



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

September 7, 2023

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, PE, Senior Distribution Engineer

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

Subject: Contract AST-001
Satellite Leak Detection Program
ECWA Project No. 202300151

The following material is attached:

- Authorization Form requesting Board Authorization to execute the attached Professional Service Contract with Astrerra.
- Professional Service Agreement for the above-referenced project.
- Copy of Sole Source Justification form.

The project consists of engineering services for preparing and executing a satellite scan of the ECWA water distribution and transmission system consisting of approximately 3,700 linear miles of pipeline. The Engineer shall filter the data by using algorithm targets and identify points of interest within the system that identify as potential water leaks. All data and points of interest are delivered by the Engineer via the EO Discover platform on an ongoing basis. The project also includes procurement of the U-Collect software package and four (4) U-View Licenses for field data collection and viewing by the engineering department.

Budget Information (2023):

Department: 250 – Engineering/Construction

Unit: 2502 - Construction

Item 19 – Payments to Contractors Other

This is a multi-year contract for which additional funds will be budgeted in 2024 for the remainder of the project.

MJQ:jmf

cc: J.Tomaka

L.Lester

M.Bellacose

CONT-AST-001-2301-X-01

SOLE SOURCE JUSTIFICATION

Requisition Item: Satellite leak detection services – ASTERRA (see attached proposal)

Purchase Order or Master Purchase Order Number: Professional Services Item. No PO issued to date

Prior Purchase Order or Master Purchase Order Number (if item has been approved previously): _____

1. Please describe the item and its function: Satellite scan of the entire ECWA water distribution Network to identify leaks that may not be visible from the surface. Goal is to reduce non-Revenue water.

2. This is a sole source* because:

- Sole provider of a licensed or patented good or service;
- Sole provider of items that are compatible with existing equipment, inventory, systems, programs or services;
- Sole provider of goods and services for which the Authority has established a standard**;
- Sole provider of factory-authorized warranty service;
- Vendor/distributor is a holder of a used item that would represent good value and is advantageous to the Authority (please attach information on market price survey, availability, etc.);
- Sole provider of goods or services that will meet the specialized needs of the Authority or perform the intended function (please detail below or in an attachment).
See attached sole source justification letter

3. What necessary features does this vendor provide which are not available from other vendors? Be specific.
No other firm provides this service. See attached sole source justification letter.

4. What steps were taken to verify that these features are not available elsewhere?

- Verification from manufacturer of sole source attached (current year).
- Other brands/manufacturers were examined (please list phone numbers and names and explain why these were not suitable).
Web search of comparable firms. See attached e-mail.
- Other vendors were contacted (please list phone numbers and names and explain why these were not suitable).

SUBMIT TO DIRECTOR OF ADMINISTRATION FOR APPROVAL

Buyer's Signature: 
Buyer's Name: Michael Quinn

Date: 7/19/2023

Approved: 
Director of Administration

Date: 09/08/2023

* Sole Source: Only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation.
** Procurement of items for which the Authority has established a standard by designating a brand or manufacturer or by pre-approving via a testing, shall be competitively bid if there is more than one vendor of the item.

A proposal for Erie County Water Authority, NY



Proposal & Scope of Work

Prepared by John Stevens, Sales Development Representative

11 July 2023

ASTERRA

ASTERRA uses patent-protected technology for infrastructure condition assessment, pipe replacement modeling, and leak detection in urban and rural, water or sewage networks, using L-band synthetic aperture radar (SAR) mounted on a satellite. The technology is based on a proprietary algorithm that detects soil moisture resulting from treated water or wastewater leaks, through the analysis of SAR data. This is of considerable value to industry, governments, and citizens. Because the observation point is orbiting 390 miles above the Earth, this allows for simultaneous monitoring of pipes within a large network.

ASTERRA's Martian Roots

ASTERRA's core technology is based on the search for underground water on Mars and other planets. Lauren Guy, a geophysicist, and entrepreneur who developed the approach, quickly recognized the application could be even more effective here on Earth. The water was closer, the need more immediate, and the technology had the potential to solve a number of critical problems. Mr. Guy founded Utilis (now known as ASTERRA) in 2013 to develop applications for the new technology. In 2016, leak detection in underground water systems became the first commercially used application. This solution is now called Recover.

A Revolutionary Change

From an orbiting satellite, our algorithm which is fine-tuned to detect treated drinking water and wastewater, reveals underground leaks as small as 0.2 gallons per minute. Now, managers of underground water infrastructure can see the water leaking from their systems. Even in the largest cities, it could be seen all at once, with unheard-of speed and efficiency. ASTERRA continues to refine the technology and expand its applications beyond leak detection, adding pipeline monitoring and deficiency analysis as well as property assessment to its growing capabilities.

Impact

ASTERRA actively contributes to the United Nations Sustainable Development Goals, particularly focusing on Goal numbers 6 (Clean Water and Sanitation), 9 (Industry, Innovation, and Infrastructure), and 13 (Climate Action). By leveraging our expertise in satellite-based infrastructure intelligence, we empower organizations to make data-driven decisions and build a resilient and sustainable future. We are dedicated to creating lasting positive change and supporting the achievement of the SDGs globally.



1. Satellite Radar – Scan Acquisition

Raw scans of the area taken by radar over Areas of Interest (AOI) received from client

2. Radiometric Corrections

ASTERRA takes the raw scan and prepares it for analysis, by filtering interferences from buildings, manmade objects, vegetation, water bodies, and more

3. Algorithmic Analysis

ASTERRA's unique and patented algorithm targets the spectral signature of treated water or wastewater and its interaction with the soil

4. Availability to Client

Newly detected leak locations are delivered via the EO Discover platform to the client on an ongoing basis, with frequency depending on the level of monitoring purchased.

Advantages of Ongoing Monitoring

Today, utilities typically survey their system blindly and reactively. This approach yields minimal results which leads many utilities to deprioritize proactive leak detection. Usually, utilities are forced to use limited resources for work orders to find, dig and repair leaks. In most cases, this results in falling further behind the curve and increased pipe breakages. Rather than leak detectors surveying the entire system blindly, Recover guides leak detectors to likely leak locations or points of interest which ASTERRA has highlighted through their analysis. Now, leak detectors only need to walk 5-10% of the system where water is already leaking. With a single scan, ASTERRA identifies ~30% of the active leaks in your system. Additional scans allow for ongoing monitoring which will result in more active leaks being identified in your system. Additionally, leaks are continuously arising and enlarging, thus ongoing monitoring will continue to detect more leaks even in areas previously inspected.

Client Benefits & Impact

ASTERRA provides a comprehensive, accurate, and non-invasive remote sensing solution for locating leaks and monitoring any potable water and wastewater system in the world. This works over any type of terrain – flat or hilly; sparsely populated or densely populated high-rises. This is done by extracting information from SAR scans taken high above the ground and converting them into locations of underground potable water or wastewater leaks. Reducing NRW additionally has a positive effect on the environment. By reducing non-revenue water loss, the amount of processing decreases, resulting in a reduction of power use and the associated environmental effects. Locating and fixing wastewater leaks in sewer systems also helps the environment by preventing pollution.

Main benefits of Recover:

- Non-invasive technology: Deployment of sensors or hardware on the ground is not necessary.
- ASTERRA technology is effective irrespective of soil type, pipe material, and pipe diameter.
- Covers large areas at once. Surveys an entire system in urban and rural areas, while also providing location intelligence at a fine resolution. Identifies potential leaks in areas that traditional acoustic leak detection programs may not typically survey.
- Find more leaks in a shorter period: Increases the efficiency of traditional acoustic leak detection programs by prioritizing work locations and offering quicker response times.
- Screening technology that can be used directly or indirectly for condition assessment, asset budget planning and work on structural changes prioritizing network riskier zones.
- Identifies background (i.e., non-surfacing) leaks that might otherwise go undetected for long periods of time.
- Can fit into either CAPEX or OPEX budgets.
- Provides a positive impact on the environment (reduces water loss, electricity used, and CO2 produced).

ASTERRA's Solutions

ASTERRA's solutions include Recover and MasterPlan for potable water and wastewater. All are made available on ASTERRA's EO Discover platform. Recover and MasterPlan are ASTERRA's commercial services offered in this proposal. The output from the proprietary algorithm is provided through the analysis of the SAR data combined with other processing techniques owned by Utilis (dba ASTERRA).

Recover for Leak Detection

Recover, the recipient of the AWWA Innovation Award in 2021, is a satellite-based solution for monitoring and detecting leaks in drinking and wastewater systems. It enhances operational efficiency and budget optimization by providing infrastructure intelligence for proactive pipe repair and planning. With Recover, entire city-wide systems can be monitored efficiently.

This advanced technology quickly locates non-surfacing leaks, allowing leak detection crews to focus on targeted repairs instead of unnecessary digging. Compared to traditional methods, Recover identifies more leaks and increases field crew efficiency by up to 400%. It offers the water industry the lowest cost per leak found, averaging 3.5 leaks per crew day compared to 1.3 with traditional acoustic methods. By reducing non-revenue water loss, which amounts to 17 billion gallons annually worldwide, Recover brings significant benefits to companies in the industry.

Furthermore, Recover assists the wastewater sector by mitigating the risks of fines, consent decrees, legal consequences, and reputational damage.

Recover Insights

At the start of the client's subscription period, each client is provided access to the EO Discover platform where they can access the data in the form of GIS files, the U-View application, or the dashboard with individual projects and field performance metrics. Each client is also provided access to the U-Collect field investigation application. The platform can be accessed 24/7 during the subscription period to view ASTERRA's analysis and results of field investigations track success metrics. Recover's specific features include:

Recover (POI Output): A GIS layer containing the POIs, provided in SHP and KML format for import into any GIS system (client-based, ESRI, or ASTERRA-provided U-Collect and U-View) that can be overlaid on a map displaying streets, pipes, hydrants, valves, and potential leak information.

EO Discover: A link to the EO Discover password-protected platform displaying data and field results, along with monitoring the progress of the project/service progress in real-time.

Temporal and Spatial Analysis: With a single scan, Recover identifies ~30% of the leaks in a given system. With multiple scans, Recover will identify up to 25% more of the leaks in the given system. Through multiple scans we can identify leak clusters through a temporal and spatial analysis which will aid in maintenance prioritization and asset management plans.

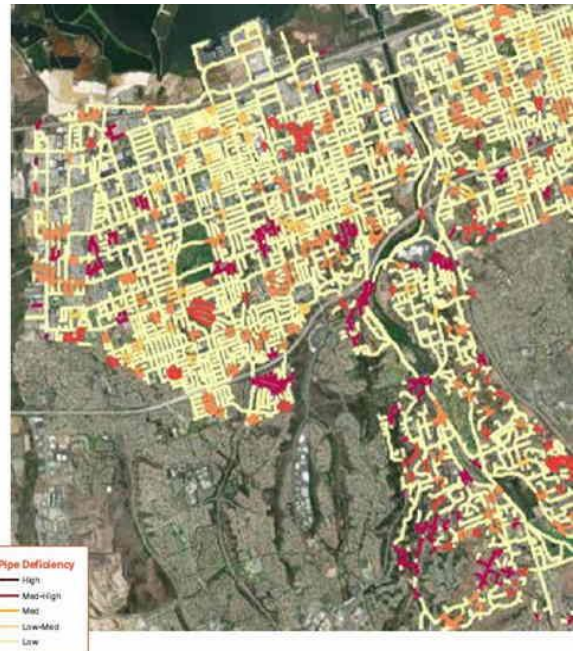
MasterPlan for Pipe Deficiency Assessment

Providing unique insights not available from anyone but ASTERRA, MasterPlan is an actual (not predictive) measurement of non-surfacing pipe leaks. It is pipe agnostic and collected non-invasively by a satellite with wide coverage, often scanning a full system instantaneously. MasterPlan provides actionable insights into your asset management plan in one easy data layer. Trained on five years of leaks discovered using Recover, the new algorithm assesses the deficiency of an entire pipe system using multiple SAR scans over time.

ASTERRA MasterPlan provides a GIS dataset containing pipe deficiency levels derived from SAR data. This solution is based on the same proven patented algorithm that is used by Recover to detect leaks in your system but is extended to monitor your system over time using statistical analysis. The general process takes all POIs identified in two consecutive satellite scans (identical coverage and angle) over your area of interest and analyzes the POI results. It then compares the POIs from multiple scans and identifies the clusters of POIs between them.

