



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 1, 2022

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer

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

Subject: Contract NC-044
Water System Improvements
Town of Amherst
ECWA Project No. 202200054

The following material is attached:

- Authorization Form requesting Board Authorization to execute the attached Professional Service Contract with Nussbaumer & Clarke, Inc.
- Professional Service Contract for the above referenced project.
- Copy of Interoffice Memorandum Michael J. Quinn, Senior Distribution Engineer, dated January 31, 2022, detailing recommendations for the contract assignment after review of Request for Proposals (PN 202200005).

This project, budgeted for design in 2022 and construction in 2023 and 2024, will consist of the installation of approximately 42,250 linear feet of new distribution waterline on multiple streets in the Town of Amherst. The project shall be designed under a single phase with two construction contracts (two construction seasons). For additional project details and scope of work please refer to the Professional Service Agreement for Engineering Services – Contract NC-044.

Budget Information:

Funds are available for topographical survey and to begin the design in Unit: 2590 Eng/Const Distribution Mains, Item 101676 Dist Main Replacement G. Balance of funds to complete the design will be transferred from Contract JMD-001, 2022 Budget Unit 2590 Eng/Const Distribution Mains, Item 101596 JMD-001 Waterline Replacement.

MJQ:jmf

Attachments

cc: L.Kowalski

L.Lester

W.Wheeler

CONT-NC-042-2101-X-01



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

January 31, 2022

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer

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

Subject: Water System Improvements
Town of Amherst Distribution System 2022-2024
Request for Proposals
Project No. 202200005

The Erie County Water Authority (Authority) recently issued a Request for Proposals (RFP) for engineering services for design and construction phase services to replace several distribution mains in the Town of Amherst. The work will be performed under one contract.

The RFP was issued to eleven consulting engineering firms and the RFP was also posted to the Authority website. Six of the original firms responded (DuBois & King, Inc., Greenman-Pedersen, Inc., JM Davidson, Wendel, and Wm. Schutt & Associates did not submit proposals). Additionally, Michael Baker International submitted their proposal based on Authority's website. Those submitting proposals are listed in alphabetical order below:

- Barton & Loguidice, PC
- CHA Consulting, Inc.
- DiDonato Associates
- Erdman Anthony
- LaBella Associates, DPC
- Michael Baker International
- Nussbaumer & Clarke, Inc.

The proposals were reviewed and discussed among the engineering staff. Experience, staffing, scope, and project approach were considered. It was determined that while each firm possessed relevant qualifications to perform the work proposed, based on the review and evaluation of the proposals, it was the committee's opinion that Nussbaumer & Clarke, Inc. was the best firm for this project due to a combination of experience and qualifications. In addition, the firm's fee is in line with the other firms and appears reasonable when compared to the design fees for other 2022 distribution system design projects.

In order to expedite this project, the Engineering Department will be requesting approval of the Services Agreements with Nussbaumer and Clarke, Inc. (Contract NC-044) also at the February 10th meeting.

MJQ:jmf

cc: R.Stoll
L.Kowalski
M.Quinn
L.Lester
W.Wheeler
ECWA-223-2102

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

Contract: NC-044 **Project No.:** 202200054
Project Description: Water System Improvements, Town of Amherst.

Item Description:



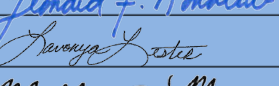




Agreement Professional Service Contract Amendment Change Order
 BCD NYSDOT Agreement Contract Documents Addendum
 Recommendation for Award of Contract Recommendation to Reject Bids
 Request for Proposals
 Other _____

Action Requested:

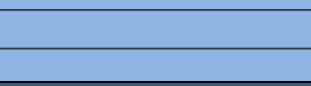
Board Authorization to Execute Legal Approval
 Board Authorization to Award Execution by the Chairman
 Board Authorization to Advertise for Bids Execution by the Secretary to the Authority
 Board Authorization to Solicit Request for Proposals
 Other _____

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr Distribution Engineer		Date: <u>2/1/2022</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>2/2/22</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>02/02/2022</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>02/01/2022</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>2/2/2022</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>02/02/2022</u>
<input checked="" type="checkbox"/> Legal		Date: <u>2/2/2022</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>2/2/22</u>
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Remarks: _____

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

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES**

This is an Agreement effective as of February 10, 2022 (“Effective Date”) by and between

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

hereinafter referred to as the “Authority,” and

NUSSBAUMER & CLARKE, INC.
3556 Lake Shore Road, Suite 500
Hamburg, New York 14219-1494

hereinafter referred to as “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to the installation of new distribution mains and replacement of distribution mains in direct service areas, specifically, the Town of Amherst (the “Project”).

