



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

March 2, 2022

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer

Subject: EPA Lead and Copper Rule Revisions  
Program Management  
Project No. 202200023

Attached is a copy of the Request for Proposals for consulting engineering services for the development and implementation of a compliance program for the Lead and Copper Rule Revisions (LCRR) with the Consultant acting as the Program Manager. The Program Manager will take on the administrative role of coordinating the Authority's response to the LCRR.

The first action item required under the LCRR is the Lead Service Line Inventory (LSLI) which is due on October 16, 2024. The RFP establishes a due date for the LSLI of October 2023, one year earlier than required by the LCRR. The Consultant is being tasked with proposing a schedule for the remainder of the tasks listed below.

The Program Manager will be responsible for the following tasks:

- Program Management and Administration – overseeing and administering ECWA's response to the LCRR.
- Lead and Copper Rule Revisions Work Plan – develop a work plan that outlines how the program will be managed, establishing project team roles and responsibilities, project schedule and QA/QC.
- Lead Service Line Inventory (LSLI) – provide a searchable web-based map of service material data. This information will eventually be made available to our customers.
- Lead Service Line Replacement Program (LSLRP) – develop a plan for lead service line replacements that will be implemented by ECWA.
- Sampling Monitoring Program - develop a sampling monitoring plan that will be implemented by ECWA.
- Public Notification/Education/Outreach Program – develop a public outreach plan that ECWA will implement. Anytime a more stringent regulation is implemented there is typically a spike in testing exceedances which will require public notification. Customers need to be made aware of the upcoming changes and potential impact of public notifications.
- Program Assistance – this part of the contract will establish a bucket of hours that will be utilized if additional assistance is needed once a task is complete and if issues arise once the task is being implemented.

To: Terrence D. McCracken  
Secretary to the Authority

- 2 -

March 2, 2022

The detailed description of the project is included in the attached RFP. I recommend that the Request for Proposals be issued to the following consulting engineering firms:

- Arcadis
- Blue Conduit
- Brown & Caldwell
- GHD
- Hazen & Sawyer
- 120 Water

In addition, the RFP will also be posted to the ECWA website.

The Engineering Department is requesting a Resolution to Solicit the Request for Proposals. The contact person for the Restricted Period for this RFP will be Leonard F. Kowalski, PE, Executive Engineer.

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

Funds are available for the project in the 2022 Capital Budget as follows:

- Unit: 1030 Water Quality Assurance
- Item 101664 Study – Corrosion Control Program Management

LFK:jmf

Attachment

cc: R.Stoll

M.Wymer

M.Quinn

ECWA-497-2201-X-16

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

**Contract:** \_\_\_\_\_ **Project No.:** 202200023  
**Project Description:** EPA Lead and Copper Rule Revisions – Program Management

**Item Description:**





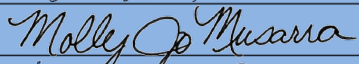


- |   |  |   |                                       |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement                            | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment          | <input type="checkbox"/>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

**Action Requested:**


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

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input checked="" type="checkbox"/> Sr. Production Engineer		Date: 03/02/2022
<input checked="" type="checkbox"/> Chief Operating Officer	 For RJS	Date: 03/02/2022
<input checked="" type="checkbox"/> Executive Engineer		Date: 03/02/2022
<input checked="" type="checkbox"/> Director of Administration		Date: 03/02/2022
<input checked="" type="checkbox"/> Risk Manager		Date: 03/02/2022
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 03/02/2022
<input checked="" type="checkbox"/> Legal		Date: 3/2/2022

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority		Date: 3/2/22
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**Remarks:** \_\_\_\_\_

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

**REQUEST FOR PROPOSALS  
FOR CONSULTING ENGINEERING SERVICES**

**EPA LEAD AND COPPER RULE REVISIONS  
PROGRAM MANAGEMENT**

**ECWA Project No. 202200023**

**General**

The Erie County Water Authority (Authority) is seeking Professional Services Proposals for consulting engineering services associated with the development, management, and implementation of the Authority's compliance program for the United States Environmental Protection Agency Lead and Copper Rule Revisions.

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

The Request for Proposal (RFP) is being conducted pursuant to the New York State Finance Law §§139-j and 139-k and the Erie County Water Authority's Procurement Disclosure Policy. The Procurement Disclosure Policy is available by accessing the Erie County Water Authority's web site – <http://www.ecwa.org>, under the caption "Doing Business with ECWA."

**Project Description**

The project consists of the development and implementation of a compliance program for the Lead and Copper Rule Revisions ("LCRR") with the Consultant acting as the Program Manager. The Consultant will take on the administrative role of coordinating the Authority's response to the LCRR.

The Consultant will be responsible for the following tasks:

- A. Program Management and Administration
- B. Lead and Copper Rule Revisions Work Plan
- C. Lead Service Line Inventory (LSLI)
- D. Lead Service Line Replacement Program (LSLRP)
- E. Sampling Monitoring Program
- F. Public Notification/Education/Outreach Program
- G. Program Assistance

## **Lead Service Line Inventory**

In anticipation of the LCRR the Authority has worked on our service line inventory for the last five years. The Authority tracks data at four locations for each service line which are listed in the table below. The table also provides the current number of knowns and unknowns throughout our distribution system.

	<b>Known Material</b>	<b>Unknown Material</b>	<b>% Unknown</b>
Material at Main (Authority/Public)	<b>103,181</b>	<b>71,006</b>	<b>40.76%</b>
Material at Curb Box (Authority/Public)	<b>103,224</b>	<b>70,963</b>	<b>40.74%</b>
Material at Curb Box (Private)	<b>95,125</b>	<b>79,062</b>	<b>45.39%</b>
Material at Meter (Private)	<b>31,347</b>	<b>142,840</b>	<b>82.00%</b>

Ownership of service lines within our system is typically delineated at the curb box located at the right-of-way/property line. The Authority is responsible to maintain the public side and the property owner is responsible to maintain the private side.

Currently, the information on service line material is depicted as a four-color graphic within the Authority's GIS system.

With the number of unknowns currently in our inventory, physically inspecting every unknown service line to ascertain material type is unrealistic. A solution is needed to expedite the inspection process to allow the Authority to focus on areas with a higher probability of lead service line material. The intent of this project is to increase the accuracy of the service line inventory to yield actionable data. It is our belief that predictive modeling will produce a product that will result in an effective LSLRP. Even though the belief is that predictive modeling is the most cost-effective strategy to predict the location of lead services and that the Authority has thoroughly reviewed our internal records, the Authority is seeking a desktop evaluation to ensure that nothing was overlooked. The scope of work for the LSLI will also include using a more traditional methodology of developing the inventory in the event that predictive modeling is not an accepted method in New York State.