These results are processed through a learned statistical algorithm and used to assign pipes a score from low to high, signifying the level of deficiency observed.

With ASTERRA Masterplan, we can identify critical areas where the client can focus its future pipeline rehab and replacement efforts. These high deficiency areas can be used for asset management planning purposes, e.g., capital improvement replacement planning.



MasterPlan Insights

MasterPlan provides utilities and engineers with insights into actual pipe conditions. This GIS data layer is compatible and easily integrates into all GIS and GIS-based software. Combine this data with other information, such as pipe age, material, work orders, and consequence of failure to further enhance your replacement planning models or water system master plans.

MasterPlan (Pipe Deficiency Output): A GIS layer containing client pipe segments rated based on condition. Provided in SHP and KML format for import into a GIS or risk modeling system (Client map displaying streets, pipes, hydrants, valves, and potential leak information).

EO Discover: Login credentials to the EO Discover's password-protected platform for viewing the pipe data via GIS or U-View applications and for monitoring pipe deficiency levels.

MasterPlan Pipe Deficiency Assessment: A summary assessment detailing the condition of the client's pipes based on the GIS data output of pipe scores from low to high deficiency.

U-View Licenses: Licenses are provided for U-View (allows the client to view the data) for the duration of the EO Discover subscription period.

Typical Process and Timeline

- After confirmation of the order through the contract signature or receipt of a purchase order, ASTERRA will acquire the satellite scan(s). ASTERRA must have the order confirmation at least 21 days prior to the first date of satellite coverage to move forward with the satellite data procurement. The date of the acquisition is subject to the technical and operational constraints of the third-party satellite operation company and may change at any time.
- Before the acquisition, the client will provide ASTERRA with an Area of Interest (AOI). Unless agreed otherwise by the parties, the AOI is a designated geographical area to be surveyed using satellite within the client-provided service area.
- During the period prior to the scan acquisition, the client will provide ASTERRA with a GIS layer of all available treated water or sewage lines in the AOI to be analyzed. If available, the client will also provide a hydrant and valve layer within the AOI.
- Unless otherwise agreed upon by both the parties, ASTERRA will provide services only in the AOI overlapping with the client's provided GIS pipe system layer.
- After acquiring the scan and receiving the GIS pipe layers from the client, data will begin to populate on the EO Discover platform. This is approximately 7-14 business days after the first scheduled scan acquisition date. Scan acquisition dates may be changed by a third party (satellite operator) or due to technical constraints. Service start dates may be affected due to poor scan quality according to ASTERRA's quality assurance standards.
- Where applicable, leak field inspection work can begin after the leakage data has populated on EO Discover on an agreeable date between both parties.



PROPOSAL

Scope of Work

The scope of work contained herein details the work and services ASTERRA will provide as well as the roles and responsibilities of both ASTERRA and Erie County Water Authority, NY (“**Client**”).

Roles, Responsibilities, and Offerings – ASTERRA

ASTERRA will provide Recover data as a service via EO Discover and it will consist of areas identified as potential leaks (i.e., areas containing soil moisture of treated water and/or wastewater underground) using a proprietary satellite imaging algorithm across the **Client’s** water system. ASTERRA will provide a primary contact person for technical and administrative purposes who will interact with the **Client**.

ASTERRA’s Responsibilities (“Services”):

- Acquiring and analyzing the satellite scan(s).
- Providing potential leak location data as a service through our password-protected platform, EO Discover. This data can be exported as GIS data files.
- Providing best practices for field inspection protocols to the Client.

ASTERRA’s Solution for Potable Water:

- **Recover (POI Output):** GIS layer containing the POIs, provided in GIS data files formatted for import into any GIS system.
- **EO Discover:** Provides access to monitor and track the progress of the project/service in real time and calculates ROI and impact metrics for ongoing KPI tracking. The license is for the period of service purchased.
- **U-Collect and U-View Licenses:** Provided for each of the following: U-Collect (allows field technician to collect data in the field), and U-View (allows field technician to view data from anywhere). The license is active upon delivery for the period of service. Additional licenses may be purchased and/or the initial license extended at the request of the client.

- **Kick-off Meeting:** Prior to fieldwork, an ASTERRA or ASTERRA-certified team (regardless of if it the client's team or a contractor), will call a kick-off meeting to agree on the operational field plan to address the Client's specific needs and the best practices required to get the best results.
- **Optional: Acoustic Leak Detection for Field Investigation (for Potable Water Pipelines Only):** Based upon selecting this option, ASTERRA will provide a certified subcontracted acoustic leak detection team to investigate the points of interest, provide a list of verified leaks, and mark them for repair. The leak detection field verification team(s) is proficient and experienced in using and operating acoustic equipment. The team should be provided with all the needed tools to access the listening points.
- **Optional: ASTERRA MasterPlan Pipe Deficiency Map,** provided as a GIS data set, if purchased within the Recover tier available or as an additional service option.
- **Optional: ESRI Arc GIS Field Maps Integration –** data provided in your ESRI ArcGIS online accounts for easy use in ArcGIS Field Maps. (Additional cost may apply if it is not included in the Recover service tier already).

ASTERRA's Solution for Wastewater

- **Recover (POI Output):** GIS layer containing the POIs, provided in GIS data files formatted for import into any GIS system.
- **EO Discover:** Provides access to monitor and track the progress of the project/service in real time and calculates ROI and impact metrics for ongoing KPI tracking. The license is for the period of service purchased.
- **Kick-off Meeting:** ASTERRA or ASTERRA-certified team will call a virtual kick-off meeting to discuss the data delivered and demonstrate the usage of the platform.

Roles, Responsibilities, and Offering – Client

The Client is responsible for providing baseline system data, work order history, and in some cases, an acoustic field verification team to inspect POIs identified by ASTERRA. The client shall identify a primary contact person for technical, administrative, and field inspection coordination. ASTERRA agrees to use the information described below only for the client's specific project and to not share the information with any other third party.

