

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

Contract: DA-010 **Project No.:** 202000063

Project Description: Town of Amherst and Cheektowaga Upgrades.

Item Description:

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

Action Requested:

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

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|---------------------------|-------------------------|
| <input type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Operating Officer | <u>Russell J. Holt</u> | Date: <u>2/4/20</u> |
| <input checked="" type="checkbox"/> Executive Engineer | <u>Joseph Kowalski</u> | Date: <u>2-4-2020</u> |
| <input checked="" type="checkbox"/> Director of Administration | <u>Sharon L. Leston</u> | Date: <u>2/4/2020</u> |
| <input checked="" type="checkbox"/> Risk Manager | <u>Molly C. Musarra</u> | Date: <u>2/5/2020</u> |
| <input checked="" type="checkbox"/> Chief Financial Officer | <u>Karen A. Rendugast</u> | Date: <u>02/05/2020</u> |
| <input checked="" type="checkbox"/> Legal | <u>Margaret A. Murphy</u> | Date: <u>2/5/2020</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--------------------------|-----------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority | <u>T. C. [Signature]</u> | Date: <u>2/5/2020</u> |
|--|--------------------------|-----------------------|

Remarks: _____

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Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 4, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer *LFK*

Subject: Contract DA-010
Town of Amherst and Cheektowaga Upgrades
ECWA Project No. 202000063

The following material is attached:

- Blue Authorization Form for Risk Manager and Legal Department approval. The Blue Authorization Form is requesting Board Authorization to execute the attached Professional Service Contract.
- Professional Service Contract for the above referenced project.
- Copy of Interoffice Memorandum from Leonard F. Kowalski, Executive Engineer, dated January 22, 2020, detailing recommendations for the contract assignment after review of Request for Proposals (PN 202000002).

This project consists of the design and construction of the replacement of existing waterlines on multiple streets in the Town of Amherst and Town of Cheektowaga with minimum 8-inch diameter waterlines.

Street	Linear Feet	Location
<i>New waterline installation in the Town of Amherst:</i>		
Kensington Avenue	2600	From Lamarck Drive to Main Street.
Smallwood Drive	800	From north of Northledge Drive to Lakewood Parkway.
<i>New waterline installations in the Town of Cheektowaga</i>		
Linden Street	1050	From William Street to dead-end.
Vern Lane	2000	From William Street to Dowmer Place.

All valving, hydrants, abandonments, interconnections, and appurtenances shall be included in the design. Project includes a hydraulic analysis to demonstrate functionality of proposed waterlines. Pipe materials to use, sizes, and interconnection details to various existing pipes will be necessary during the design.

LFK:jmf
Attachments
cc: R.Stoll
L.Lester
CONT-DA-010-2001-X-01



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

January 22, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer

Subject: Request for Proposals
Distribution Main Design Projects 2020-2021
(Contracts A, B, C, D, E, F, and G)
ECWA Project No. 202000002

The Erie County Water Authority (Authority) recently issued a Request for Proposals (RFP) to ten (10) consulting engineering firms for engineering services for design and construction phase services for several distribution main projects in various locations within the ECWA direct service area. These projects are separated into seven different contracts (contracts A, B, C, D, E, F, and G). Wendel did not send a proposal, however two additional firms submitted a proposal based on the information on the Authority's website (EI Team and Barton & Loguidice). Those submitting proposals are listed in alphabetical order below:

- Barton & Loguidice (submitted for A, B, C, D, E, F, G)
- CHA Consulting, Inc. (submitted for A, B, C, D, E, F, G)
- Clark Patterson Lee (submitted for A, B, C, D, F, G)
- DiDonato Assoc. Eng. and Architecture, PE, PC (submitted for A, B, C, D, E, F, G)
- EI Team (submitted for A, B, C, D, E, F, G)
- Erdman Anthony & Associates, Inc. (submitted for A, B, C, D, E, F, G)
- Fisher Associates (submitted for A, B, C, D, E, F, G)
- Greenman-Pedersen, Inc. (submitted for A, B, C, D, E, F, G)
- LaBella Associates (submitted for A, B, C, D, E, F, G)
- Nussbaumer & Clarke, Inc. (submitted for A, B, C, E)
- Wm. Schutt & Associates (submitted for A, B, C, D, E, F, G)

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

The Comprehensive Strategic Plan (CSP) was also taken into consideration during the selection process. The CSP establishes a 15 mile per year replacement goal for transmission and distribution mains. In order to achieve this goal, the Authority will have to establish relationships with additional consulting firms to ensure we can consistently design and construct projects in a timely manner.