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

ARTICLE 1 – SERVICES OF ENGINEER

1.01 The Project

- A. The Engineer shall provide engineering services for the Project which will consist of the installation of approximately 42,250 linear feet of new distribution waterline on multiple streets in the Town of Amherst. The project shall be designed under a single phase with two construction contracts (two construction seasons).
- B. The Engineer shall provide engineering services for the replacement of existing waterline on the following streets:
 - 1. Ruskin Road (entire length)
 - 2. Coniston Road (entire length)
 - 3. Brantwood Road (entire length)

4. Berryman Drive (entire length)
5. Washington Highway (entire length)
6. Mount Vernon Road (from Main Street to Kensington Avenue)
7. Amherstdale Road (entire length)
8. Concord Place (from Lexington Terrace to Kensington Avenue)
9. Keswick Road (from Leburn Road to Brantwood Road)
10. Leburn Road (from Eggert to East Four Seasons Road)
11. Saratoga Road (from East Four Seasons Road to Brantwood Road)
12. Wansfell Road (entire length)
13. Colonial Drive (from Amherstdale Road to Harlem Road)
14. Dorchester Road (entire length)
15. Hancock Terrace (entire length)
16. Charlestown Road (entire length)
17. Yorktown Road (from Mount Vernon Road to Harlem Road)
18. Lexington Terrace (entire length)
19. Kensington Avenue (from East Treehaven Riad to Concord Place)

C. The Engineer agrees the following conditions apply to all work performed for the Project:

1. A Stormwater Pollution Prevention Plan (SWPPP) will be required for this project.
2. The existing waterlines will be abandoned in place. The sizes and types of the new waterlines will be determined as a part of the design project but will be a minimum 8-inch diameter.
3. All valving, hydrants, abandonments, interconnections, and appurtenances shall be included in the design.

4. The Project includes a hydraulic analysis to demonstrate functionality and redundancy of existing and proposed waterlines in case of a waterline failure in the area.
5. Pipe materials to use, sizes, and interconnection details to various existing pipes will be necessary during the design.
6. Incorporation of all Authority standard details to be included in the drawing set along with completion of all necessary tables and other design information as required.

1.02 Standard of Performance

- A. **Standard of Care:** The Engineer shall be held to the same standard of care applicable to any consultant providing professional engineering and related services. The Engineer shall use the same care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. **Technical Accuracy:** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Engineer's services. The Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Authority-furnished information.
- C. **Special Services:** The Engineer may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
 1. Soils investigations including test borings, pavement cores, and the related analysis;
 2. Detailed mill, shop and/or laboratory inspection of materials and equipment;
 3. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
 4. Air, water, and/or soil sampling, testing, and/or analysis;
 5. Hazardous material testing and assessment;
 6. Wetlands investigations, delineation, and mitigation;

7. Technical assistance with preparing the necessary documents required by the New York State Environmental Quality Review Act (SEQRA) for Type I or Unlisted actions;
 8. Technical assistance with operation and maintenance manuals;
 9. Start-up services relating to equipment to be installed by contractor;
 10. Legal services, as deemed necessary and approved by the Authority's General Counsel, for acquiring lands, easements and rights-of-ways or other Project-related services; or
 11. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officers.
- D. ***Reliance on Others:*** Subject to the standard of care set forth in § 1.02, paragraph (A) of this Agreement, the Engineer and its special services consultants may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers and the publishers of technical standards.
- E. ***Expert Witness Assistance:*** The Engineer agrees to assist the Authority as an expert witness in litigation arising from the project development and construction, even if such assistance is requested by the Authority after the expiration or termination of this Agreement.
- F. ***Compliance with Laws and Regulations, and Policies and Procedures:***
1. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
 2. The Engineer shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Public Authorities Law forms, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
 3. The Engineer 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 Engineer submitted and signed Forms A, B, and C, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.