## **Technology**

There will most likely be the need for the Authority to utilize a blend of existing and potentially new software and/or hardware and licensing agreements (technology) during this project. If there is a need to implement new technology to help execute this program and the technology is not included in your fee, the cost needs to be listed separately and any licensing agreement or contract associated with the technology needs to be included in your response. In the event that any program task requires the use of specialized software or hardware, it is strongly encouraged that the product not be proprietary and the cost shall be included in the fee estimate for that task and be clearly defined.

The Authority currently utilizes the following software to manage our assets:

- **GIS** – Server: ArcGIS Enterprise 10.5.1; Desktop: ArcMap 10.7.1
- **Cityworks** – Cityworks Server 15.1.7

### **Critical Communication**

CodeRED (Onsolve) – the Authority recently procured this service and is in the process of implementing it. The software should be fully functional by the fourth quarter of 2022.

The Authority utilizes e3Communications for public relations. Coordinating the Authority's public outreach effort will involve input and involvement with e3Communications.

### **Lead and Copper Rule Improvements**

The following information is from the EPA website:

*On December 16, 2021, EPA announced next steps to strengthen the regulatory framework on lead in drinking water. Following the agency's review of the Lead and Copper Rule Revisions (LCRR) under Executive Order 13990, EPA has concluded that there are significant opportunities to improve the rule to support the overarching goal of proactively removing lead service lines and more equitably protecting public health.*

*In a Federal Register Notice, EPA announced that the LCRR will go into effect to support near-term development of actions to reduce lead in drinking water. At the same time, EPA will develop a new proposed rulemaking to strengthen key elements of the rule. The agency anticipates finalizing the forthcoming Lead and Copper Rule Improvements (LCRI) prior to October 16, 2024, the initial compliance date in the LCRR.*

If modifications to the LCRR are implemented under the LCRI and are believed by the Authority to have a significant impact to the Scope of Work, the Engineer will be compensated under the Program Assistance section of the contract for any work additional to the original Scope of Work. The Authority shall pay the Engineer an agreed upon scope of work at the fixed rates included in Appendix B of this Agreement and direct non-salary expenses.

### **Lead Service Line Current Practices – O&M**

When a lead service line is disturbed during maintenance activities, the property owner is contacted and provided paperwork which details the procedure that ECWA utilizes during these instances. The procedure includes a household flush and coordination with ECWA's Water Quality Department. Once a household flush is completed, Water Quality collects samples and keeps an open line of communication with the customer. While the customer is waiting for their results, ECWA recommends using bottled water for consumption or a filter pitcher certified for lead removal. Daily mini flushes are also recommended to the homeowner. The sampling plan is site specific and once the lead levels drop below current action levels, the homeowner is notified of

the results. If the property owner is willing to participate, Water Quality will perform a follow up visit several months after the disturbance to perform follow up sampling.

### **Service Timeframes**

The LCRR Work Plan shall be complete 90 days after the Notice to Proceed is issued. Program Management and Administration shall be provided through the end of 2025. The Authority desires to have the LSLI completed by October 2023, one year prior to the date required by the LCRR. The Consultant will be responsible for proposing Service Timeframes for the remainder of the tasks.

### **Scope of Work**

The general scope of work is described in the example Professional Services Contract included as Attachment 1. The consultant shall note that the scope of work is intended to define the minimum standard of quality. Suggestions to the project scope that would enhance the quality of the proposed project are encouraged along with a brief description of the benefits of the enhancements to the Authority. Where the exact scope and engineering effort may not be readily quantified, the Consultant shall include a statement as to the effort assumed for the task(s).

The methods of payment shall be per the Professional Services Contract.

### **Information Requests**

All questions and requests for information are to be directed to the designated ECWA Contact Person, Leonard F. Kowalski, PE, at 716-685-8220, in accordance with New York State Finance Law §§139-j and 139-k. An optional pre-proposal meeting to discuss the project will be held on XXXXX xx, 2022, at xx:00 a.m. local time via videoconference. All prospective bidders that wish to participate in the meeting must email the designated Authority Contact Person by 4:00 p.m. on XXXXX xx, 2022.

### **Proposal Requirements**

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

- Item 1 - Qualifications and experience related to LCRR compliance, with particular focus on:
  - Experience with managing multiple year programs,
  - Mastery of LCR/LCRR regulatory requirements,
  - Experience and demonstrated success with predictive modeling associated with service line inventory,
  - Specific experience with lead service line inventory and replacement programs,

- Experience with the use of GIS and other tools to support water quality management and LSL replacement programs,
- Experience with sampling logistics, testing and customer notification,
- Experience with implementing technology to help facilitate the customer notification requirements associated with regulations similar to LCRR,
- Regulatory experience with ECDOH, NYSDOH, and USEPA,
- Experience with public outreach/stakeholder engagement.

Consultant shall demonstrate completion of a minimum of three (3) directly applicable projects in the past ten (10) years involving the key personnel included in Item 3 below. Include a minimum of three references for similar work including project name, summary of work performed, location, contact person, budget, date of completion and state the relevance to this project.

- Item 2 - Project understanding, technical approach, and detailed scope of services. Identify any suggested revisions to and expand upon the detail of the general scope of work as outlined herein. Identify innovative ideas to improve upon the quality of the work, reduce schedule and optimize costs.
- Item 3 - Project staffing for all key personnel and subcontractors. Identify the proposed role of all staff proposed for this project. Provide a table of the current and projected workload of each proposed project staff member as it relates to availability to perform the proposed work. Provide the office of each proposed project staff member and the location(s) where work will be performed. Provide resumes of the proposed personnel with listed experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.
- Item 4 - Work performed for the Water Authority in 2019, 2020, and 2021.
- Item 5 - Current remaining workload with the Water Authority.
- Item 6 - Completed Forms regarding Public Authorities Law §§ 2875, 2876, and 2878, and State Finance Law §§ 139-j and 139-k, and Unlawful Discriminatory Practices per Attachment 1, Appendix A.
- Item 7 - Proposed project schedule, showing duration of all tasks from commencement of the Work Plan through completion of the project.
- Item 8 - Fee proposal which is to include a breakdown of engineering fees for each task showing personnel (including title/grade), hours, hourly rates (billing and direct labor), overhead rates, and subcontractor costs for each task. Include subtask items as necessary to convey effort provided by individual personnel. Provide an estimate of cashflow for engineering fees over the duration of the project. Provide information on direct costs including estimated total direct cost for non-lump sum tasks.



Costs for technology not included in any of the lump sum fees shall be listed separately and any licensing agreement or contract associated with the technology shall be included in your response.

For Program Assistance, all consultants shall include rates and total calculated fee for the personnel listed in Appendix B of the example Professional Services Contract included as Attachment 1. Consultant shall propose hours, final hours will be negotiated prior to finalizing the contract.

