowledge, information, and belief, and based on the extent of the services provided by the Engineer under this Agreement.

**3.07 Record Drawings:**

A. Upon authorization from the Authority, the Engineer shall:

- 1. Provide record drawings, including the base mapping of all completed Work according to the latest Authority As-Built Standards, using the AutoCAD Version 2018 platform.
- 2. Furnish all AutoCAD files on CD to the Authority.

3. Submit two stamped/signed full size sets, AutoCAD files, .pdf version of the drawings and Project Manual (with addenda) and GPS coordinates no later than one month after final payment of the Work is recommended for approval and in accordance with Authority Standards.

**3.08 Service Timeframe.** Unless otherwise extended by mutual agreement of the parties, the Engineer will render professional services relating to this Project within the following timeframe:

- A. All services under § 3.01, § 3.02, and § 3.03 of this Agreement shall be completed and delivered to the Authority within 180 days of the issuance of the Authority's notice to proceed. The Design is complete when the Bid Documents are submitted to the Authority;
- B. All services under § 3.07 of this Agreement, Record Drawings, shall be completed and delivered to the Authority within 60 days following the contractor's date of Substantial Completion;
- C. All other services should be completed by the end of the project with an estimated completion date of < date to be inserted based on consultant's proposal >.

#### **ARTICLE 4 – PAYMENT OF PROFESSIONAL SERVICES**

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

- A. ***Preliminary Investigation and Design:*** For services described under § 3.02, paragraph A, and § 3.03 of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- B. ***Construction and General Services:*** For services described under § 3.04 and § 3.06 of this Agreement, the Authority shall the pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- C. ***Record Drawings:*** For services described under § 3.07 of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.

**4.02 Resident Inspection:** For services described under § 3.05 of this Agreement, the Authority shall pay the Engineer the payable hourly rates listed under §4.04, 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 §4.04, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

**4.03 Special Services:** For services described under § 3.02, paragraph B 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 § 3.02, paragraph B of this Agreement, such services will be billed at the fixed rates included in Appendix A 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%.

**4.04 Engineering Cost Schedule:**

**A. *Engineering Costs:***

- |  |                 |
|--|-----------------|
| 1. Lump Sum – Preliminary Design Cost                | < insert cost > |
| 2. Lump Sum – Design Cost                            | < insert cost > |
| 3. Lump Sum – Construction and General Services Cost | < insert cost > |
| 4. Lump Sum – Record Drawings Cost                   | < insert cost > |

TOTAL LUMP SUM COST:	< insert cost >
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**B. *Resident Inspections Costs:***

	Payable Hourly Rate	Employee Direct Hourly Rate
< Insert Staff Title >	< insert cost >	< insert cost >
< Insert Staff Title >	< insert cost >	< insert cost >

The Dollar amount for Estimated Resident Inspection is based fixed hour estimate of < insert hours > hours of < insert staff title > Payable Hourly Rate and < insert hours > hours of < insert staff title > 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 < insert cost >
- 2. TOTAL NOT TO EXCEED RESIDENT INSPECTION: < insert cost >

<b>C. <i>Special Services (not to exceed)</i></b>	<b>\$50,000.00</b>
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**D. *Other Costs:***

- 1. Estimated Mileage (IRS rate) < insert cost >/mile
- 2. Estimated Copy Costs (per copy) < insert cost >/sheet

- |  |                       |
|--|-----------------------|
| 3. Prints (per print)                                      | < insert cost >/print |
| 4. Subcontractor Expenses, invoiced<br>as special services | Cost plus 5% maximum  |
| 5. Other Direct Non-Salary Costs                           | At cost               |

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

## **ARTICLE 5 – GENERAL PROVISIONS**

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

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

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

### **5.04 Indemnification:**

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

#### **5.05 Confidential Information:**

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

#### **5.06 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 B-1.
- 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 requires the name of the employee, the employee's phone number and email address.

- E. The Engineer agrees to require all direct or indirect subcontractors to procure and maintain insurance in accordance with the insurance requirements set forth in the Addendum Agreement attached as Appendix B-2.

**5.07 Copyrights, Trademarks and Licensing:** 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.

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

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

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

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

**5.12 Independent Status:**

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Engineer, an owner, member, officer, partner, employee or agent of the other,

nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Engineer shall remain an independent contractor responsible for its own actions. The Engineer is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

- B. The Engineer is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 4.
- C. Neither the Engineer nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Engineer represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Engineer agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Engineer further represents and warrants that any income accruing to the Engineer and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

**5.14 Force Majeure:** Engineer shall not be liable to the Authority for any failure to perform the Services if any such failure is caused by forces beyond 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.