4. By executing this Agreement, the Engineer affirms under the penalties of perjury that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
 5. The Engineer shall comply with the provisions of the 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 Engineer submitted and signed the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement as Appendix A.
 6. The Engineer shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
 7. The Authority shall provide the Engineer in writing any and all Authority policies and procedures applicable to the Engineer's performance of services under this Agreement. The Engineer agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements; and
 8. If the Engineer, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Engineer's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.
- G. Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Engineer, its employees, and agents shall comply with all health 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.
- H. ***Unknown Conditions:*** The Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. The Authority agrees not to make resolution of any dispute with

the Engineer for payment on any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

- I. **General Conditions:** The general conditions for any construction contract document prepared here under are to be the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, latest Edition) unless both parties mutually agree to use other general conditions.

1.03 Scope of Service: The Engineer shall provide all engineering services necessary to design and install the Project improvements including, but not limited to, the following:

- A. **Preliminary Investigation and Due Diligence:** The Engineer shall provide all engineering service necessary to complete the following services:
 1. Prepare preliminary figures of project area with the use of aerial imagery, parcel lines and right-of-way boundaries (GIS based, not survey), existing water infrastructure (GIS based), and other critical information deemed necessary.
 2. Develop a list of required permits and stakeholders. Hold a stakeholder meeting to detail project and establish any potential project delays. The meeting with the Town of Amherst shall include a project phasing plan to prioritize street sequencing to divide the project into two phases.
 3. The Engineer shall develop and distribute a community outreach mailer which will include a project description, figures, phasing plan, and projected project schedule. The mailer shall also notify the customers of the potential for lead services and provide a description of the Authority’s lead service line program including recommended actions for private services.
- B. **Survey:** Upon authorization from the Authority, the Engineer shall obtain field topographic survey data for the preparation of construction plans required for final design of the project. Survey data is to be according to NAD83 and NAVD88 standards.
- C. **Design:** Upon authorization from the Authority, the Engineer shall complete the following services:
 1. Prepare detailed design drawings, specifications and contract documents (two construction contracts, Contract 1 (2023) and Contract 2 (2024)). Tasks include, but are not limited to:

- a. Attend meetings with the Authority and other related Project entities, as necessary and as required;
- b. Report to the Authority bi-weekly on the progress of the design work via email, with the following information:
 - i. Design work performed during the previous two weeks;
 - ii. Design 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 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.
- c. Review of available drawings and records furnished by the Authority;
- d. Solicitation of all required cost quotations and coordination of subconsultants and/or contractors required to provide any necessary Special Services.
- e. Prepare base drawings in AutoCAD version 2018 from the survey data obtained in the survey phase and the available records furnished by the Authority and other agencies;
- f. Complete a hydraulic analysis to determine the size(s) of the proposed watermains, and recommend waterline sizes to the Authority for review;
- g. Evaluate the use of temporary waterlines to facilitate the installation of the proposed waterlines in areas where extensive rock excavation is anticipated;
- h. Evaluate the use of trenchless technologies such as re-lining and pipe bursting;
- i. Prepare engineering calculations to support the design of the improvements, including related civil, hydraulic, mechanical, electrical, structural, and architectural features of the project;

- j. Submit plans to various utility companies and regulatory agencies to incorporate all existing utilities within the project limits;
 - k. Prepare final plans, profiles, and job specific detail drawings that include editing of the Authority's standard detail drawings where appropriate;
 - l. 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;
 - m. Obtain New York State Prevailing Wage Rates and inserting them into the specifications;
 - n. Prepare a quantity take-off and a construction cost estimate;
 - o. 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;
 - p. Preparing stamped site-specific Maintenance and Protection of Traffic (MPT) plans meeting all New York State Department of Transportation (NYSDOT) standards for inclusion in the bid set,
 - q. 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
 - r. Attend a final design meeting with the Authority;
2. Prepare engineering data, where necessary, for regulatory permit applications as required to obtain local, state, federal and public utility approval for the initiation and construction of the work;
 3. 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;

4. Prepare appropriate documentation for SEQRA and any Stormwater Pollution Prevention Plan (SWPPP) reports including calculations; and
5. Prepare a schedule for the Project utilizing the Authority's standard format. The Project schedule shall be updated as needed.