For Special Services, all consultants shall include a lump sum cost of \$50,000.00 for the purposes of this proposal. Provide fixed hourly billing rates for applicable personnel to be included in the Professional Services Contract as Appendix C.

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

<b>Project 202200023 – RFP for EPA Lead and Copper Rule Revisions Program Management</b>	
<b>Program Management and Administration</b>	\$
<b>Lead and Copper Rule Revisions Work Plan</b>	\$
<b>Lead Service Line Inventory</b>	\$
<b>Lead Service Line Inventory – Design</b>	\$
<b>Lead Service Line Inventory – General Services</b>	\$
<b>Lead Service Line Inventory – Record Drawings</b>	\$
<b>Lead Service Line Replacement Program</b>	\$
<b>Sampling Monitoring Program</b>	\$
<b>Public Education, Notification and Outreach Program</b>	\$
<b>Program Assistance Allowance</b>	\$ <b>TBD</b>
<b>Special Services (not to exceed)</b>	\$ <b>50,000.00</b>
<b>TOTAL:</b>	\$

**Proposals will be accepted until 4:00 p.m. on March XX, 2022.** Five hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, NY 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and

will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: "EPA LEAD AND COPPER RULE REVISIONS PROGRAM MANAGEMENT"

### **Evaluation and Selection**

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

The final scope of work and fee for the engineering services for the project will be negotiated with the selected firm(s). Professional Service Contracts will then be executed pending successful negotiation and authorization by the Water Authority Board of Commissioners. All firms submitting proposals will be notified of the selection results. It is anticipated that the selection process will be completed in March 2022, and that the agreement will be executed in April 2022.

**ERIE COUNTY WATER AUTHORITY**  
**REQUEST FOR PROPOSALS – ATTACHMENT 1**  
**SAMPLE AGREEMENT**

## ATTACHMENT 1

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

### **PROFESSIONAL SERVICES AGREEMENT FOR EPA LEAD & COPPER RULE REVISIONS PROGRAM MANAGEMENT**

This Agreement, effective as of **DATE OF BOARD APPROVAL** (“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

**XYZ ENGINEERING FIRM**  
0000 Street, Suite 000  
City, State, ZIP

hereinafter referred to as the “Consultant.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to the implementation of the EPA Lead and Copper Rule Revisions Program Management (the “Project”) as part of the continuation of the Authority’s overall response to the Lead and Copper Rule Revisions (“LCRR”).

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

#### **ARTICLE 1 – THE PROJECT**

**1.01** The project consists of the development and implementation of a compliance program for the Lead and Copper Rule Revisions with the Consultant acting as the Program Manager. The Program Manager will take on the administrative role of coordinating the Authority’s response to the LCRR.

**1.02** The Consultant shall provide engineering services for the following tasks:

- A. Program Management and Administration (Program Manager)
- B. Lead and Copper Rule Revisions Work Plan
- C. Lead Service Line Inventory
- D. Lead Service Line Replacement Program

- E. Sampling Monitoring Program
- F. Public Notification/Education/Outreach
- G. Program Assistance

## ARTICLE 2 – COMPLIANCE STANDARDS

### 2.01 **Standard of Performance**

- A. ***Standard of Care:*** The standard of care for all professional engineering and related services performed or furnished by the Consultant under this Agreement will be the 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 Consultant's services. The Consultant 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 Consultant shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Public Authorities Law forms, a copy of which is attached to, and incorporated in, this Agreement as Appendix A.
- C. The Consultant shall comply with the provisions set forth in State Finance Law §§ 139-j and 139-k. In response to the Authority's Request for Proposals, the Consultant submitted and signed Forms A, B, and C, a copy of which area attached to, and incorporated in, this Agreement as Appendix A.
- D. By executing this Agreement, the Consultant 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.
- E. The Consultant shall comply with the provisions of Human Rights Law, codified as Executive Law § 290, *et. seq.*, and Labor Law § 201-g of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant 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.

- F. The Consultant 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.
- G. The Authority shall provide the Consultant in writing any and all Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements; and
- H. If the Consultant, 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 of 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 Consultant'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 Consultant, its employees, and agents shall comply with all health and safety rules and regulations adopted by the State of New York, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using personal protective face masks, or complying with any testing or vaccination requirements before entering any Authority property.

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

## **ARTICLE 3 – SCOPE OF SERVICE**

**3.01** **Program Management and Administration.** The Consultant shall provide project management and administration services necessary to complete the program including, but not limited to, the following:

### **A. General Program Management**

- 1. In contemplation of the program, the Consultant shall:
  - a. Provide a Program Manager to oversee and administer the program. The Program Manager shall be responsible for overseeing the development and implementation of the following tasks associated with this project:

1. § 3.02 LCRR Work Plan
  2. § 3.03 Lead Service Line Inventory (LSLI)
  3. § 3.04 Lead Service Line Replacement Program (LSLR)
  4. § 3.05 Sampling Monitoring Program (SMP)
  5. § 3.06 Public Education/Notification /Outreach Program (PENOP)
  6. § 3.07 Program Assistance
- b. The Program Manager shall take on the administrative role of coordinating the Authority's response to the LCRR.
  - c. Authority personnel will provide assistance and the documentation required to the Program Manager to assist in developing and implementation of a compliance program for the Lead and Copper Rule Revisions ("LCRR").

**B. *Meetings and Reports.***

1. Throughout the LCRR program, the Consultant shall:
  - a. Conference with the Authority and other related Project stakeholders, as necessary and as required;
  - b. Report to the Authority bi-weekly on the progress of the work via email, with the following information:
    - i. Work performed during the previous two weeks;
    - ii. Work scheduled for the next two weeks;
    - iii. Schedule status/deliverable status, attaching an updated project schedule in Microsoft Project format, identifying all project milestones, cashflow and current project status;
    - iv. Budget status/percent completed;
    - v. Input needed from the Authority or others;
    - vi. Requests for scope changes; and
    - vii. Other issues or concerns;

**3.02 LCRR Work Plan.** The Consultant shall provide all engineering services necessary to prepare a Work Plan for the overall LCRR program including, but not limited to, the following:

- A. Upon review of all documentation and data, the Consultant shall develop and submit a Work Plan for review and approval. At a minimum, the Work Plan shall include the following:
  - 1. Program Management Team roles and responsibilities.
  - 2. Clearly defined program goals and objectives with a thorough explanation of how they will be accomplished.
  - 3. Technology requirements/recommendations and procurement timeframes.
  - 4. LCRR program schedule with milestone dates and progress meeting frequency.
  - 5. QA/QC plan.
- B. The Consultant will conduct a project kickoff meeting and at least three (3) review meetings with the Authority under this task. Key members of the Program Management team shall be on site for the first meeting. The Program Manager shall be onsite for the second meeting, the remainder of Program Management Team can be virtual. Subsequent meetings may be fully virtual. Provide meeting minutes to the Authority within ten (10) calendar days.
- C. The Consultant shall prepare a draft LCRR Work Plan report, setting the factors considered by the Consultant including, but not limited to, those specifically identified in paragraph A, of this section. The Consultant shall supply the Authority with five (5) copies of the draft LCRR Work Plan report with supporting documentation, along with a digital .pdf file of the draft LCRR Work Plan report with supporting documentation.
- D. The Consultant shall meet with the Authority to review the draft LCRR Work Plan report and will incorporate all comments into a final version. The Consultant shall supply the Authority with five (5) copies of the final LCRR Work Plan report with supporting documentation, along with a digital .pdf file of the final LCRR Work Plan report with supporting documentation. If required, the Consultant shall submit the final LCRR Work Plan report with supporting documentation to the Erie County Health Department and New York State Health Department (as applicable) for review and approval. Program Manager will also address any comments as required.
- E. After completion of the LCRR Work Plan report, the Consultant shall execute the plan.



**3.03 Lead Service Line Inventory (LSLI).** The Consultant shall provide all engineering services necessary to develop a comprehensive LSLI for the Authority and ultimately to provide a searchable database to allow customers to view service line material type.

A. ***LSLI Work Plan.*** The Consultant shall prepare a LSLI Work Plan detailing the process that will be utilized to develop the inventory. The scope of services under this Task shall include:

1. Develop schedule with milestone dates.
2. Meet with Authority staff to discuss and document the status of the current service line inventory.
  - a. The Authority has approximately 174,000 service connections. Four data points are currently tracked, and the number of unknowns is listed below:
    - i. Material at Main (Authority/Public) – approximately 71,000 unknowns
    - ii. Material at Curb Box (Authority/Public) – approximately 71,000 unknowns
    - iii. Material at Curb Box (Private) – approximately 79,000 unknowns
    - iv. Material at Meter (Private) – approximately 143,000
3. Review available service data, including, but not limited to, tap cards, building records, as-built drawings, customer provided information, and existing GIS information. Provide technical support to facilitate the organization of the data and make recommendations on future record keeping strategies.
4. Review the current processes being utilized by the Authority to verify service material type including CityWorks work orders, meter shop work orders, etc... Document processes through development of a standard operating procedure (SOP) for collecting and reporting service material data under this task.
5. Provide a strategy to verify service material type. The strategy shall be multifaceted including both predictive modeling and traditional strategies that include desktop evaluation of tap cards, building records, as-built drawings, and existing GIS information, as well as strategic test pitting or other visual verification program(s).
  - a. The expertise of the Consultant will be relied upon to predict the probability of lead presence in services. The strategy used must be coordinated and discussed with the Erie County Health Department and New York State Health Department, as applicable, to determine compliance with LCRR.

- b. Develop methodology for explaining the level of confidence when labeling services as lead, unknown, or non-lead.
      - c. Develop a project to perform test pits to physically verify service line material type to be used with predictive modeling. Assume 400 test pits will be required, the actual number required will be dictated by the Consultant.
  - 6. The Consultant shall prepare a draft LSLI Work Plan report, setting the factors considered by the Consultant including, but not limited to, those specifically identified in paragraph A, of this section. The Consultant shall supply the Authority with five (5) copies of the draft LSLI Work Plan with supporting documentation, along with a digital .pdf file of the draft LSLI Work Plan report with supporting documentation.
  - 7. The Consultant shall meet with the Authority to review the draft LSLI Work Plan report and will incorporate all comments into a final version. The Consultant shall supply the Authority with five (5) copies of the final LSLI Work Plan report with supporting documentation, along with a digital .pdf file of the final LSLI Work Plan report with supporting documentation. If required, the Consultant shall submit the final LSLI Work Plan report with supporting documentation to the Erie County Health Department and New York State Health Department (as applicable) for review and approval. Program Manager will also address any comments as required.
- B. ***Design – Test Pits.*** Upon Authorization from the Authority, the Consultant shall complete the following services:
- 1. Prepare design details, specifications and contract documents for the excavation of test pits. Tasks include, but are not limited to:
    - a. Attend meetings with the Authority and other related Project entities, as necessary and as required;
    - b. Review available drawings and records furnished by the Authority;
    - c. Solicit all required cost quotations and coordinate subconsultants and/or contractors required to provide any necessary Special Services.
    - d. Prepare standard details, project descriptions, and test pit locations (maps and tables) based on results from § 3.03 paragraph A ;
    - e. Submit plans to various utility companies and regulatory agencies to incorporate all existing utilities within the project limits;
    - f. Prepare final plans, and general details that include editing of the Authority's standard detail drawings where appropriate;

- g. Prepare a "Project Manual," including contract specifications that include editing of the Authority's standard "front end" specifications and standard technical specifications where appropriate, preparation of additional technical specifications as required, and inclusion of necessary appendices providing supporting information;
  - h. Obtain New York State Prevailing Wage Rates and inserting them into the specifications;
  - i. Prepare a quantity take-off and a construction cost estimate;
  - j. Prepare an engineering report meeting the Authority's format and including all design parameters, summary of hydrants added, standards utilized, and hydraulic calculations performed for the design. Once approved, submit with contract specifications, drawings, application forms and fees to Erie County Health Department as necessary to obtain Health Department approval;
  - k. Evaluate each site for Maintenance and Protection of Traffic (MPT) requirements. Develop standard/general MPT plans/details meeting all New York State Department of Transportation (NYSDOT) standards for inclusion in the bid set;
  - l. Provide project drawings/specifications/construction cost estimate to the Authority at 30%, 70%, 95%, and 100% design, with incorporation of comments received into following submissions; and
  - m. Attend a final design meeting with the Authority.
2. Furnish to the Authority five (5) sets of drawings, specifications and other contract documents, for final review by the Authority and other approving agencies. Supply electronic (.pdf) versions of drawings and the Project Manual to the Authority;

C. ***General Services – Test Pits.*** Upon authorization from the Authority, the Consultant shall complete the following services:

- 1. Furnish ten (10) sets of contract drawings, final specifications, and other documents for each contract to the Authority. Provide electronic files of all documents to Avalon Document Services who will provide contract drawings, final specifications, and other documents required for bidding and construction purposes. The cost of documents provided through Avalon Document Services shall be paid by the Contractor.
- 2. Conduct a pre-bid meeting when appropriate;