Client Responsibilities

- **Pipe System Information for Potable Water Lines:** Prior to scan acquisition, the **Client** shall provide ASTERRA with a detailed and accurate GIS pipe system layer. If GIS is not available, roads will be used to guide the analysis. ASTERRA will use this layer to identify POIs. The GIS layer should include pipe material and diameter, length of pipeline to be analyzed, hydrants, valves, and any other detailed information available.
- **Pipe System Information for Wastewater Lines:** Prior to scan acquisition, the **Client** shall provide ASTERRA with a detailed and accurate GIS pipe system layer. If GIS is not available, roads will be used to guide the analysis. ASTERRA will use this layer to identify POI locations. The GIS layer should include pipe material and diameter, forced and/or gravity lines, length of pipeline to be analyzed, manholes, depth, and any other detailed information available.
- **Leak Detection History (Work Orders):** The **Client** shall provide ASTERRA with a detailed and accurate history of leak findings and repairs beginning one (1) week before the date the first satellite scan is acquired and through the project life cycle.
- **Leak Detection Performance Metrics for Potable Water Lines:** The **Client** shall provide ASTERRA with relevant and available performance metric data related to previous **Client**-utilized leak detection methodologies. This information will be used to calculate value metrics of the service and will be provided to the Client in the final report for their use.

Client Services for Potable Water

Areas of Interest (AOI)

During this service, ASTERRA will survey the Area of Interest (AOI) to be determined by the client, contained to 3667 linear miles of mains and service pipes as outlined in the image below:






Once ASTERRA receives the full GIS pipe system information from the client, the pipe and total miles analyzed per delivery will be identified. Note: both main and service lines will be counted for total pipe length calculation.



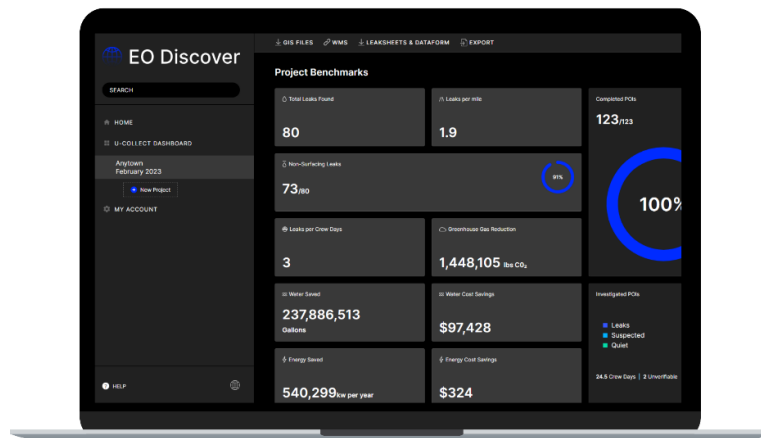
EO Discover

Subscription-Based Service Packages

ASTERRA's Recover solution and features are provided via a subscription to EO Discover with an option to select one of three district levels of service (Detect, Prevent or Advise). Each service level contains specific features designed to meet clients' current and future needs, with additional add-on services available.

Detect 	Prevent 	Advise 
2 licenses: EO discover	4 licenses: EO discover	6 licenses: EO discover
Base line leak analysis	Base line leak analysis	Base line leak analysis
Leak Locations	Leak Locations	Leak Locations
U-collect/U-View Apps (2 licenses)	U-collect/U-View Apps (4 licenses)	U-collect/U-View Apps (6 licenses)
	Temporal and Spatial leak Analysis	Enhanced Temporal and Spatial leak Analysis
	Prioritized Leak locations for field investigation	Prioritized Leak locations for field investigation
		MasterPlan Pipe Deficiency Map
		ESRI ArcGIS Field Maps Compatibility
		Personal Success Manager

Always Included: Online support, customized success plan, best practices tutorials



Pricing

Area of interest (AOI) for analysis:

Potable Water lines: 3667 linear miles

	Detect		Prevent		Advise	
	QTY	Price	QTY	Price	QTY	Price
Package	12 months	\$225,000	12 months	\$300,000	12 months	\$475,000
Final Program Report	1 QTY	Included	1 QTY	Included	1 QTY	Included
Total	\$225,000		\$300,000		\$475,000	

Optional Additional Services

Subcontracted Acoustic Leak Detection Team - BOTG (40 hours/ 5 Days)	40 Days	\$72,000	70 Days	\$126,000	100 Days	\$180,000
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Package price discount for 24 months subscription: 15 %

Package price discount for 36 months subscription: 20 %

Proposal is valid until: October 31, 2023.

Note: Once a package is selected, please contact ASTERRA sales team for terms of use and signature processing.



Utilis Inc., Db., ASTERRA

4180 La Jolla Village Dr. Suite 530
San Diego, CA 92037

July 11, 2023

Attn: **Erie County Water Authority, NY**

295 Main Street, Room 350, Buffalo, NY 14203-2494

To Whom It May Concern:

This letter is in regard to ASTERRA and the **sole source provider status** for the Erie County Water Authority, NY remote sensing water leak survey project. This letter is to confirm that the ASTERRA data analysis for identifying possible potable water leaks in water distribution systems is a sole source product, manufactured and sold by ASTERRA. No division of ASTERRA, nor any other company, makes a similar or competing product.

ASTERRA developed a unique and patented algorithm for leaks detection in urban freshwater distribution networks. ASTERRA uses spectral aerial imaging, taken from a satellite mounted sensor, using the L band microwave wavelength, to spot leakage in subterranean drinking water networks. Drinking water is detected, by looking for the particular spectral signature typical to drinking water.

ASTERRA analysis identifies the leaks within a search distance from the actual leak. The search distance is defined by a "Dynamic buffer", which is calculated specifically according to physical properties of the analyzed area and technical components of the satellite. For every new analysis, the size of the dynamic buffer is specifically calculated. The polygon area size varies for each analysis.

Additionally, **competition is precluded by the existence of patent:** ASTERRA' algorithm and process are patented US 9285475 Mar, 15 2016 SYSTEM AND METHOD OF UNDERGROUND WATER DETECTION assigned to ASTERRA. ASTERRA is 100% owned subsidiary of Utilis Inc.

If you desire additional information, don't hesitate to contact us at 1-858-521-9442 at any time or visit our website at www.asterra.io

A handwritten signature in black ink, appearing to read "James D. Perry", followed by a horizontal line.