**5.15 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 circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Engineer or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

**5.16 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 6 – SEVERABILITY**

**6.01** Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be

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

## **ARTICLE 7 – TERMINATION**

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

### **ERIE COUNTY WATER AUTHORITY**

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

*< insert name of Engineer >*

By \_\_\_\_\_

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2021, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

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

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

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

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

## APPENDIX A

### FIXED RATES FOR SPECIAL SERVICES

Grade	Hourly Billing Rate

## APPENDIX B-1

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

#### STURGEON POINT WATER TREATMENT PLANT WASHWATER TANK REPLACEMENT

ECWA Project No. 2021\_\_\_\_\_

#### Insurance Specs:

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

#### Insurance Requirements:

**a. Workers Compensation:**

Part 1: Workers Compensation: Statutory

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

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

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

**c. Commercial General Liability:**

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

**d. Automobile Liability:**

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

**e. Umbrella Liability:**

- \$1,000,000. Each Occurrence

- \$1,000,000. Aggregate
- Per Project/Job Aggregate Limit Required
- Erie County Water Authority to be scheduled as an Additional Insured

**e. 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.

## APPENDIX B-2

[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. 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.

**F. 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 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]**

---

[Name of Representative]

---

[Insert Name by Representative]

(Print name and title)

(Print name and title)

Date:

Date:

**APPENDIX C**  
**RESPONSE TO RFP**  
**STATE FINANCE LAW REQUIRED FORMS**

*< Engineer's RFP response including the following required forms to be inserted here >*

## **FORMS A, B, and C**

### **STATE FINANCE LAW REQUIREMENTS**

The Erie County Water Authority (the “Authority”) is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). When the Authority seeks to procure goods or services by means of an Invitation or Notice to Bid, or a Request for Proposals, the State Finance Law imposes certain restrictions on anyone who may wish to offer goods or services to the Authority as an Offerer, as that term is defined in §§ 139-j(1)(h) and 139-k(1)(h).

During the Restricted Period, as defined in §§ 139-j(1)(f) and 139-k(1)(f), when bids or proposals are being solicited, the Authority will designate a contact person with whom the Offerer may contact for information and other authorized purposes as set forth in §139-j of the State Finance Law. The designated contact is identified in the Notice to Bidders, or in the Request for Proposal. An Offerer is authorized to contact the Authority’s designated contact for such purposes as set forth in § 139-j(3).

Pursuant to the State Finance Law, the Authority is also required to make certain findings before making any determinations as to the qualifications and eligibility of those seeking a procurement contract, as that term is defined in State Finance Law §§ 139-j(1)(g) and 139-k(1)(g). Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings of non-responsibility occurring within a 4-year period, the Offerer will be debarred from obtaining procurement contracts with the Authority. Further information about these requirements can be found in §§139-j and 139-k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

The following forms will be used by the Authority to make such findings:

Form A - Offerer’s Affirmation of Understanding of, and Agreement to Comply with, the Authority’s Permissible Contact Requirements During the Restricted Period.

Form B - Offerer’s Certification of Compliance with State Finance Law.

Form C - Offerer’s Disclosure of Prior Non-Responsibility Determinations.

**FORM A**

**Offerer's Affirmation of Understanding of, and Agreement to Comply  
with, the Permissible Contact Requirements During the Restricted Period**

**Instructions:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a written affirmation of understanding and agreement to comply with procedures regarding permissible contacts with the Authority in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

**FORM B**

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

**Instructions:**

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

**Offerer Certification:**

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

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

**Instructions:**

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

**FORM C (Continued)****Offerer's Disclosure of Prior Non-Responsibility Determinations**

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

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

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

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
- No                      Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle)
- No                      Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

**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:**

[illegible]

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(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: \_\_\_\_\_  
Signature

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

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

## **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**

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

SECTION 139-L OF THE STATE FINANCE LAW  
STATEMENT RELATING TO SEXUAL HARASSMENT POLICY

1. "Bidder" has the same meaning as the term, "Offerer," as that term is defined in State Finance Law § 139-k(1)(h), and includes anyone who submits a bid or proposal.
2. Every proposal or bid hereafter made and submitted to the Erie County Water Authority, where competitive bidding or a sealed proposal is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the Bidder and affirmed by such Bidder as true under penalty of perjury:

SEXUAL HARASSMENT BIDDING CERTIFICATION

- (a) "By submission of this bid/proposal, EACH BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section two hundred one-g of the Labor Law."
3. A bid/proposal shall not be considered for award nor shall any award be made to a Bidder who has not complied with subdivision one of this section; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid/proposal a signed statement which sets forth in detail the reasons therefore.

The undersigned CERTIFIES, under penalty of perjury, that he is authorized to make this bid/proposal and execute this statement on sexual harassment; that he is familiar with the statements contained in ¶2(a) of this document, as well as the provisions of State Finance Law §139-L and Labor Law §201-g, and such statements are true and have been complied with by the Bidder.

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

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

(SEAL)