

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

Contract: 21-10-02 **Project No.:** 202100002

Project Description: Small Services Contract Area #2,
February 1, 2021 through January 31, 2023

Item Description:








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

Action Requested:

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

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr. Distribution Engineer		Date: <u>2/8/2021</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>2/9/2021</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>02/09/2021</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>02/09/2021</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>02/08/2021</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>02/08/2021</u>
<input checked="" type="checkbox"/> Legal		Date: <u>02/08/2021</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>02/10/2021</u>
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Remarks: Amendment #1.

Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 8, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: Michael Quinn, Senior Distribution Engineer

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

Subject: Small Services Contract, Area #2
February 1, 2021 through January 31, 2023
ECWA Project No. 202100002

On Thursday, October 27, 2020, the Authority authorized the advertisement for bids for the referenced contract (Agenda Item No. 13). On Thursday, January 21, 2021, the Authority awarded the above referenced contract to Russo Development, Inc. (Agenda Item No. 5). The contract became effective on February 1, 2021. Subsequent to advertisement and receiving bids on the Contract, the Authority's insurance consultant, Lawley, recommended that the contract be amended for the purpose of transferring liability arising from a Labor Law claim to downstream contractors and sub-constructors, by requiring them to defend and indemnify the Authority for conduct not related to Authority employees or agents.

Representatives from Russo Development have reviewed and executed the amendment. The incorporation of the amendment does not change the award amount or have any impact on contract cost or scheduled. Therefore, the Engineering and Legal Departments hereby request approval of Amendment No. 1 and execution by the Chairman. Upon execution the amendment will become part of the executed contract.

Attached please find the following documents:

1. ECWA Authorization Form.
2. Amendment No. 1.

MJQ:JRS:jmf

Attachment

cc: L.Kowalski

J.Sylvester

ECWA-799-2101-X-12

**AMENDMENT NO. 1 TO
THE SMALL SERVICES CONTRACT AREA #2**

AMENDMENT, effective February 18, 2021, to the Small Services Contract Area #1,
with an Effective Date of February 1, 2021, by and between

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

hereinafter referred to as the "Authority", and

RUSSO DEVELOPMENT, INC.
3710 Milestrip Road
Blasdell, New York 14219

hereinafter referred to as "Contractor".

WHEREAS, on January 21, 2021, the Authority awarded the Contractor a contract for
Small Services Area #2 (the "Contract"); and

WHEREAS, the Contract was executed on February 1, 2021; and

WHEREAS, in accordance with § 3.02 of the General Conditions of the Contract, the
parties may amend the Contract Documents by written amendment; and

WHEREAS, the Authority wishes to amend the Contract to provide for insurance
requirements in relation to subcontractors hired by the Contractor or its subcontractors; and

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties
agree to the following:

- (1) Paragraph 5.04 *Insurance Requirements* in the Supplementary Conditions – Section
00800 shall be deleted in its entirety and replaced with the following:

"SC-5.04 *Insurance Requirements*

- A. Contractor shall procure and maintain insurance in
accordance with Insurance Requirements, as set forth in the
attached Appendix B-1 and hereby made a part of these
General Conditions.
- B. Contractor shall require all direct and 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 and hereby made a part of these General Conditions.”

- (2) The following paragraph shall be added to the Supplementary Conditions – Section 00800, immediately following paragraph 6.06.H:

“SC-6.06 I Before Work commences, the Owner must review and approve any proposed subcontracting agreement prior to its execution. All Work performed by any Subcontractor must be performed under the supervision and control of the Contractor. As used in this paragraph, a subcontractor is defined in GC 1.01.A.42. Any subcontracting agreement must contain an Addendum Agreement, in the form set forth in Appendix B-2.”


- (3) Appendix B to the Project Manual shall be renamed “Appendix B-1.”
- (4) Appendix B-2, which is attached hereto as Attachment 1, shall be added immediately following Appendix B-1 in the Project Manual.
- (5) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement; and
- (6) The parties agree to accept electronic signature pages, signed in conformity with the Governor’s Executive Order No. 202.8, allowing any notarial action to be performed utilizing audio-video technology.

IN WITNESS WHERETO, the parties hereto have caused this Amendment No. 1 to be signed by their respective duly constituted officers, attested and sealed pursuant to proper authority.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

RUSSO DEVELOPMENT, INC.

By  _____
Joseph L. Russo, II, President

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ____ day of _____, in the year 2021, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in the Amherst, New York, that he is the Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument, and he signed his name thereto by the authorization of the Board of Commissioners for the Erie County Water Authority.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 5 day of February, in the year 2021, before me personally came Joseph L. Russo, II, to me known, who, being by me duly sworn, did depose and say that he resides in ERIE COUNTY that he is the President of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Notary Public

CARL W. MORGAN
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES APRIL 12, 2027

ATTACHMENT 1

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. 202100002, **Small Services Area #2 Contract with Russo Development, Inc.**, a copy of which may be obtained from **Russo Development, Inc., 3710 Milestrip Road, Blasdell, NY 14219**.

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

MISCELLANEOUS:

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

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

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

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

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

**[Insert name of Downstream
Subcontractor]**

[Insert Name of Representative]
(Print name and title)
Date:

[Insert Name by Representative]
(Print name and title)
Date: