



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

November 2, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, Senior Distribution Engineer

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

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

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The year 2022 Capital Budget includes funds for the design of a waterline replacement project in the Town of Amherst. The design work is scheduled for 2022 and the construction work is scheduled for two construction seasons (2023 and 2024). Attached is a copy of the Request for Proposals (RFP). The RFP includes one project for Town of Amherst Distribution System and the detailed description is included in the attached RFP. I recommend that the Request for Proposals be issued to the following consulting engineers:

Barton & Loguidice, PC  
CHA Consulting, Inc.  
DiDonato Associates  
DuBois & King, Inc.  
Erdman Anthony  
Greenman-Pedersen, Inc.  
JM Davidson  
Labella Associates, DPC  
Nussbaumer & Clarke, Inc.  
Wendel  
Wm. Schutt and Associates

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

Note that each of these design contracts will include a \$50,000 contingency item that may be used to address unforeseen items and conflicts that arise during the design phase or to address requests made from time to time from the involved municipalities that may affect the design concepts. Any request for use of the contingency item will be subject to review by the Engineering Department and authorization by the Chief Operating and Chief Financial Officers.

The Engineering Department is requesting a Resolution to Solicit the Request for Proposals. The contact person for the Restricted Period for this RFP will be William W. Wheeler, PE, Distribution Engineer.

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

Funds are available in the 2022 Capital Budget as follows:

- Unit: 2590
- Item 101675 Distribution Project F

MJQ:jmf

Attachments

cc: R.Stoll

L.Kowalski

L.Lester

W.Wheeler

ECWA-928-2201-X-16

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

**Contract:** \_\_\_\_\_ **Project No.:** 202200005  
**Project Description:** Water System Improvements, Town of Amherst Distribution System  
2022-2024

**Item Description:**




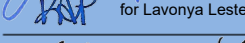



- |   |  |   |                                       |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement                            | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment          | <input type="checkbox"/>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

**Action Requested:**

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

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input checked="" type="checkbox"/> Sr. Distribution Engineer		Date: 11/02/2021
<input checked="" type="checkbox"/> Chief Operating Officer		Date: 11/2/2021
<input checked="" type="checkbox"/> Executive Engineer		Date: 11/02/2021
<input checked="" type="checkbox"/> Director of Administration	 for Lavonya Lester	Date: 11/02/2021
<input checked="" type="checkbox"/> Risk Manager		Date: 11/2/2021
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 11/02/2021
<input checked="" type="checkbox"/> Legal		Date: 11/2/2021

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority		Date: 11/2/21
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**Remarks:** \_\_\_\_\_  
\_\_\_\_\_

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

**REQUEST FOR PROPOSALS  
FOR CONSULTING ENGINEERING SERVICES  
  
WATER SYSTEM IMPROVEMENTS  
TOWN OF AMHERST DISTRIBUTION SYSTEM 2022-2024**

**ECWA Project No. 202200005**

**General**

The Erie County Water Authority (Authority) is seeking Professional Services Proposals for consulting engineering services for the improvements of water distribution system in the Town of Amherst.

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

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

**Project Description**

The Authority is planning to replace several distribution mains over the next three weeks (2022 - 2024). The project is within Town of Amherst which is a Direct Service area owned and operated by the Authority. The projects are scheduled for design in 2022 with construction in 2023 and 2024. The project shall be designed under a single phase with two construction contracts (two construction seasons).

The project will entail the following contract:

Installation of approximately 42,250 linear feet of new distribution waterline on multiple streets in the Town of Amherst. The project will consist of the replacement of existing waterlines on Ruskin Road (entire length), Coniston Road (entire length), Brantwood Road (entire length), Berryman Drive (entire length), Washington Highway (entire length), Mount Vernon Road (from Main Street to Kensington Avenue), Amherstdale Road (entire length), Concord Place (from Lexington Terrace to Kensington Avenue), Keswick Road (from Lebrun Road to Brantwood Road), Lebrun Road (from Eggert Road to East Four Seasons Road), Saratoga Road (from East Four Seasons Road to Brantwood Road), Wansfell Road (entire length), Colonial Drive (from Amherstdale Road to Harlem Road), Dorchester Road (entire length), Hancock Terrace (entire length), Charlestown Road (entire length), Yorktown Road (from Mount Vernon Road to Harlem Road), Lexington Terrace (entire length), and Kensington Avenue (from East Treehaven Road to Concord Place). 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.

### **Scope of Work**

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

### **Information Requests**

All questions and requests for information are to be directed to the designated ECWA Contact Person, William W. Wheeler, PE, Distribution Engineer, at 716-685-8251, email: [wwheeler@ecwa.org](mailto:wwheeler@ecwa.org), in accordance with New York State Finance Law §§139-j and 139-k.