D. **General Services:** Upon authorization from the Authority, the Engineer shall complete the following services for each construction contract:

1. Coordinate with Avalon Plan Room (Buffalo) to host plans and projects manuals on their site for bidding purposes. Furnish up to ten (10) sets of stamped and signed contract drawings, final specifications, and other documents required for bidding and construction purposes for each contract to ECWA as directed;
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), including benchmarks, reference and axis lines along the routes of the construction or where necessary;
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 Engineer'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 Engineer 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. Check line and grade for preparation of record drawings;
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.

E. ***Resident Inspections:*** Upon authorization from the Authority, the Engineer shall furnish a full-time Resident Project Engineer (RPE) having a minimum NICET II certification or equivalent experience, and who will conduct technical inspection of the construction work relating to the Project;

1. ***Engineer's duties and responsibilities:*** The Engineer, 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 Engineer;
- ii. Exceed limitations of Engineer'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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer appropriate details relative to the test procedures and systems start-ups;
- j. Report to the Engineer and the Authority when clarifications and interpretations of the contract documents are needed and transmit to the contractor clarifications and interpretations as issued by Engineer;
- k. Advise the Engineer 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 Engineer;

1. Shall conduct all necessary Stormwater Pollution Prevention Plan (SWPPP) field inspections as directed by codes and as authorized by the Authority. Inspector shall also provide and maintain all record documentation on site for review using a construction mailbox or other approved method, and
 - m. 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.
- F. **Record Drawings:** Upon authorization from the Authority, the Engineer shall complete the following services:
1. Provide record drawings, including the base mapping, (on AutoCAD Version 2018) of all completed work according to the latest ECWA As-Built Standards. Update the existing Authority valve and hydrant details to reflect the completed work. Furnish one set of mylar transparencies and all AutoCAD files on CD of these drawings to the Authority.
 2. Provide horizontal and vertical coordinates using survey grade Real Time Kinematic (RTK) GPS with horizontal centimeter level accuracy and best possible vertical precision given the environmental conditions during collection for all mainline valves, hydrants, hydrant valves, permanent blow-offs, and meter pits. Coordinates shall be presented as points within an ESRI geodatabase feature class, or provided in Microsoft Excel, Microsoft Access, or .dbf format. At a minimum, the coordinate file shall contain a Northing, Easting, Elevation, horizontal precision, vertical precision, and Description for each feature.
 3. Record Drawings and coordinates to be based on the NY State Plane Coordinate System – West Zone. Data is to be according to NAD83 and NAVD88 datums. Coordinates shall be provided in Microsoft Excel, Microsoft Access, or .dbf format. At a minimum, the coordinate file shall contain a Northing, Easting, Elevation, and Description for each feature.
 4. Submit two stamped/signed full size sets, AutoCAD files, .pdf version of the drawings (with stamp and seal) and Project Manual (with addenda) and GPS coordinates no later than one month after final payment of the Construction Contract is recommended for approval and in accordance with Authority Standards.
- G. **Contractor's Request for Payment:** As a general service to the Authority, the Engineer 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.

- H. ***Certificates, Operation and Maintenance Materials:*** During the course of construction, as a general service, the Engineer 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.

- I. ***Completion:*** Upon authorization from the Authority, as general services, the Engineer 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.

1.04 Contingency Allowance: The Engineer may use the contingency allowance to resolve unforeseen issues encountered during the initial design phase and to allow the incorporation of additional design aspects not included at the inception of the design phase. The Engineer may use the contingency allowance when the original scope of work for the Project was not sufficient to allow for subsequent changes in design to improve the completed Project. The Engineer may use the contingency allowance to accommodate specific design modifications necessary for main alignments, interconnection configurations, and overall project completeness. The Engineer may only use the contingency allowance following review and approval of the Authority's Engineering Department, Chief Operating Officer and Chief Financial Officer.

1.05 Start of Construction: Unless otherwise extended by mutual agreement of the parties, the professional services to be rendered in this Project shall be performed within the following timeframe:

- A. All survey services should be completed by June 1, 2022;
- B. All design services should be completed by December 1, 2022; and

- C. All other services should be completed by the end of construction with an estimated completion date of December 1, 2023 (Contract 1) and December 1, 2024 (Contract 2).