3. Prepare and distribute addenda;
4. Provide assistance to the Authority in securing bids, tabulating bid results, analyzing bid results, and making recommendations on the award of each construction contract;
5. Provide a pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested parties, conduct a pre-construction meeting and distribute minutes;
6. Supply an approved contractor's schedule for construction of the project;
7. Provide detailed initial stakeout (once only), of each test pit location;
8. Give consultation and advice to the Authority during construction;
9. Prepare elementary sketches and supplementary sketches, if required, to resolve actual field conditions encountered;
10. Interpret contract documents and resolve problems as to amount, quality, acceptability, and fitness;
11. Review the contractor's submittals of material and/or equipment for compliance with the Consultant's design concept and take appropriate action such as, but not limited to: "approved," "approved as corrected," "revise and resubmit," or "not approved";
12. Furnish general construction inspection as to quality and quantity of the contractor's work as the construction progresses in order to recommend partial payment;
13. Coordinate with all Authority's customers within the Project area regarding the construction work;
14. Schedule and attend progress meetings;
15. Report via email to the Authority bi-weekly on the progress of the construction work with the following information:
  - a. Summary of the construction work performed in the previous two-week period;
  - b. Updated project schedule (in Microsoft Project format) identifying all project milestones and current project status;

- c. Forecast of all upcoming work and project costs expected for the project, including identification of any contract items which may exceed bid quantities; and
  - d. Copies of final inspection reports (in .pdf format) for reports in the previous two-week period;
- 16. Notify the Authority when a change in the work is proposed which will cause an adjustment in the contract cost. Evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval. Discuss changes in the plans or procedures authorized by the Consultant with the Authority prior to implementation. Obtain approval for all change orders from the Authority's Board of Commissioners prior to implementation;
- 17. When new waterlines are placed into service, notify the appropriate fire districts in writing, identifying addresses of new hydrants placed into service and existing hydrants soon to be removed from service. A copy of this letter shall also be sent to the Authority;
- 18. Verify service depth and material type at each location and update service records accordingly;
- 19. Make a final inspection, furnish a report on project completion, and make recommendations for final payments to contractors and for the release of retained amounts, if any;
- 20. Assist the Authority as an expert witness in litigation arising from Project design, development or construction.
- D. ***Resident Inspections – Test Pits.*** Upon authorization from the Authority, the Consultant shall furnish a full-time Resident Project Consultant (RPE) who will conduct technical inspection of the construction work relating to the Test Pits;
  - 1. *Consultant's duties and responsibilities:* The Consultant, through the RPE's observations, shall protect the Authority against defects and deficiencies in the construction work.
  - 2. *RPE's duties and responsibilities:*
    - a. The RPE shall not:
      - i. Authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), without written approval by the Authority and the Consultant;

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

b. The RPE shall:

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

- g. Advise the Authority and the Consultant whether any part of the construction work in progress should be corrected or rejected or should be uncovered for observations, or requires special testing, inspection, or approval;
- h. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Authority personnel, and that the contractor maintains adequate records relating to the same;
- i. Observe, record, and report to Consultant appropriate details relative to the test procedures and systems start-ups;
- j. Report to the Consultant and the Authority when clarifications and interpretations of the contract documents are needed and transmit to the contractor clarifications and interpretations as issued by Consultant;
- k. Advise the Consultant and the contractor of the commencement of any portion of the construction work requiring a Shop Drawing or Sample submittal for which RPE believes that the submittal has not been approved by the Consultant;
- l. Submit via email bi-weekly updates to the Authority summarizing the resident inspection costs and projecting further resident inspection costs for the duration of the construction work.

E. ***Record Drawings – Test Pits.*** Upon Authorization from the Authority, the Consultant shall complete the following services:

- 1. Provide a spreadsheet or other tracking mechanism containing the data collected from performing Test Pits and updated service records.

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

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

H. **Completion – Test Pits.** Upon authorization from the Authority, as general services, the Consultant shall:

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

I. **Final LSLI Report.** After completion of the LSLI Work Plan, the Consultant shall execute the plan to provide the Authority with a LSLI that is compliant with the LCRR. The scope of services under this Task shall include:

1. Provide a web-based map of service material data to be made available to the public on the Authority's website. The information shall be searchable by address.
2. Provide a standard operating procedure (SOP) and training to Authority staff for uploading, revising, and maintaining the web-based map and database.
3. Provide an SOP for annual notification of customers with lead service lines (LSLs) or unknowns annually.

**3.04 Lead Service Line Replacement Program (LSLR).** The Consultant shall provide all engineering services necessary to develop a program that the Authority will execute for the replacement of LSLs at a goal-based rate that is compliant with the LCRR.

A. The Consultant shall prepare a LSLR Program Work Plan detailing the process that will be utilized to develop the program. The scope of services under this Task shall include:

1. Develop schedule with milestone dates.
2. Discuss the development of a program strategy and framework to prioritize replacement of LSLs. The following tasks shall be performed when developing the strategy:
  - a. Develop replacement strategy and goals shall be developed based on results from the predictive modeling performed under § 3.03 Lead Service Line Inventory.
  - b. Evaluate opportunities to align LSLR with distribution system renewal projects. Discuss Authority's annual commitment to distribution



system renewal projects and impacts that the LSLR program will have on this program.

c. Prepare cost estimates for LSL replacements to be included in the Authority's Capital Improvement Program (CIP).

3. Discuss strategies for informing customers before a full or partial lead service line replacement is performed.
4. Discuss the development of workflows for post-replacement activities, including sampling and filter pitcher distribution and tracking.
5. Discuss the development of a reporting program and SOP to track replacement progress and provide real time dashboards and exportable reports.
6. Discuss the development of public notification materials, which also includes a program to track resident communications, such as letters, phone calls and face to face communication with field personnel.
7. Discuss the development of legal materials, including documents that allow access to the customer's property and document refusals to participate.
8. Develop policy on private side LSLs replacement, including funding strategies. Funding strategies shall include insurance programs, grants (State or Federal), and self-insured.
  - a. Develop strategies to encourage homeowner participation in full lead service line replacement program.
  - b. The pros and cons of each strategy shall be discussed with Authority staff.
  - c. Any strategy presented to the Authority must be legally sound for the Authority to implement in New York State.
  - d. Discuss the feasibility and legality of creating a customer assistance program to support low-income customers and vulnerable populations.
  - e. Identify funding sources from State or Federal governments and outline the steps required for the Authority to access the funding.
9. The Consultant shall prepare a draft LSLR Work Plan report, setting the factors considered by the Consultant including, but not limited to, those specifically identified in paragraph A, of this section. The Consultant shall supply the Authority with five (5) copies of the draft LSLR Work Plan with supporting documentation, along with a digital .pdf file of the draft LSLR Work Plan report with supporting documentation.