Terrence D. McCracken
Secretary to the Authority

- 2 -

January 22, 2020

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

Consultant	Contract	Description
Barton & Longuidice	A	Critical Infrastructure Improvements, Town of Clarence and Aurora.
Erdman Anthony& Associates, Inc.	B	Replacements of Undersized Distribution Mains, Town of West Seneca and Cheektowaga and Village of Depew.
Labella Associates	C	Town of Cheektowaga and Village of Lancaster Upgrades.
William Schutt & Associates	D	City of Lackawanna and Town of Hamburg Upgrades.
DiDonato Associates	E	Town of Amherst and Town of Cheektowaga Upgrades.
Clark Patterson Lee	F	French Road Upgrades, Town of Cheektowaga
Greenman-Pedersen, Inc.	G	George Urban Boulevard Upgrades, Town of Cheektowaga.

Each firm provided a thorough and detailed technical project understanding and approach for the various projects identified as A, B, C, D, E, F, and G. In addition, their proposed project level of effort is competitive and reasonable for the work being proposed. Several of the firms have a depth of knowledge and experience with Authority standards, design procedures, construction standards and procedures, and technical specifications, while two of the firms have not performed work for the Authority in the past, but have personnel experienced in distribution main design. Furthermore, they have experienced staff to provide the construction phase services and construction oversight required by the Authority. Our staff review also considered overall performance of professional services for these firms with recent experience with Authority projects.

I am requesting the Board's approval to negotiate with the above seven firms to develop contracts for the referenced projects.

LFK:jmf
cc: R.Stoll
L.Lester
S.Denzler
ECWA-223-2002

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 13th day of February, 2020, by and between

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

hereinafter referred to as the “Authority,” and

**DIDONATO ASSOCIATES ENGINEERING &
ARCHITECTURE, PE, PC**
689 Main Street
Buffalo, New York 14203

hereinafter referred to as “Consultant.”

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

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

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

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

1. QUALIFICATIONS OF CONSULTANT:

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

2. SCOPE OF SERVICES:

A. PROJECT DESCRIPTION

TOWN OF AMHERST AND CHEEKTOWAGA UPGRADES

This project consists of the design and construction of the replacement of existing waterlines on multiple streets in the Town of Amherst and Town of Cheektowaga with minimum 8-inch diameter waterlines.

Street	Linear Feet	Location
<i>New waterline installation in the Town of Amherst:</i>		
Kensington Avenue	2600	From Lamarck Drive to Main Street.
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<i>New waterline installations in the Town of Cheektowaga</i>		
Linden Street	1050	From William Street to dead-end.
Vern Lane	2000	From William Street to Dowmer Place.

All valving, hydrants, abandonments, interconnections, and appurtenances shall be included in the design. Project includes a hydraulic analysis to demonstrate functionality of proposed waterlines. Pipe materials to use, sizes, and interconnection details to various existing pipes will be necessary during the design.

B. ENGINEERING SERVICES:

Consultant shall provide all engineering services necessary to design and install the improvements described in Section A, including, but not limited to, the following:

1. Survey

Upon authorization from the Authority, the Consultant shall complete the following services:

- a. Obtain field topographic survey data for the preparation of construction plans required for final design of the project. Survey data is to be according to NAD83 and NAVD88 standards.

2. Design

Upon authorization from the Authority, the Consultant shall complete the following services:

- a. Prepare detailed design drawings, specifications and contract documents. Tasks include, but are not limited to:
 - 1) Conferences with the Authority, agencies, etc., as necessary and as required.
 - 2) Report to the Authority bi-weekly on the progress of the work via email, with the following information:
 - a) Work performed over the last two weeks.
 - b) Work scheduled for the next two weeks.
 - c) Schedule status/deliverable status. Attach an updated project schedule (in Microsoft Project format) identifying all project milestones and current project status.
 - d) Budget status/percent complete.
 - e) Input needed from ECWA or others.
 - f) Other issues/concerns.