ARTICLE 2 – PAYMENT OF PROFESSIONAL SERVICES

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

- A. ***Preliminary Investigation & Due Diligence:*** For services described under § 1.03, paragraph A of this Agreement, the Authority shall pay the Engineer 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.
- B. ***Survey:*** For services described under § 1.03, paragraph B of this Agreement, the Authority shall pay the Engineer 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.
- C. ***Design:*** For services described under § 1.03, paragraph C of this Agreement, the Authority shall pay the Engineer 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 Engineer 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.
- D. ***General Services:*** For services described under § 1.03, paragraphs D, G, H, and I of this Agreement, the Authority shall pay the Engineer 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.
- E. ***Record Drawings:*** For services described under § 1.03, paragraph F of this Agreement, the Authority shall pay the Engineer 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 Engineer 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.

2.02 Resident Inspection: For services described under § 1.03, paragraph E of this Agreement, the Authority shall pay the Engineer the payable hourly rates listed under § 2.04, paragraph B and direct non-salary expenses. Overtime premium will be paid at 50% of the Resident Inspectors' direct hourly rate in addition to the payable hourly rate listed under § 2.04, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

2.03 Special Services: For services described under § 1.02, paragraph C of this Agreement, the Authority shall pay the Engineer for special services pre-approved by the Authority's Chief Operating Officer in an amount approved by the Authority's Chief Financial Officer.

- A. When the Engineer is performing the special services described in § 1.02, paragraph C of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains special services from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

2.04 Contingency Allowance: For services described under § 1.04 of this Agreement, the Authority shall pay the Engineer for services reviewed by the Authority's Engineering Department and pre-approved by the Authority's Chief Operating Officer in an amount pre-approved by the Authority's Chief Financial Officer.

- A. When the Engineer is performing the services described in § 1.04 of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains services required as part of a contingency item from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

2.05 Engineering Cost Schedule:

A. Engineering Costs:

1. Lump Sum Preliminary Investigation and Due Diligence Cost	\$10,400.00
2. Lump Sum Survey Cost	\$159,800.00
3. Lump Sum Design Cost	\$431,700.00
4. Lump Sum General Service Cost	\$154,700.00
5. Lump Sum Record Drawings Cost	\$39,500.00

TOTAL LUMP SUM COST: \$796,100.00

B. Resident Inspection Costs:

	Payable Hourly Rate	Employee Direct Hourly Rate
NICET II or III Resident Project Engineer (2023)	\$96.00	\$40.00
NICET II or III Resident Project Engineer (2024)	\$99.00	\$41.25

The Dollar amount for Estimated Resident Inspection is based on a fixed hour estimate of 5,500 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 | \$544,500.00 |
| 2. TOTAL NOT TO EXCEED RESIDENT INSPECTION: | \$623,700.00 |

C. *Special Services (not to exceed)* \$100,000.00

D. *Contingency Allowance (not to exceed)* \$100,000.00

E. *Other Costs:*

The following are only applicable to expenses incurred under § 1.02, paragraph C, Special Services, § 1.03, paragraph D, Resident Inspection, and § 1.04, Contingency Allowance, of this Agreement. All other direct non-salary costs are to be included in the lump sum payments as set forth in § 2.01 of this Agreement.

- | | |
|--|----------------------|
| 1. Estimated Mileage (IRS rate) | \$0.56 / mile |
| 2. Estimated Copy Costs (per copy) | \$0.10 / sheet |
| 3. Prints (per print) | \$1.00 / print |
| 4. Subcontractor Expenses, invoiced
as special services | Cost plus 5% maximum |
| 5. Other Direct Non-Salary Costs | At cost |

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

ARTICLE 3 – GENERAL PROVISIONS

3.01 Subcontract and Assignments: The Engineer may not subcontract or delegate any of the work, services, and/or other obligations of the Engineer without the express written consent of the

Authority's Executive Staff. The Authority and the Engineer bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Engineer shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

3.02 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.

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

3.04 Indemnification:

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

3.05 Confidential Information:

- A. In order to assist the Engineer in the performance of this Agreement, the Authority may provide the Engineer with confidential information including, but not limited to information relative to the services to be performed. All information received by the Engineer in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Engineer shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performing of services including but not limited to information relative to the services to be performed. The Engineer shall hold in confidence and not disclose to any person or any entity, any information related to the materials or work produced under this Agreement.