10. The Consultant shall meet with the Authority to review the draft LSLR Work Plan report and will incorporate all comments into a final version. The Consultant shall supply the Authority with five (5) copies of the final LSLR Work Plan report with supporting documentation, along with a digital .pdf file of the final LSLR Work Plan report with supporting documentation. If required, the Consultant shall submit the final LSLR Work Plan report with supporting documentation to the Erie County Health Department and New York State Health Department (as applicable) for review and approval. Program Manager will also address any comments as required.
- B. The Consultant shall provide the following documents associated with the replacement of lead service lines:
1. Provide technical specifications that the Authority will include in Authority developed LSLR Project Manuals.
  2. Provide drawings and standard details that the Authority will include in Authority developed LSLR Project Manuals.
- C. After completion of the LSLR Work Plan, the Consultant shall provide assistance to the Authority while the Authority executes the plan.

**3.05 Sampling Monitoring Program (SMP)** - The Consultant shall provide all engineering services necessary to develop a SMP that the Authority will execute that is compliant with the LCRR.

- A. The Consultant shall prepare a SMP Work Plan detailing the process that will be utilized to develop the program. The scope of services under this Task shall include:
1. Discuss the development of a database or implementation of software that will be used to track samples. The database/software shall also be used to order, track and ship sampling kits. The database/software shall be easily integrated with the Authority's current customer database software.
  2. Discuss the development of a customer communications database for Authority's use to track notifications (i.e., field contact, letters, phone calls) to residents, regulatory agencies, etc. The database shall be easily integrated with the Authority's current customer database software.
  3. Provide all data utilized and generated by the Consultant in relation to this project to the Authority on regular and agreed to basis in a standard readable format such as xml, json, csv, or fixed-width text. Provide the data to the Authority in a secure method such as password encrypted zip file stored on an agreed to secure file sharing service or uploaded to a location the Authority designates such as a Microsoft SharePoint Site or supplied on physical media such as dvd or usb storage. Existing Authority data requested and generated for

the Consultant shall also supplied in a standard readable format as requested by the Consultant and will be transmitted via physical media or SharePoint.

4. Discuss the use of water quality dashboards or other types of reporting software to monitor and improve water quality parameters.
5. Develop a sampling plan that is compliant with the LCRR. Discuss strategies to increase public participation in the sampling program.
6. Discuss methods how to identify schools and daycare facilities that need to be sampled. Develop a strategy to support school and childcare facility sampling for both the LCRR and New York State requirements.
7. Discuss Find-and-Fix Assessment strategies for individual lead compliance samples that exceed the action limit. Develop a SOP that the Authority will utilize when there are exceedances.
8. Discuss the development of a SOP for reporting results to customers and primacy agencies within LCRRs required time frames.
9. The Consultant shall prepare a draft SMP Work Plan report, setting the factors considered by the Consultant including, but not limited to, those specifically identified in paragraph A, of this section. The Consultant shall supply the Authority with five (5) copies of the draft SMP Work Plan with supporting documentation, along with a digital .pdf file of the draft SMP Plan report with supporting documentation.
10. The Consultant shall meet with the Authority to review the draft SMP Work Plan report and will incorporate all comments into a final version. The Consultant shall supply the Authority with five (5) copies of the final SMP Work Plan report with supporting documentation, along with a digital .pdf file of the final SMP Work Plan report with supporting documentation. If required, the Consultant shall submit the final SMP Work Plan report with supporting documentation to the Erie County Health Department and New York State Health Department (as applicable) for review and approval. Program Manager will also address any comments as required.

B. After completion of the SMP Work Plan, the Consultant shall provide assistance to the Authority while the Authority executes the plan.

**3.06 Public Education, Notification and Outreach Program (PENOP).** The Consultant shall provide all engineering, communication, and technical services necessary to develop a public education, notification, and outreach program that the Authority will execute.

A. The Consultant shall prepare a PENOP Work Plan detailing the process that will be utilized to develop the program. The scope of services under this Task shall include:

1. Develop schedule with milestone dates that establishes when each phase of the PENOP will be implemented.

2. The PENOP shall encompass an overall communication strategy for every facet of the LCRR that shall include but not be limited to the following:
  - a. Meet with Authority staff to discuss communication needs and strategies for public outreach.
  - b. Discuss a strategy to streamline communication between the public and the Authority.
  - c. Develop internal and external communication tools.
  - d. Develop key messages and talking points for the Authority.
  - e. Discuss training for Authority staff, including public relations firm. Develop specific training for field crews and customer service representatives. Discuss implementing the training.
  - f. Develop plan to meet LCRR requirements associated with SMP and public education to notify customers: individual and entire customer base.
  - g. Develop educational and promotional materials for each phase of the LCRR. Ensure customers are receiving a consistent message. Develop subject matter at the appropriate reading level to be conveyed in English, Spanish, and Arabic.
  - h. Discuss the development of a program to provide training for customers to collect samples via videos and educational material available on Authority website.
  - i. Develop content for website.
3. The Consultant shall prepare a draft PENOP Work Plan report, setting the factors considered by the Consultant including, but not limited to, those specifically identified in paragraph A, of this section. The Consultant shall supply the Authority with five (5) copies of the draft PENOP Work Plan with supporting documentation, along with a digital .pdf file of the draft PENOP Plan report with supporting documentation.
4. The Consultant shall meet with the Authority to review the draft PENOP Work Plan report and will incorporate all comments into a final version. The Consultant shall supply the Authority with five (5) copies of the final PENOP Work Plan report with supporting documentation, along with a digital .pdf file of the final PENOP Work Plan report with supporting documentation. If required, the Consultant shall submit the final PENOP Work Plan report with supporting documentation to the Erie County Health Department and New York State Health Department (as applicable) for review and approval. Program Manager will also address any comments as required.

- B. After completion of the PENOP Work Plan, the Consultant shall provide assistance to the Authority while the Authority executes the plan.

**3.07 Program Assistance.** The Consultant may employ the following additional related services in carrying out the Project, subject to the Authority's approval. Prior to starting any additional work under this article, the Consultant and the Authority will agree to the scope, payment method and a not to exceed amount. Authority shall provide written approval by the Authority's Chief Operating Officer and Chief Financial Officer.

- A. ***Lead and Copper Rule Improvements Assistance (LCRIA).*** If modifications to the LCRR are implemented under the LCRI following the execution of this agreement and are believed by the Authority to have a significant impact to the original Scope of Work., the Engineer will be compensated under this section of the contract.
- B. ***LSLR Assistance.*** Assistance requested and provided under § 3.04.C of this Agreement, the Engineer will be compensated under this section of the contract.
- C. ***SMP Assistance.*** Assistance requested and provided under § 3.05B of this Agreement, the Engineer will be compensated under this section of the contract.
- D. ***PENOP Assistance.*** Assistance requested and provided under § 3.06.B of this Agreement.