- g) Scope changes.
- 3) Review of available drawings and records furnished by the Authority.
- 4) Preparation of base drawings in AutoCAD version 2017 from the survey data obtained in the survey phase and the available records furnished by the Authority and other agencies.
- 5) Hydraulic analysis to determine the size of the proposed transmission watermain.
- 6) Evaluate the use of temporary waterlines to facilitate the installation of the proposed waterlines in areas where extensive rock excavation is anticipated.
- 7) Evaluate the use of trenchless technologies such as re-lining and pipe bursting.
- 8) Preparation of engineering calculations to support the design of the improvements, including related civil, hydraulic, mechanical, electrical, structural, and architectural features of the project.
- 9) Submission of the plans to various utility companies and agencies and all coordination, as required, to incorporate all existing utilities within the project limits.
- 10) Coordination with all municipalities and agencies having jurisdiction within the project limits.
- 11) Preparation of final plans, profiles, and job specific detail drawings that include editing of the Authority's standard detail drawings where appropriate.
- 12) Preparation of a "Project Manual", including contract specifications that include editing of the Authority's standard "front end" specifications and standard technical specifications where appropriate, preparation of additional technical specifications as required, and inclusion of necessary appendices providing supporting information.
- 13) Obtaining New York State Wage Rates and inserting them into the specifications.
- 14) Preparation of a quantity take-off and a construction cost estimate.
- 15) Preparation of an engineering report and submission with contract specifications, drawings, application forms and fees to Erie County Health Department for approval.
- 16) Solicit quotes and coordinate work for soils investigations. Sub-consultant used to perform field

work and generate geotechnical report will be compensated as a Special Service.

- 17) Evaluate available pipe materials and recommend pipe type(s) to use based on site geometry and soil conditions.
 - 18) Provide submittals to the Authority at 30, 70, 95, and 100 percent completion.
 - 19) Attendance at a final design meeting with the Authority.
- b. Prepare engineering data, where necessary, with regard to regulatory permit applications as required to obtain local, state, federal and public utility approval for the initiation and construction of the work.
 - c. Furnish to the Authority five (5) sets of drawings, specifications and other contract documents, for final review by the Authority and other approving agencies. Supply electronic (.pdf) versions of drawings and Project Manual to the Authority.
 - d. Prepare documentation for compliance with New York State SEQR (Type II actions) and SWPPP.
 - e. Prepare a schedule for the project utilizing the Authority's standard format. The project schedule shall be updated as needed.

3. **General Services**

Upon authorization from the Authority, the Consultant shall complete the following services:

- a. Furnish twenty (20) sets of contract drawings, final specifications, and other documents required for bidding and construction purposes for each contract.
- b. Conduct a pre-bid meeting when appropriate.
- c. Prepare and distribute addenda.
- d. Provide assistance to the Authority in securing bids, tabulating bid results, analyzing bid results, and making recommendations on the award of each construction contract.
- e. Provide pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested parties, conduct a pre-construction meeting and distribute minutes.
- f. Supply an approved contractor's schedule for construction of the project.
- g. Provide detailed initial stakeout (once only), including bench marks, reference and axis lines along the routes of the construction or where necessary.
- h. Give consultation and advice to the Authority during construction.