Sincerely,
James D. Perry
Executive Vice President

From: [Michael J. Quinn](#)
To: ["McCRACKEN, TERRENCE"](#); [Katherine A. Gillette](#); [Lavonya Lester](#); [Molly Jo Musarra](#)
Cc: [Leonard F. Kowalski](#); [Marc A. Bellacose](#)
Subject: Satellite Leak Detection Services - ASTERRA
Date: Monday, July 17, 2023 12:00:00 PM
Attachments: [ASTERRA Sole Source Letter - Erie County Water Authority, NY July 11, 2023.pdf](#)
[image001.jpg](#)
[ASTERRA Proposal SaaS Offering - Erie County Water Authority, NY July 11, 2023.pdf](#)

All;

We would like to get the final go ahead to pursue this professional services contract as a sole source. We did some due diligence on the technology and came up with two firms that appeared to have used the same technology as ASTERRA as follows:

- Utilis – the parent company of ASTERRA. ASTERRA is the name of the division, brand, and product line based on Utilis technology.
- Watervision Technology - Partner/ reseller for ASTERRA under contract for the Middle East Region.

Based on our review of the technology, we are confident that ASTERRA is in fact the sole source vendor for this technology. That said, our plan is to develop a contract based on our standard professional services format and start the process. Please let me know if there are any questions or concerns. Thanks.

Mike

Michael Quinn, PE, BCEE

Sr. Distribution Engineer

Erie County Water Authority
3030 Union Road
Cheektowaga, NY 14227-1097
T: 716.685.8203
M: 716.392.1758
mquinn@ecwa.org



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

Contract: AST-001 **Project No.:** 202300151
Project Description: Satellite Leak Detection Program

Item Description:



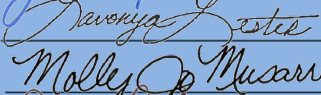
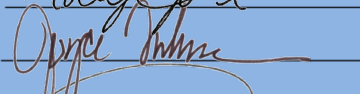


<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> 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 checked="" type="checkbox"/> Sr Distribution Engineer		Date: <u>9/7/2023</u>
<input type="checkbox"/> Chief Operating Officer	_____	Date: _____
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>09/08/2023</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>09/08/2023</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>09/08/2023</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>09/08/2023</u>
<input checked="" type="checkbox"/> Legal		Date: <u>9/8/2023</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>9/8/2023</u>
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Remarks: _____

Resolution Date: _____ **Item No:** _____

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES**

This Agreement, effective as of September 20, 2023 (“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

UTILIS INC., d/b/a., ASTERRA
4180 LaJolla Village Drive, Suite 530
San Diego, California 92037

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to the creation of a Satellite Leak Detection Program (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 shall provide engineering services for the Project which consists of the preparing and executing a satellite scan of the Authority’s water distribution and transmission system consisting of approximately 3,700 linear miles of pipeline. The Engineer shall filter the data by using algorithm targets and identify points of interest within the system that identify as potential water leaks. All data and points of interest are delivered by the Engineer via the EO Discover platform on an ongoing basis. The Engineer shall provide four (4) U-Collect and four (4) U-View Licenses for field data collection and viewing. The following sections provide a general scope of work to be provided under this contract.

ARTICLE 2 – COMPLIANCE STANDARDS

2.01 *Standard of Performance*

- A. *Standard of Care:* The Engineer shall be held to the same standard of care applicable to any consultant providing professional engineering and related services. The Engineer shall use the same care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the 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. Together with this Agreement, the Engineer submitted and signed the Public Authorities Law forms, a copy of which are attached to and incorporated in this Agreement as Appendix A.
- C. The Authority determined that the Engineer is a sole source provider of satellite leak detection technology to scan the Authority's water system.
- D. The Engineer shall comply with the provisions set forth in State Finance Law §§ 139-j and 139-k. Together with this Agreement, the Engineer submitted and signed Forms A, B, and C, a copy of which is attached to, and incorporated in, this Agreement as Appendix A.
- E. 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.
- F. The Engineer shall comply with the provisions of the Human Rights Law (Executive Law § 290, *et. seq.*) and Labor Law § 201-g of the laws of the State of New York. Together with this Agreement, the Engineer submitted and signed the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement, as Appendix A.
- G. 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.
- H. 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.
- I. 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 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, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using a personal protective face mask, or complying with any testing or vaccination requirements, 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 agree on the operational field plan to address the Authority's specific needs and the best practices required to get the best result of the satellite leak detection scan.

3.02 **General Services**

- A. **General Services:** Upon authorization from the Authority, the Engineer shall complete the following services:
1. Raw data scan using L-band synthetic aperture radar (SAR) mounted on a satellite.
 2. Analyze the results of the scan by filtering interferences from buildings, manmade objects, vegetation, water bodies, and other objects not utilized in the data scan.
 3. Perform an algorithmic analysis for the spectral signature of treated water and its interaction with the soil.
 4. Deliver newly detected leak locations with a shape file based on the initial scan.
 5. Provide U-Collect application with four (4) licenses for U-Collect and for U-View to the Authority to enable the Authority to view field information and update data in real-time.
 6. Provide a second satellite scan analysis six months following the initial scan.

7. Analyze the second scan filtering the same interference parameters as the initial scan.
8. Perform an algorithmic analysis for the spectral signature of treated water and its interaction with the soil in the second scan.
9. Deliver newly detected leak locations along with a GIS shape file of the data of the second scan results.
10. Provide a Final Program Report.

3.03 Acoustic Leak Detection Services: Upon authorization from the Authority, the Engineer shall furnish a full-time acoustic leak detection crew who will conduct technical investigation of points of interest for potential leaks within the distribution and transmission system and will provide acoustic leak detection services to investigate points of interest, provide a list of verified leaks, and mark locations for repair.

3.04 Contingency Allowance: The Engineer may use contingency allowance when the original scope of work for the project was not sufficient to allow for completion of the project. The Engineer may only use contingency allowance following review and approval of the Authority's Engineering Department, Chief Operating Officer, and Chief Financial Officer.

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. **General Services:** For services described under §3.01 and §3.02 of this Agreement, the Authority shall pay Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made at the at the below intervals:
 1. At the completion of the initial satellite scan, analyzation, points of interest leak report, and EO Discover U-Collect/U-View has been provided to the Authority.
 2. At the completion of the second satellite scan (6 months following the initial satellite scan), analyzation, points of interest leak report, and Final Program Report have been provided to the Authority.