- B. The Engineer shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Engineer shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Engineer's benefit or for the benefit of others shall be permitted.
- C. In no event is the Engineer authorized to disclose confidential information without the prior written approval of the Authority. Engineer may provide such information to its subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- D. The terms of this section shall be binding during and after the expiration or termination of this Agreement.

3.06 Insurance:

- A. The Engineer agrees to secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C.
- B. The Engineer agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Engineer agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Engineer agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email addresses.
- E. The Engineer agrees to require all direct or indirect subcontractors to procure and maintain insurance in accordance with the Insurance Requirements, as set forth in the Addendum Agreement, attached as Appendix D.

3.07 Copyrights, Trademarks and Licensing:

- A. All materials produced under this Agreement, whether produced by the Engineer alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority.

The Engineer shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.

- B. In performing work under this agreement, the Engineer may be granted access to the Authority's GIS data, documents, and other information. The Engineer understands and agrees that the use of such data, documentation and information shall be treated as confidential information and the Engineer shall abide by the terms and conditions of the Confidentiality and Copyright Licensing Agreement, attached and incorporated in this Agreement as Appendix E.

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

3.09 Conflicts of Interest: The Engineer represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Engineer from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Engineer will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Engineer, except to pay for services rendered.

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

3.11 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.

3.12 Independent Status:

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

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

- B. The Engineer is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 2.
- C. Neither the Engineer nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Engineer represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Engineer agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Engineer further represents and warrants that any income accruing to the Engineer and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

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

3.15 Gratuities: The Engineer shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Engineer or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

3.16 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 4 – SEVERABILITY

4.01 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 5 – TERMINATION

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

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

NUSSBAUMER & CLARKE, INC.

By _____
Michael T. Marino, PE, CEO

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of February, 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 Chairman of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2022, before me personally came Michael T. Marino, PE, to me known, who, being by me duly sworn, did depose and say that he resides in _____, New York, that he is the CEO 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.

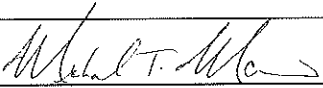
BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:

Affirmed under penalty of perjury this 17th day December, 2021

FIRM NAME Nussbaumer & Clarke, Inc.

ADDRESS 3556 Lake Shore Road, Suite 500

Buffalo, NY ZIP 14219

AUTHORIZED SIGNATURE 

TYPED NAME OF AUTHORIZED SIGNATURE Michael T. Marino, P.E.

TITLE Chief Executive Officer TELEPHONE No. 716-827-8000

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.

Nussbaumer & Clarke, Inc.

(Name of Individual, Partnership or Corporation)

By Michael T. Marino
(Person authorized to sign)
Michael T. Marino, P.E., CEP



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.

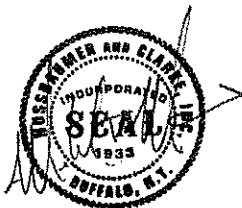
It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before 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.

Nussbaumer & Clarke, Inc.

(Name of Individual, Partnership or Corporation)

By Michael T. Marino
(Person authorized to sign)
Michael T. Marino, P.E., CEO



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: Michael T. Marino Date: 12/17/21

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

Contractor Name: Nussbaumer & Clarke, Inc.

Contractor Address: 3556 Lake Shore Road, Suite 500
Buffalo, NY 14219

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: 12/17/2021

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

Contractor Name: Nussbaumer & Clarke, Inc.

Contractor Address: 3556 Lake Shore Road, Suite 500

Buffalo, NY 14219

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:

Nussbaumer & Clarke, Inc.

Address: 3556 Lake Shore Road, Suite 500, Buffalo, NY 14219

Name and Title of Person Submitting this Form: Michael T. Marino, P.E.

Chief Executive Officer

Contract Procurement Number: _____

Date: 12/17/2021

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: Michael T. Marino Date: 12/17/2021
Signature

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

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: Michael T. Marino Date: 12/17/21

Name: Michael T. Marino, P.E.

Title: Chief Executive Officer

Offerer Name: Nussbaumer & Clarke, Inc.