- i. Prepare elementary sketches and supplementary sketches, if required, to resolve actual field conditions encountered.
- j. Interpret contract documents and resolve problems as to amount, quality, acceptability, and fitness.
- k. Review the contractor's submittals of material and/or equipment for compliance with the Consultant's design concept and take appropriate action such as but not limited to: "approved", "approved as corrected", "revise and resubmit"; or "not approved".
- l. Furnish general construction inspection as to quality and quantity of the contractor's work as the construction progresses in order to recommend partial payment.
- m. Coordinate with all Authority's customers within the project area regarding the construction work.
- n. Schedule and attend progress meetings.
- o. Report to the Authority bi-weekly on the progress of the work via email, with the following information:
 - 1) Summary of the work performed in the previous two-week period.
 - 2) Attach an updated project schedule (in Microsoft Project format) identifying all project milestones and current project status.
 - 3) Forecast of all upcoming work and project costs expected for the project. Identify any contract items which may exceed bid quantities.
 - 4) Attach copies of final inspection reports (in .pdf format) for reports in the previous two-week period.
- p. Notify the Authority when a change in the work is proposed which will cause an adjustment in the contract cost. Evaluate whether the proposed change is justified and reasonable, and if necessary prepare change orders, field directives, and make recommendations for approval. Discuss changes in the plans or procedures authorized by the Consultant with the Authority prior to implementation. Obtain approval for all change orders from the Board of Commissioners prior to implementation.
- q. When new waterlines are placed into service, notify the appropriate fire districts in writing, identifying addresses of new hydrants placed into service and existing hydrants soon to be removed from service. A copy of this letter shall also be sent to the Authority.
- r. Check line and grade for preparation of record drawings.
- s. 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.

4. **Resident Inspection**

Upon authorization from the Authority, the Consultant shall complete the following services:

- a. Provide technical inspection of construction by a full-time resident engineer and/or inspectors as required, who will:
 - 1) Inspect all work to determine the progress, quality, quantity and conformance of the work in accordance with contract documents.
 - 2) Notify customers prior to start of construction.
 - 3) Prepare daily inspector reports.
 - 4) Review, verify and approve requests for monthly and final payments to contractors, based on quantities of work put in place.
 - 5) Provide bi-weekly updates via email summarizing the Resident Inspection costs and projecting future Resident Inspection costs for the duration of the project.

5. **Record Drawings**

Upon authorization from the Authority, the Consultant shall complete the following services:

- a. Provide record drawings, including the basemapping, (on AutoCAD Version 2017) of all completed work according to the latest ECWA As-Built Standards. Update the existing ECWA valve and hydrant details to reflect the completed work. Furnish one set of mylar transparencies and all AutoCAD files on CD of these drawings to the Authority.
- b. Provide horizontal and vertical coordinates using survey grade Real Time Kinematic (RTK) GPS with horizontal centimeter level accuracy and best possible vertical precision given the environmental conditions during collection for all mainline valves, hydrants, hydrant valves, permanent blow-offs, and meter pits. Coordinates shall be presented as points within an ESRI geodatabase feature class, or provided in Microsoft Excel, Microsoft Access, or .dbf format. At a minimum, the coordinate file shall contain a Northing, Easting, Elevation, horizontal precision, vertical precision, and Description for each feature.
- c. Provide copies of all photographs (digital and print) taken during the course of the design and construction work.
- d. Record Drawings and coordinates to be based on the NY State Plane Coordinate System – West Zone. Data is to be according to NAD83 and NAVD88 datums. Coordinates shall be provided in Microsoft Excel, Microsoft Access, or .dbf format. At a minimum, the coordinate file shall

contain a Northing, Easting, Elevation, and Description for each feature.

- e. 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 Construction Contract is recommended for approval and in accordance with Authority Standards.

C. SPECIAL SERVICES

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

1. Soils Investigations - including test borings, pavement cores, and the related analysis.
2. Detailed mill, shop and/or laboratory inspection of materials and equipment.
3. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities.
4. Additional copies of reports, contract drawings and documents.
5. Extra travel and subsistence for the Consultant and his staff beyond that normally required under ordinary circumstances, when authorized by the Authority.
6. Assistance to the Authority serving as an expert witness in litigation arising from project development or construction.
7. New York State SEQR (Type I and Unlisted Actions).
8. Air, water, and/or soil sampling, testing, and/or analysis.
9. Operation and maintenance manuals.
10. Start-up services.
11. Hazardous material testing and assessment.
12. Development of Maintenance and Protection of Traffic (MP&T) plans not included in the original scope of work.
13. Assistance with NYSDOT and ECDPW permitting.
14. Steady State and/or Extended Period Simulation hydraulic modeling and calibration.
15. Wetlands investigations, delineation, and mitigation.
16. Stormwater Pollution Prevention Plans (SWPPP) development and inspections.
17. Transient analysis and mitigation recommendations.
18. Corrosion control analysis and recommendations.
19. Assistance with grant research, compilation of grant applications, and reporting/documentation after award.