4.02 Acoustic Leak Detection Services: For services described under §3.03 of this agreement, the Authority shall pay the Engineer the payable hourly rates listed under §4.04, paragraph B. Payment for Acoustic Leak Detection Services will be made monthly.

4.03 Contingency Allowance: For services described under §3.04 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 §3.04 of this agreement, such services will be billed at the fixed rates included in §4.04, paragraph B of this agreement.
- B. When the Engineer obtains special services from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

4.04 Engineering Cost Schedule:

A. *Engineering Costs:*

1. Lump Sum Cost for initial satellite scan, analyzation, Points Of Interest Leak Report, and EO Discover U-Collect/U-View Application (4 Licenses)	\$150,000.00
2. Lump Sum Cost Second Scan at 6 months from initial Satellite scan, analyzation, Points of Interest Leak Report, <u>and Final Program Report.</u>	\$150,000.00
TOTAL LUMP SUM COST:	\$300,000.00

B. *Acoustic Leak Detection Service Costs:*

	Payable Daily Rate
Acoustic Leak Detection Services	\$1,800.00

Acoustic Leak Detection Services shall be provided upon written authorization by the Authority with rates based on a 2-man crew. The dollar amount for the referenced services is based on 20 days. Actual days may vary based on the number of points of interest (potential leaks) detected within the distribution and transmission system.

1. Estimated Acoustic Leak Detection Services	\$36,000.00
2. TOTAL NOT TO EXCEED ACOUSTIC LEAK DETECTION SERVICES:	\$45,000.00

C. *Contingency Allowance:* \$10,000.00

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 thirty (30) 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 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.

- B. The Engineer agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Engineer agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Engineer agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email address.
- E. The Engineer agrees to require all direct or indirect subcontractors to procure and maintain insurance in accordance with the Insurance Requirements, as set forth in the Addendum Agreement, attached as Appendix C.

5.06 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 Engineer agrees to abide by the terms and conditions of the Authority's Confidentiality and Non-Disclosure Agreement, which is attached to and incorporated in this Agreement as Appendix D.

- E. The terms of this section shall be binding during and after the expiration or termination of this Agreement.

5.07 Copyrights, Trademarks and Licensing: The Engineer agrees all materials or work product 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 after 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 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.

5.15 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

UTILIS INC., d/b/a, ASTERRA

By _____

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 20th day of September, in the year 2023, 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 _____)
COUNTY OF _____) ss:

On the _____ day of _____, in the year 2023, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____, that he/she is the _____ of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

APPENDIX A
RESPONSE TO RFP
REQUIRED FORMS

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

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

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

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

NOTICE

(Penal Law § 210.45)

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

Affirmed under penalty of perjury this _____ day _____, 20____

FIRM NAME _____

ADDRESS _____

_____ ZIP _____

AUTHORIZED SIGNATURE _____

TYPED NAME OF AUTHORIZED SIGNATURE _____

TITLE _____ TELEPHONE No. _____

SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

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

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

- (a) Such person, and any firm, partnership, or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation termination shall be paid.

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

§2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

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

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

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

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)

CONTRACT TERMINATION PROVISION

Instructions:

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

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

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

Sample Contract Termination Provision

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

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

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

Offerer Statement:

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

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

By: _____ Date: _____

Name: _____

Title: _____

Offerer Name: _____

Offerer Address: _____

APPENDIX B

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

WATER TRANSMISSION AND DISTRIBUTION SYSTEM SATELLITE SCAN AND LEAK DETECTION ANALYSIS

ECWA Project No. 202300151

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 ongoing and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Town of Boston and Town of Orchard Park to be scheduled as Additional Insureds.
- 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.
- Town of Boston and Town of Orchard Park to be scheduled as Additional Insureds.

e. Umbrella Liability:

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate
- Per Project/Job Aggregate Limit Required
- Erie County Water Authority to be scheduled as an Additional Insured
- Town of Boston and Town of Orchard Park to be scheduled as Additional Insureds.

f. Professional Liability:

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

Certificates of Insurance to be provided to the Authority prior to start of work as follows:

ACORD 25 including copy of Additional Insured Endorsement

Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Renewals of Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be received by the Authority 30 days prior to the expiration of the insurance policy period.

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract.

Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than “A-” with a Financial Strength Code (FSC) of at least VII.

The professional service provider shall name the Authority, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies.

Any liability coverage on a “claims made” basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer’s National Association of Insurance Commissioners (N.A.I.C.) identifying number or A. M. Best identifying number appears on the Certificate of Insurance. Also, at the top of the Certificate of Insurance, please list the project number.

Acceptance of a Certificate of Insurance and/or approval by the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities or liabilities. Certificates of Insurance should be e-mailed to mmusarra@ecwa.org 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 C

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

ADDENDUM AGREEMENT

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

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

Insurance Requirements

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

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

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

Worker’s Compensation & Occupational Disease: Statutory

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

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

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

B. Commercial General Liability:

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

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

The coverage must include the following:

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

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

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

C. Commercial Automobile Liability Insurance:

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

D. Commercial Umbrella/Excess Liability Insurance:

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

E. Pollution Liability:

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

F. Builder’s Risk/Installation Floater:

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

G. Owned and/or Rented Tools or Equipment:

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

JOB-SITE SAFETY:

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

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

WORKERS COMP IMMUNITY WAIVER:

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

HOLD HARMLESS / INDEMNIFICATION:

To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Authority and its heirs, executors, administrators, successors, assigns, affiliates, employees and agents (hereinafter referenced as “Owner Indemnitees”) from and against any and all actions, claims, liabilities, damages, losses and expenses, including but not limited to bodily injury, death and property damage, and reasonable attorney's fees and costs (including those incurred in the defense of any such underlying claim, as well as those incurred in the enforcement of this Addendum Agreement and/or in the prosecution of any claim for indemnification by Authority) arising out of or resulting from, or alleged to arise out of or result from, the Subcontractor’s work (including the work by any of the Subcontractor’s subcontractors), except to the extent caused by the negligence or willful misconduct of any Owner Indemnitees.

MISCELLANEOUS:

If any term or provision of this Addendum Agreement conflicts with or is otherwise inconsistent with any term or provision in the Primary Contract or any prior written agreement entered between the parties, the terms and provisions contained herein shall govern and control.