Offerer Address: 3556 Lake Shore Road, Suite 500

Buffalo, NY 14219

ERIE COUNTY WATER AUTHORITY

APPENDIX B

FIXED RATES FOR SPECIAL SERVICES

APPENDIX B

FIXED RATES FOR SPECIAL SERVICES

Grade	Hourly Billing Rate
Principal Land Surveyor	\$230.00
Senior Corporate Associate	\$168.00
Corporate Associate	\$153.00
Project Manager	\$144.00
Project Engineer	\$124.00
Engineer 2	\$108.00
Engineer 1	\$93.00
Sr. CADD Designer	\$134.00
Survey Technician 2	\$88.00
2 Person Survey Crew (NYS Prev Wage)	\$300.00
Administrative Assistant	\$72.00

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
- Per Project/Job Aggregate Limit Required
- Erie County Water Authority to be scheduled as an Additional Insured

f. Professional Liability:

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

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

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

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

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

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

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

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, Claim Representative/Risk Manager Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER E.T. Clauss & Co., Inc. 735 Delaware Ave. Buffalo, NY 14209 Eric T. Clauss		716-886-6600		CONTACT NAME: Eric T. Clauss PHONE (A/C, No, Ext): 716-886-6600 FAX (A/C, No): 716-886-4128 E-MAIL ADDRESS:	
INSURED Nussbaumer & Clarke Inc. 3556 Lake Shore Road Buffalo, NY 14219-1494				INSURER(S) AFFORDING COVERAGE	
				NAIC #	
				INSURER A: Travelers Indemnity 25658	
				INSURER B: Phoenix 25623	
				INSURER C: Continental Casualty	
				INSURER D:	
				INSURER E:	
				INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	680-5H781188-21	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	BA-8A820065-21	12/31/2021	12/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	CUP-8A821990-21	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N <input checked="" type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below		X	XO-UB-8J694715-21	12/31/2021	12/31/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab			AEH591945570	01/01/2022	01/01/2023	Occ/Agg \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Erie County Water Authority is included as Additional Insured on a primary and non contributory basis (General and Auto Liability) - Reference: ECWA #202200054 - Water System Improvements, Town of Amherst-Distribution System 2022-2024, Contract #NC-044; Nussbaumer File #21J1-0140

APPROVED/MJM

CERTIFICATE HOLDER Erie County Water Authority 295 Main Street, Room 350 Buffalo, NY 14203-2494 X----01	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

<p>1a. Legal Name & Address of Insured (Use street address only)</p> <p>Nussbaumer & Clarke, Inc. 3556 Lake Shore Road Buffalo, NY 14219</p> <p>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy) ECWA #202200054-Water System Improvements, Town of Amherst Distribution System 2022-2024 (NC-044 – 21J1-0140)</p>	<p>1b. Business Telephone Number of Insured 716-827-8000</p> <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured 83-500124</p> <p>1d. Federal Employer Identification Number of Insured or Social Security Number 16-0574460</p>
<p>2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p> <p>Erie County Water Authority Risk Manager 295 Main Street, Suite 350 Buffalo, NY 14203</p>	<p>3a. Name of Insurance Carrier Phoenix Ins Co (Travelers Ins Co)</p> <p>3b. Policy Number of entity listed in box "1a" UB-8J694715-21</p> <p>3c. Policy effective period _____ 12/31/2021 _____ to _____ 12/31/2022 _____</p> <p>3d. The Proprietor, Partners or Executive Officers are <input checked="" type="checkbox"/> included. (Only check box if all partners/officers included) <input type="checkbox"/> all excluded or certain partners/officers excluded.</p>

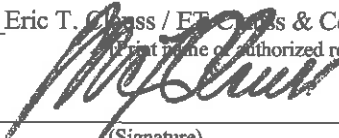
This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under **Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy**). The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The Insurance Carrier will also notify the above certificate holder within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.

Please Note: Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: Eric T. Glass / ET Glass & Co., Inc.
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by:  01/27/2022
(Signature) (Date)

Title: President

Telephone Number of authorized representative or licensed agent of insurance carrier: 716-886-6600

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

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. NC-044, Project No. 202200054, **Water System Improvements, Town of Amherst with Nussbaumer & Clarke, Inc.**, a copy of which may be obtained from **Nussbaumer & Clarke, Inc.**, 3556 Lake Shore Road, Suite 500, Hamburg, New York 14219-1494.

In accordance with the terms and conditions of the Primary Contract No. NC-044 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]

[Insert Name by Representative]

(Print name and title)

(Print name and title)

Date:

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.