3. PAYMENT FOR SERVICES:

A. The Consultant agrees to accept a lump sum payment for all services to be provided herein except for Resident Inspection which shall be paid on a cost plus fixed fee basis per the schedule included in paragraph 3.D. The methods of payment are as follows:

1. Survey

For services described under Section 2B1, Survey, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.

2. Design

For services described under Section 2B2, Design, the Authority shall pay Consultant a lump sum which will include all expense, labor, and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. After submission by the Consultant to the Authority of a draft set of contract documents, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount. The balance will be paid when the final contract documents are submitted to the Authority.

3. General Services

For services described under Section 2B3, General Services, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.

4. Resident Inspection

For services described under Section 2B4, Resident Inspection, the Authority shall pay Consultant the payable hourly rates listed under 3D2 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 3D2. Payment for Resident Inspection and expenses will be made monthly.

5. Record Drawings

For services described under Section 2B5, Record Drawings, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. After submission by the Consultant to the Authority of draft record drawings, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount. The balance will be paid when the final record drawings are submitted to the Authority.

B. SPECIAL SERVICES

For services described under Section 2C, Special Services, the Authority shall pay Consultant an amount to be negotiated at the time such service is required. Costs for such special services shall not exceed \$50,000.00.

C. AUDIT

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

D. ENGINEERING COST SCHEDULE

1. Engineering Costs:

Survey	\$31,500.00
Design	\$83,000.00
General Services	\$33,600.00
Record Drawings	<u>\$13,340.00</u>
TOTAL ENGINEERING COST	\$161,440.00

2. Resident Inspection Hourly Rates

	Payable Hourly Rate	Employee Direct Hourly Rate
Resident Inspector(s)	\$87.00	\$38.00

The dollar amount for Estimated Resident inspection is based on the assumption of 1,300 hours of Resident Inspector 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.

Estimated Resident Inspection	\$113,100.00
TOTAL NOT TO EXCEED:	\$131,000.00

3. Other Costs:

Mileage	IRS rate
Subcontractor Expenses	Cost plus 5% maximum, within the limits set forth in ¶3B (Special Services)
All Other Direct Non-Salary Costs	At Cost
Direct Non-Salary Costs shall not exceed	\$5,000.00

4. **SUBCONTRACT AND ASSIGNMENT:** The Consultant may not subcontract or delegate any of the work, services, and/or other obligations of the Consultant without the express written consent of the Authority. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

5. **AMENDMENTS:** No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.

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

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

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

8. **CONFIDENTIAL INFORMATION:** In order to assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any

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

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

In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. Consultant may provide such information to its subconsultants for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

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

10. **COPYRIGHTS, TRADEMARKS, AND LICENSING:** All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether or not registered.

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

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

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

Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or

as being entitled to participate in any plans, arrangements or distributions of the Authority.

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

16. **COMPLIANCE:** The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York.

The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.

The Consultant agrees that the Agreement herein shall be in compliance with the provisions of Section 139-L of the State Finance Law (attached as Exhibit C).

17. **GRATUITIES:** The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.
18. **NOTICE:** Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.
19. **SEVERABILITY:** If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.
20. **TERMINATION:** The Authority reserves the right to terminate this contract in the event it is found that the Certification filed by the Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this contract.

ERIE COUNTY WATER AUTHORITY

By: _____
Jerome D. Schad, Chairman

**DIDONATO ASSOCIATES ENGINEERING &
ARCHITECTURE, PE, PC**

By: _____
John DiDonato, PE, Vice President

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

On the _____ day of _____, in the year 20____, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chairman of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Notary Public

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

On the _____ day of _____, in the year 20____, before me personally came John DiDonato, PE, to me known, who, being by me duly sworn, did depose and say that he resides in _____, New York, that he is the Vice President 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