This Addendum Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. This Addendum Agreement, its terms and any claims arising therefrom, shall be interpreted and construed in accordance with the laws of the State of New York.

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

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

[Insert name of Upstream Contractor or
Upstream Subcontractor]

[Insert name of Downstream Subcontractor]

[Print Name and Title of Representative]

[Print Name and Title of Representative]

Date:

Date:

APPENDIX D

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT (hereinafter “Agreement”) is hereby executed between:

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

hereinafter referred to as the “Authority”, and

Utilis Inc., dba., ASTERRA
4180 La Jolla Village Dr., #530
San Diego, CA 92037

hereinafter referred to as the “Consultant.”

Certification & Affirmation

[Name of Authorized Representative], an individual who is Consultant’s duly authorized representative (hereafter “Authorized Representative”), by signing this Agreement in the name and on behalf of the Consultant, subscribes and affirms the following:

1. that he/she is signing this Agreement on behalf of Consultant intending to bind said Consultant to the representations made in this Agreement,
2. that Consultant will comply with all requirements of this Agreement, and
3. that Consultant will certify the return or destruction of Confidential Information received as specified in this Agreement, if applicable.

Purpose

This Agreement is being entered into regarding services being provided by Consultant for the purpose of identifying potential water leaks within the system in an effort to reduce water loss.

PART 1. DEFINITIONS

A. Confidential Information

Confidential Information shall be defined to include any information, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or the source of information (e.g., electronic systems licensed by third-party contractors), which the Authority provides to



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

Consultant, or which Consultant obtains, discovers, derives, or otherwise becomes aware solely because of Consultant's contractual relationship with the Authority.

Confidential information does not include the following:

- (a) information that is previously rightfully known to Consultant without restriction on disclosure,
- (b) information that is or becomes, from no act or failure to act on the part of Consultant, generally known in the relevant industry or in the public domain, or
- (c) information that is independently developed by Consultant without the use of Confidential Information.

Title to all Confidential Information remains the property of the Authority. Confidential Information is provided on an "as is" basis, and the Authority makes no warranties, guarantees or representations of any kind express or implied, or arising by custom or trade usage, as to any matter whatsoever, without limitation, and specifically makes no implied warranty of fitness for any particular purpose or use, including but not limited to adequacy, accuracy, completeness or conformity to any representation, description, sample, or model.

B. Authorized Use

"Authorized Use" shall be defined as the use of Confidential Information by Consultant, its employees, or agents, solely for the purpose of performing the services as agreed to, as now or hereafter modified, or amended. Disclosure, display, use, duplication, storage, or transmittal of Confidential Information, in any form, for any purpose other than as agreed to, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an "unauthorized use."

C. Authorized Person

"Authorized Person" shall be defined as those persons within Consultant's employ or control identified by Consultant to the Authority as having a need to receive, possess, store, access, or view Confidential Information for an Authorized Use.

PART 2. CONFIDENTIALITY & NON-DISCLOSURE REQUIREMENTS

A. Duty to Protect Confidential Information

Upon proper execution of this Agreement, Consultant will be granted a non-exclusive, non-



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

transferable license to display, use, duplicate, store, and disclose Confidential Information only for an Authorized Use. Consultant shall safeguard all Confidential Information which is delivered from the Authority to Consultant to ensure its authorized use and to protect and prevent its unauthorized use or disclosure.

“Safeguard all Confidential Information” shall be defined as Consultant taking either one, or a combination of the following security measures, whichever standard is higher:

- (a) Where Consultant has established security procedures for its own confidential, sensitive business information which impose security requirements for the protection of its own trade secret, proprietary or confidential information, Consultant shall protect the Confidential Information using the same means; and/or
- (b) Where Consultant has not established such internal procedures, Consultant shall take the commercial measures defined below, to protect the Confidential Information.

Commercial Measures to Protect Confidential Information

For purposes of this Agreement, “commercial measures” shall be defined and will include each of the following responsibilities to be undertaken by Consultant:

1. Use Restriction

Confidential Information shall only be received, possessed, stored, accessed and/or viewed by Authorized Persons.

2. Access by Authorized Person(s)

- a. Consultant shall be responsible for identifying those persons within its employ or control (e.g., employees and agents) who have a need to receive, possess, store, access, or view Confidential Information for an authorized use (hereinafter “Authorized Person(s)").
- b. Consultant shall be required to take commercially reasonable steps to inform each Authorized Person of their individual obligation to protect the security of Confidential Information in accordance with the requirements of this Agreement.
- c. Consultant shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any Authorized Person until such person has agreed and acknowledged in writing to comply with the required security obligations set forth below.



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

3. Access by Third-Party Consultant or Subcontractor

- a. Consultant shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any third-party consultant or subcontractor without the express written consent of the Authority's General Counsel.
- b. The Authority's General Counsel may only give such written consent after the legal representative of the third-party consultant or subcontractor has been made aware of and has agreed in writing to comply with the required security obligations of this Agreement.
- c. If such written consent is given by the Authority's General Counsel, the third-party consultant or subcontractor shall not be allowed to further disseminate or distribute Confidential Information, other than to provide access by Authorized Person(s) within third-party consultant's or subcontractor's control and oversight.

4. Security Obligations Regarding Confidential Information

Any person(s) who receive, possess, store, access, or view Confidential Information from either Consultant or its approved third-party consultant or subcontractor (hereinafter "Custodian") shall be subject to the following security obligations:

- a. Custodian is the SOLE entity authorized to duplicate, distribute, or otherwise transmit Confidential Information,
- b. Custodian's legal representative must approve any process used to duplicate, distribute, or otherwise transmit Confidential Information to Authorized Person(s), and may NOT approve or use any process which involves the use of any public internet or other non-secure medium,
- c. Unless otherwise authorized by Custodian's legal representative, Confidential Information may NOT be stored on personal (non-business) computing or other electronic devices (including zip drives, thumb drives, disks, or any similar computing storage or copying device) or taken or removed in any form outside of the physical premises of Custodian.
- d. Confidential Information may only be duplicated, distributed, or otherwise transmitted "as is", without alteration of any kind. "Confidential" or "Copyright" notices, whether originally in physical or electronic medium, shall not be removed from and shall be duplicated on Confidential Information when such information is duplicated, distributed, or otherwise transmitted pursuant to (b) above.