**3.08 Special Services.**

- A. The Consultant may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
1. Air, water, and/or soil sampling, testing, and/or analysis;
  2. Detailed mill, shop and/or laboratory inspection of service materials not specifically identified elsewhere in the scope of services;
  3. Hazardous material testing and assessment;
  4. Technical assistance with property access and access agreements as necessary;
  5. Start-up services relating to equipment or technology to be installed by others;
  6. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
  7. Extra travel and subsistence for the Consultant and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority;

8. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officers.

- B. **Reliance on Others.** Subject to the standard of care set forth in § 2.01, paragraph A, the Consultant and its special services consultants may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers and the publishers of technical standards.
- C. **Expert Witness Assistance.** The Consultant agrees to assist the Authority as an expert witness in litigation arising from the project development and construction, even if such assistance is requested by the Authority after the expiration or termination of this Agreement.

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

- A. All services under § 3.01 of this Agreement, Program Management and Administration, shall be provided throughout the duration of the project;
- B. All services under § 3.02 of this Agreement, LCRR Work Plan, shall be completed and delivered to the Authority within 90 days of the issuance of the Authority's notice to proceed;
- C. All services under § 3.03 of this Agreement, Lead Service Line Inventory, shall be completed and delivered to the Authority within xxx days following the conclusion of the scope of work of § 3.02 of this Agreement, LCRR Work Plan.
- D. All services under § 3.04 of this Agreement, Lead Service Line Replacement Program, shall be completed and delivered to the Authority within xxx days following the conclusion of the scope of work of § 3.03 of this Agreement, Lead Service Line Inventory.
- E. All services under § 3.05 of this Agreement, Sampling Monitoring Program, shall be completed and delivered to the Authority within xxx days following the conclusion of the scope of work of § 3.03 of this Agreement, Lead Service Line Inventory.
- F. All services under § 3.06 of this Agreement, Public Education, Notification and Outreach Program, shall be completed and delivered to the Authority within xxx days following the conclusion of the scope of work of § 3.03 of this Agreement, Lead Service Line Inventory.
- G. All services under § 3.07 of this Agreement, Lead and Copper Rule Improvements Assistance, shall be completed when requested and approved by the Authority.

## ARTICLE 4 – PAYMENT OF PROFESSIONAL SERVICES

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

- A. ***Project Management and Administration:*** For services described under § 3.01 of this Agreement, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- B. ***LCRR Work Plan:*** For services described under § 3.02 of this Agreement, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 40% of the total lump sum amount. After submission by the Consultant to the Authority of a draft LCRR Work Plan, payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. The balance will be paid when the final LCRR Work Plan is submitted to the Authority.
- C. ***Lead Service Line Inventory:*** For services described under § 3.03 paragraph A of this Agreement, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 30% of the total lump sum amount. After submission by the Consultant to the Authority of a draft Lead Service Line Inventory Work Plan, payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. The balance will be paid when the services under § 3.03 paragraph I are complete.
- D. ***Lead Service Line Inventory, Design – Test Pits:*** For services described under § 3.03 paragraph B of this Agreement, the Authority shall pay the Consultant a lump sum which will include all expense, labor, and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. After submission by the Consultant to the Authority of a draft set of contract documents, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount. The balance will be paid when the final contract documents are submitted to the Authority.
- E. ***Lead Service Line Inventory, General Services – Test Pits:*** For services described under § 3.03, paragraphs C, F, G and H of this Agreement, the Authority shall pay the Consultant a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- F. ***Lead Service Line Inventory, Record Drawings – Test Pits:*** For services described under § 3.03, paragraph E of this Agreement, the Authority shall pay the Consultant a lump sum which will include all expense, labor and cost associated with this task. Payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount. After submission by the Consultant to the Authority of

draft record drawings, payment will be made monthly based on the percentage of completion up to 90% of the total lump sum amount. The balance will be paid when the final record drawings are submitted to the Authority.

- G. ***Lead Service Line Replacement Program:*** For services described under § 3.04 paragraphs A and B of this Agreement, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 40% of the total lump sum amount. After submission by the Consultant to the Authority of a draft LSLR Work Plan, payment will be made monthly based on the percentage of completion up to 70% of the total lump sum amount.. The balance will be paid when the final LSLR Work Plan is submitted to the Authority.
- H. ***Sampling Monitoring Program:*** For services described under § 3.05, Paragraphs A and B of this Agreement, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 40% of the total lump sum amount. After submission by the Consultant to the Authority of a draft SMP Work Plan, payment will be made monthly based on the percentage of completion up to 60% of the total lump sum amount. The balance will be paid when the final SMP Work Plan is submitted to the Authority.
- I. ***Public Education, Notification and Outreach Program:*** For services described under § 3.06A of this Agreement, the Authority shall pay Consultant a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 40% of the total lump sum amount. After submission by the Consultant to the Authority of a draft PENOP Work Plan, payment will be made monthly based on the percentage of completion up to 60% of the total lump sum amount. The balance will be paid when the final PENOP Work Plan is submitted to the Authority.

**4.02 *Resident Inspection – Test Pits:*** For services described under § 3.03, paragraph D of this Agreement, the Authority shall pay the Consultant the payable hourly rates listed under § 4.06, paragraph B and direct non-salary expenses. Overtime premium will be paid at 50% of the Resident Inspectors' direct hourly rate in addition to the payable hourly rate listed under § 4.06, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

**4.03 *Program Assistance:*** For services described under § 3.07 of this Agreement, the Authority shall pay the Engineer at the fixed rates included in Appendix B of this Agreement and direct non-salary expenses. Payment will be made monthly. Payments for services will be based on detailed actual hours worked with a total cost not to exceed *<insert total value from table in Appendix B>*.



**4.04 Special Services:** For services described under § 3.08 of this Agreement, the Authority shall pay the Consultant 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 Consultant is performing the special services described in § 3.08 of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Consultant obtains special services from a third party, the Consultant will be reimbursed based on the actual invoice cost paid by the Consultant, plus 5%.

**4.06 Engineering Cost Schedule:**

**A. *Engineering Costs:***

- |  |                 |
|--|-----------------|
| 1. Lump Sum – Program Management and Administration          | < insert cost > |
| 2. Lump Sum – LCRR Work Plan                                 | < insert cost > |
| 3. Lump Sum – Lead Service Line Inventory                    | < insert cost > |
| 4. Lump Sum – Lead Service Line Inventory – Design           | < insert cost > |
| 5. Lump Sum – Lead Service Line Inventory – General Services | < insert cost > |
| 6. Lump Sum – Lead Service Line Inventory – Record Drawings  | < insert cost > |
| 7. Lump Sum – Lead Service Line Replacement Program          | < insert cost > |
| 8. Sampling Monitoring Program                               | < insert cost > |
| 9. Lump Sum – Public Education/Notification/Outreach         | < insert cost > |

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

	Payable Hourly Rate	Employee Direct Hourly Rate
Resident Project Engineer	\$XX.00	\$XX.00

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

- |   |              |
|---|--------------|
| 1. Estimated Resident Inspection            | \$XXX,000.00 |
| 2. TOTAL NOT TO EXCEED RESIDENT INSPECTION: | \$XXX,000.00 |

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

The following costs are only applicable to expenses incurred under § 3.07, Lead and Program Assistance, § 3.08, Special Services of this Agreement. All other direct non-salary costs are to be included with the costs listed in the lump sum payments listed in § 4.05, Paragraph A of this Agreement.