### **Proposal Requirements**

Proposals are to be concise, specific and straightforward. All pertinent information is to be contained in the proposal. The use of artwork, special covers, and extraneous information in the proposals is discouraged. Proposals are to remain valid for a minimum of 60 days. Page limits, for each proposal section, are included below and refer to single sided pages. Each proposal is to include the following:

- Item 1 - Qualifications and related experience, particularly on the type of projects outlined above. Include a minimum of three references for similar work including project name, location, contact person, budget, date of completion and state the relevance to this project.

**Item 1 Page Limit** – 6 pages, including related project summaries. More detailed project descriptions may be provided as an appendix.

- Item 2 - Project understanding, technical approach and detailed scope of services. Identify any suggested revisions to and expand upon the detail of the general scope of work as outlined herein.

**Item 2 Page Limit** – 5 pages.

- Item 3 - Project staffing for all key personnel and subcontractors. Identify the proposed role of all staff proposed for this project. Provide a table of the current and projected workload of each proposed project staff member as it relates to availability to perform the proposed work. Provide the office of each proposed project staff member and the location(s) where work will be performed. Provide resumes of the proposed personnel with listed experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.

**Item 3 Page Limit** – 3 pages. Full resumes for key staff members may be provided as an appendix.

- Item 4 - Qualifications of resident inspector(s) including applicable education, training, experience, and certification.

**Item 4 Page Limit – 2 pages.**

- Item 5 - Work performed for the Water Authority in 2019, 2020, and 2021.

**Item 5 Page Limit – 1 page.**

- Item 6 - Current remaining workload with the Water Authority.

**Item 6 Page Limit – 1 page.**

- Item 7 - Completed Forms regarding Public Authorities Law §§ 2875, 2876, and 2878, and State Finance Law §§ 139-j and 139-k, and Unlawful Discriminatory Practices per Attachment 1, Appendix A (pp. [REDACTED]).

- Item 8 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix C.

- Item 9 - Proposed project schedule, showing duration of all tasks from preliminary design through construction completion.

**Item 9 Page Limit – 1 page.**

- Item 10 - Fee proposal which is to include a breakdown of engineering fees for each task showing personnel, hours, hourly rates (billing and direct labor), overhead rates, and subcontractor costs for each task. Provide information on direct costs including estimated total direct cost for non-lump sum tasks. Note that the direct labor multiplier for resident inspection shall be limited to 2.80. All consultants shall include Special Services lump sum cost of \$50,000 for the purposes of this proposal.

**Item 10 Page Limit – 3 pages.**

Proposals shall include the following form for comparison purposes:

<b>Project 202200005 – RFP for Water System Improvement, Town of Amherst Distribution System 2022-2024</b>	
<b>Preliminary Investigation and Due Diligence</b>	<b>\$</b>
<b>Survey</b>	<b>\$</b>
<b>Design</b>	<b>\$</b>
<b>Construction and General Services</b>	<b>\$</b>
<b>Resident Inspections</b>	<b>\$</b>
<b>Record Drawings</b>	<b>\$</b>
<b>Special Services</b>	<b>\$ 50,000.00</b>
<b>Contingencies</b>	<b>\$ 50,000.00</b>
<b>TOTAL:</b>	<b>\$</b>

**Proposals will be accepted until 4:00 p.m. on December 21, 2021.** Five hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, New York 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: “PROPOSAL – WATER SYSTEM IMPROVEMENTS, TOWN OF AMHERST DISTRIBUTION SYSTEM 2022-2024.”

### **Evaluation and Selection**

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

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

## ATTACHMENT 1

Project No. XXXXXXXX

Contract XX-XX

### PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

This is an Agreement effective as of DATE OF BOARD APPROVAL (“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

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

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. Washington Highway (entire length)
5. Mount Vernon Road (from Main Street to Kensington Avenue)
6. Amherstdale Road (entire length)
7. Concord Place (from Lexington Terrace to Kensington Avenue)
8. Keswick Road (from Leburn Road to Brantwood Road)
9. Leburn Road (from Eggert to East Four Seasons Road)
10. Saratoga Road (from East Four Seasons Road to Brantwood Road)
11. Wansfell Road (entire length)
12. Colonial Drive (from Amherstdale Road to Harlem Road)
13. Dorchester Road (entire length)
14. Hancock Terrace (entire length)
15. Charlestown Road (entire length)
16. Yorktown Road (from Mount Vernon Road to Harlem Road)
17. Lexington Terrace (entire length)
18. 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. 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.
2. All valving, hydrants, abandonments, interconnections, and appurtenances shall be included in the design.
3. 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.