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

- e. Other than as set forth in (a-d), above, Confidential Information may not be duplicated, distributed, stored, or otherwise transmitted or communicated to or by any person or system. Authorized Person(s) may not copy, re-duplicate, re-transmit or re-distribute Confidential Information, in any form, whether whole or in part, or in any medium, whether electronic or hard copy.
- f. Upon termination of employment, or upon completion or expiration of the services performed by Consultant or any third-party party consultant or subcontractor, each Authorized Person(s) shall be required to return Confidential Information to Custodian's legal representative, and/or to certify that all electronic, optical, or other copies have been destroyed within any electronic storage or other medium, and all device(s) used or provided to and in the possession of such Authorized Person for the possession or storage of Confidential Information shall be surrendered and returned to the Custodian who shall then deliver it to the Authority for whatever forensic review of the activity logged into or disseminated from said device(s) the Authority may determine to implement.

5. Chain of Custody

Consultant shall be required to keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of Consultant, and to any third-party consultant or subcontractor who has a need to access Confidential Information for such authorized use.

Any third-party consultant or subcontractor receiving Confidential Information from Consultant shall, as a condition of accessing such information, certify that such entity shall keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of such entity, and that such entity will provide its written certification of compliance with the provisions of this Agreement to the Consultant as provided in paragraph VI, below.

6. Certification by Consultant of Return of Confidential Information

Consultant and its third-party consultant or subcontractor who have received Confidential Information shall certify the chain of custody of such information as follows:

a. Consultant:

Upon termination of the engagement, Consultant shall independently certify, in writing, to the Authority, its compliance, during the period agreed to, with the terms of



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

this Agreement. Consultant shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s), consultants and subcontractors to whom the Confidential Information was duplicated, distributed, or transmitted,
- (ii) As to Authorized Person(s) within the internal employment or control of Consultant, that all copies of Confidential Information have either been returned to the Authority or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage, and Consultant shall attach the certifications of its consultants and subcontractors.

2. **Third-Party Consultant or Subcontractor:**

Upon termination of the engagement, such entity shall independently certify, in writing its compliance with the terms of this Agreement, and shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s) to whom the Confidential Information was duplicated, distributed, or transmitted, and
- (ii) As to such Authorized Person(s) within the internal employment or control of such entity, that all copies of Confidential Information have either been returned to the Authority or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage.

Termination

The license to use, possess, or retain any Confidential Information or any of the devices upon which it was accessed, downloaded, transferred or stored, terminates automatically upon the happening of any of the following: (a) breach of this agreement or (b) completion of Consultant's services as agreed to or (c) any notice of termination by the Authority of the services agreement with or without cause and solely on the demand of the Authority to any representative of the Consultant (given orally or in writing in any format) without regard to any other claims, controversies, demands, or alleged legal rights claimed by Consultant, including but not limited to any amounts alleged to be owed for services rendered or any other legal or equitable claims. Consultant and all prior Authorized Users shall be legally liable, both criminally and civilly, for any violation of this provision which shall be deemed a wrongful taking or withholding of the Confidential Information to the same extent as if it had been obtained by all such parties without the Authority's permission and consent in the first instance.



**ERIE COUNTY WATER AUTHORITY
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

Compliance

Should Consultant breach or threaten to breach this Agreement, the Authority shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorney's fees) for losses or damages resulting from such breach. Consultant is deemed to acknowledge that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information.

Consultant affirms that its employees with access to Confidential Information will not disclose such Confidential Information to anyone, except as provided in this Agreement. In addition, Authorized Persons shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. Consultant shall notify the Authority immediately upon becoming aware that Confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

Governing Laws

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, Consultant has caused this Non-Disclosure Agreement to be signed as of the date set forth below.

By: _____

Print Name: _____

Title: _____

Date: _____



**ERIE COUNTY WATER AUTHORITY
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

STATE OF New York)
) SS:.
COUNTY OF)

On this _____ day of _____, 2023, before me personally came _____, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that she/he is the _____ (title) of _____ (Consultant), with its principal place of business located at _____ and that she/he executed the foregoing instrument in the name of the Consultant, and that she/he executed the same as the act and deed of the Consultant for the uses and purposes mentioned therein.

Notary Public



**ERIE COUNTY WATER AUTHORITY
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

**CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL
INFORMATION**

Consultant, having a principal place of business at _____
(hereinafter _____), and having entered into a Confidential Non-Disclosure Agreement
(NDA) with the Erie County Water Authority on _____, and having been provided
by the Authority with Confidential Information in accordance with that NDA, now certifies on
behalf of itself and all Authorized Persons provided Confidential Information as agreed to, as to
the following:

- i. that the documented chain of custody, attached hereto, names all Authorized
Person(s) to whom the Confidential Information was duplicated, distributed, or
transmitted, and
- ii. as to such Authorized Person(s), that the Confidential Information provided by the State
has been returned to the State, and that all duplicates, regardless of format, have been
destroyed or permanently deleted from all forms of electronic storage, and
- iii. Consultant has attached certifications of Authorized Person(s) to whom the
Confidential Information was duplicated, distributed or transmitted, that all copies of
Confidential Information have been returned to Consultant and that the Authorized
Person has destroyed or permanently deleted all duplicates of Confidential Information
from all forms of electronic storage.

This Certification is hereby executed

By:

Name

Title

Date



**ERIE COUNTY WATER AUTHORITY
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

STATE OF New York)
) SS:.
COUNTY OF)

On this _____ day of _____, 2023, before me personally came _____, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that she/he is the _____ (title) of _____ (Consultant), with its principal place of business located at _____, and that she/he executed the foregoing instrument in the name of the Consultant, and that she/he executed the same as the act and deed of the Consultant for the uses and purposes mentioned therein.

Notary Public



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

APPENDIX E

ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY AND COPYRIGHT LICENSING AGREEMENT

LICENSE:

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

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

OWNERSHIP:

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

CONFIDENTIALITY CLAUSE:

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

COPYRIGHT NOTICE:

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

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



ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

LIMITATION OF LIABILITY:

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

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

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

TERMINATION:

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

LIQUIDATION OF DAMAGES FOR BREACH OF AGREEMENT:

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

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

SPECIFIC TERMS OF ACCEPTANCE:

This Agreement constitutes the entire agreement between the parties.