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

Total Estimated Direct Non-Salary Costs (not to exceed) < insert cost >

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

### **ARTICLE 5 – GENERAL PROVISIONS**

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

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

**5.03 Right to Terminate:** The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days' written notice. The Consultant 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 Consultant agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors and employees may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Consultant's

performance of professional services provided under this Agreement and those of its subcontractors or anyone for whom the Consultant is legally liable.

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

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

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

#### **5.06 Insurance:**

- A. The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of

injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C.

- B. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant shall 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.

**5.07 Copyrights, Trademarks and Licensing:** All materials produced under this Agreement, whether produced by the Consultant 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 Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether 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 Consultant and the Authority shall be governed, interpreted and decided by a court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

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

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

**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 Consultant, 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 Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Consultant 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 Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

**5.14 Force Majeure:** Consultant shall not be liable to the Authority for any failure to perform the Services if any such failure is caused by forces beyond Consultant's reasonable control, including without limitation, actions or inactions of any governmental agencies, changes in law, strikes, lockouts, or other industrial disturbances, acts or omissions of third-parties, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics, including issues arising out of the COVID-19 pandemic, which may include without limitation, workforce shortages, lack of necessary supplies or Personal Protective Equipment, travel restrictions, and other restrictions resulting from public guidance and emergency orders.

**5.15 Gratuities:** The Consultant 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 Consultant or its employees shall not, under

circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

**5.16 Notice:** Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

## **ARTICLE 6 – SEVERABILITY**

**6.01** Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agrees that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

## **ARTICLE 7 – TERMINATION**

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

### **ERIE COUNTY WATER AUTHORITY**

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

*< insert name of Consultant >*

By \_\_\_\_\_

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2022, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2022, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is the \_\_\_\_\_ of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

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

# **ERIE COUNTY WATER AUTHORITY**

## **APPENDIX A**

### **RESPONSE TO RFP REQUIRED FORMS**

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



**NON-COLLUSIVE BIDDING CERTIFICATION**

as mandated by Public Authority Law § 2878

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

(1) The prices in this bid or proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/respondent or with any competitor; and

(2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder/respondent and will not knowingly be disclosed by the bidder/respondent prior to opening, directly or indirectly, to any other bidder/respondent or to any competitor; and

(3) No attempt has been made or will be made by the bidder/respondent to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**NOTICE**

(Penal Law § 210.45)

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

**BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:**

Affirmed under penalty of perjury this \_\_\_\_\_ 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)



**FORM C (Continued)**

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

6. If yes, please provide details below.

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

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

Basis of Termination or Withholding:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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

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

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

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

## **CONTRACT TERMINATION PROVISION**

### **Instructions:**

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

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

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

### **Sample Contract Termination Provision**

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

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

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

### **Offerer Statement:**

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

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

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

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

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

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

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

\_\_\_\_\_

**ERIE COUNTY WATER AUTHORITY**

**APPENDIX B**

**LEAD AND COPPER RULE IMPROVEMENTS ASSISTANCE  
CONSULTANT ENGINEER FIXED HOURLY BILLING RATES**

**APPENDIX B**  
**Program Assistance**

**CONSULTANT ENGINEER FIXED HOURLY BILLING RATES**

<b>Grade</b>	<b>Hourly Billing Rate</b>

## APPENDIX C

### FIXED RATES FOR SPECIAL SERVICES

Grade	Hourly Billing Rate

# **ERIE COUNTY WATER AUTHORITY**

## **APPENDIX C**

### **INSURANCE REQUIREMENTS**

## APPENDIX C

### INSURANCE REQUIREMENTS

Insurance specs:

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

Insurance Requirements:

**a. Workers Compensation:**

Part 1: Workers Compensation: Statutory

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

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

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

**c. Commercial General Liability:**

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

**d. Automobile Liability:**

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

**e. Umbrella Liability:**

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured



**f. Professional Liability:**

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

**g. Cyber Liability:**

- \$2,000,000. Per Claim
- \$2,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured

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

ACORD 25 including copy of Additional Insured Endorsement Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

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

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than “A-” with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name the Authority, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies. Any liability coverage on a “claims made” basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

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

Acceptance of a Certificate of Insurance and/or approval by the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities or liabilities.

Certificates of Insurance should be e-mailed to [mmusarra@ecwa.org](mailto:mmusarra@ecwa.org) or mailed to Ms. Molly Jo Musarra, Claim Representative/Risk Manager Erie County Water Authority, 295 Main Street –

Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.

# **ERIE COUNTY WATER AUTHORITY**

## **APPENDIX D**

### **ADDENDUM AGREEMENT**

## APPENDIX D

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

### ADDENDUM AGREEMENT

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

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

#### **Insurance Requirements**

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

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

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

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

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

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

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

**B. Commercial General Liability:**

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

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

The coverage must include the following:

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

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

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

**C. Commercial Automobile Liability Insurance:**

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

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

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

**E. Pollution Liability:**

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

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

“All Risk” Property Insurance coverage afforded by a Builder’s Risk/Installation Floater or its equivalent insuring all materials, equipment and supplies provided by the Subcontractor and intended to become a permanent part of the construction, whether stored on the premises, away from the project site and/or while in transit, in an amount

equal to the replacement cost of such materials, equipment and supplies. A “Waiver of Subrogation” in favor of the Authority must be included.

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

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

**JOB-SITE SAFETY:**

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

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

**WORKERS COMP IMMUNITY WAIVER:**

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

**HOLD HARMLESS / INDEMNIFICATION:**

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

**MISCELLANEOUS:**

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

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

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

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

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

**[Insert name of Downstream  
Subcontractor]**

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

(Print name and title)

Date:

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

(Print name and title)

Date:



**APPENDIX E**

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

## **APPENDIX E**

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

#### **LICENSE:**

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

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

#### **OWNERSHIP:**

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

#### **CONFIDENTIALITY CLAUSE:**

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

#### **COPYRIGHT NOTICE:**

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

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

### **LIMITATION OF LIABILITY:**

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

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

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

### **TERMINATION:**

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

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

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

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

### **SPECIFIC TERMS OF ACCEPTANCE:**

This Agreement constitutes the entire agreement between the parties.