4. Pipe materials to use, sizes, and interconnection details to various existing pipes will be necessary during the design.
5. 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. ***Health Screening Questionnaire:*** Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Engineer, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York or the Authority including, but not limited to, completing an online health screening questionnaire before entering any Authority worksite.
- 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:
  - 4. Prepare detailed design drawings, specifications and contract documents (two construction contracts). 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 2017 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;
- 5. 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;
  - 6. 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;
  - 7. Prepare appropriate documentation for SEQRA and any Stormwater Pollution Prevention Plan (SWPPP) reports including calculations; and
  - 8. 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. Furnish ten (10) sets of contract drawings, final specifications, and other documents to the Authority. Provide electronic files of all documents to Avalon Document Services who will provide contract drawings, final

specifications, and other documents required for bidding and construction purposes. The cost of documents provided through Avalon Document Services shall be paid by the Contractor.

2. Conduct a pre-bid meeting when appropriate;
3. Prepare and distribute addenda;
4. Provide assistance to the Authority in securing bids, tabulating bid results, analyzing bid results, and making recommendations on the award of each construction contract;
5. Provide a pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested parties, conduct a pre-construction meeting and distribute minutes;
6. Supply an approved contractor's schedule for construction of the project;
7. Provide detailed initial stakeout (once only), 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) 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;
- l. 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.

E. ***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 2017) 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.
- F. ***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.
- G. ***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.
- H. ***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 May 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. ***Survey:*** 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. ***Design:*** 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 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.

- C. ***General Services:*** For services described under § 1.03, paragraphs C, F, G and H 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.
- D. ***Record Drawings:*** For services described under § 1.03, paragraph E 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 D of this Agreement, the Authority shall pay the Engineer the direct cost of labor, times a multiplier based on the hours worked at straight time (without overtime premium), direct non-salary expenses, and a fixed fee.

- A. Payment for Resident Inspection labor and expenses will be made monthly based on actual costs.
- B. Payment for the fixed fee will be made monthly based on the proportion of construction completed. Fixed fee shall be billed separately from the Resident Inspection costs.

**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 A of this Agreement.
- B. When the Engineer obtains special services from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

**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 A 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	[Insert\$]
2. Lump Sum Survey Cost	[Insert\$]
3. Lump Sum Design Cost	[Insert\$]
4. Lump Sum General Service Cost	[Insert\$]
5. Lump Sum Record Drawings Cost	[Insert\$]
TOTAL LUMP SUM COST:	
	[Insert\$]

**B. *Resident Inspection Costs:***

	Payable Hourly Rate	Employee Direct Hourly Rate
Resident Project Engineer	[Insert\$]	[Insert\$]

The Dollar amount for Estimated Resident Inspection is based on a fixed hour estimate of 0000 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	[Insert\$]
2. TOTAL NOT TO EXCEED RESIDENT INSPECTION:	[Insert\$]

- C. ***Special Services (not to exceed)*** \$50,000.00
- D. ***Contingency Allowance (not to exceed)*** \$50,000.00

**E. Other Costs:**

The following are only applicable to expenses incurred under § 1.02, paragraph C, Special Services, and § 1.03, paragraph D, Resident Inspection, 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)                            | [Insert\$]           |
| 2. Estimated Copy Costs (per copy)                         | [Insert\$]           |
| 3. Prints (per print)                                      | [Insert\$]           |
| 4. Subcontractor Expenses, invoiced<br>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. 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. The terms of this paragraph shall be binding during and subsequent to the termination of this Agreement.

### **3.06 Insurance:**

- A. The Engineer shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix B.

- B. The Engineer shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Engineer shall provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Engineer shall provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email 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 B-2.

**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 C.

**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

**XYZ ENGINEERS**

By \_\_\_\_\_  
Full Name, President

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

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

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came Full Name, to me known, who, being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_, New York, that he/she is the President of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

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

**APPENDIX A**

**FIXED RATES FOR SPECIAL SERVICES**

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

## APPENDIX B-1

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



## APPENDIX B-2

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

### ADDENDUM AGREEMENT

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

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

#### **Insurance Requirements**

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

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

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

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

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

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

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

**B. Commercial General Liability:**

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

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

The coverage must include the following:

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

hired to perform work by any insured or additional insured pursuant to work that is subject to this Addendum Agreement or in any contract or agreement to which this Addendum Agreement is attached.

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

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

**C. Commercial Automobile Liability Insurance:**

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

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

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

**E. 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 C**

### **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.