



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

CONFIDENTIAL ATTORNEY COMMUNICATION

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

CC: Terrence D. McCracken, Secretary to the Authority
Russell J. Stoll, Chief Operating Officer
Joyce A. Tomaka, Chief Financial Officer
Leonard F. Kowalski, Executive Engineer
Michael J. Quinn, Senior Distribution Engineer

From: Mark S. Carney, General Counsel
Margaret A. Murphy, Senior Associate Attorney

Date: November 7, 2022

Subject: Approval of Professional Service Contract for Appraisal Services
Shenehon Company

The Erie County Water Authority (the "Authority") owns and maintains water infrastructure crossing or running parallel to active railroad lines. Even though it has the power to acquire easements by condemnation, the Authority has historically accepted limited licenses to maintain its infrastructure on or near railroad property. Such railroad licenses, however, give no permanent rights to the Authority and are revocable at any time. In most cases, the Authority pays annual licensing fees to these railroad companies. Over a period of 20 to 50 years, these fees exceed the "just compensation" value to acquire permanent easements.

The Authority would like to acquire easements for railroad crossings traversing property owned by the Buffalo & Pittsburgh Railroad, Inc. ("BPRR") and managed by Genesee & Wyoming Railroad Services, Inc. ("GWRS") in the City of Lackawanna, County of Erie, State of New York.

In the first project (GP-010), the Authority seeks to upgrade a 24-inch water main that has been in existence since 1929. The current water main encroaches approximately 110 feet onto BPRR property near Willet Road. The proposed upgrade would reduce the encroachment by 40 feet, traversing BPRR property by approximately 70 feet. That project is expected to commence construction next year.

In the second project (EA-013), the Authority seeks to upgrade an underground 8-inch water main, in existence since 1902, traversing BPRR property beneath the BPRR tracks near Ridge Road, an encroachment of approximately 160 feet. The proposed upgrade would remove and relocate the water main from beneath the tracks to an elevated bridge owned by the City of Lackawanna, reducing the encroachment by 53 feet and traversing BPRR property by approximately 107 feet. That project is expected to begin construction in 2023.

Both proposed easements relate to century-old public water mains that have never interfered with the operation of this rail line. During this same period, the ownership and management of the subject properties has changed numerous times. Since 1953, the properties have been owned by Buffalo, Rochester and Pittsburg Railway Company, then the Baltimore and Ohio Railroad Company, and finally the Buffalo & Pittsburgh Railroad, Inc.

The Authority has recently received a title search relating to both properties. The Authority is now ready to move forward in acquiring appraisals for these railroad crossings.

As shown in articles written by John T. Schmick and Robert J. Strachota, they have found appraisers working for railroad companies overvalue secondary usage, by not factoring in other secondary users in the valuation. [John R. Schmick, Appraising Public Utility Easements in Railroad Corridor, Right of Way, Mar.-April 2007\) at 31-32.](#) They have successfully assisted utilities in obtaining railroad crossing easements through agreement or when necessary, by condemnation.

John T. Schmick and Robert J. Strachota are associated with the appraisal firm of Shenehon Company in Minneapolis. Due to the firm's experience with railroad easements, the Legal Department recommends retaining its services to obtain appraisals for the properties relating to these two water improvement projects.

The appraiser must visually inspect these railroad crossings and other adjacent comparable properties before issuing any appraisal report. Because winter is coming, time is of the essence. We, therefore, recommend that the Board approve the professional service contract at its next meeting.

Upon the approval of the contract, the Chief Financial Officer will need to provide Shenehon Company a retainer of Nine Thousand Dollars (\$9,000) to cover initial expenses prior to the completion of the final appraisal reports for each railroad crossing. This retainer shall be held in escrow and drawn against in accordance with the provisions of paragraph 2.04 of the contract.

Re: Professional Service Contract for Shenehon Company

November 7, 2022

Page 3

Budget Information (2022 and 2023 Budgets):

- Unit 2595 Engineering/Construction Transmission Mains
- Item No. 101599 GP-010 Transmission Main Replacement

- Unit 2595 Engineering/Construction Transmission Mains
- Item No. 101600 EA-013 Transmission Main Replacement

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

Contract: _____ **Project No.:** _____
Project Description: Approval of Professional Services Contract for Appraisal Services
Shenhon Company

Item Description:

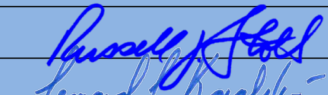
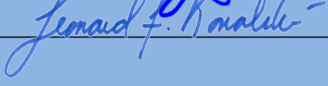
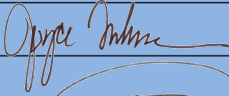

<input checked="" type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input checked="" type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input checked="" 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 type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>11/7/2022</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>11/07/2022</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>11/07/2022</u>
<input checked="" type="checkbox"/> Legal		Date: <u>11/7/2022</u>

APPROVED FOR BOARD RESOLUTION:

<input type="checkbox"/> Secretary to the Authority		Date: <u>11/7/22</u>
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Remarks: _____

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

**PROFESSIONAL SERVICES CONTRACT
for Appraisal Services**

AGREEMENT made this 17th day of November 2022, by and between:

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

hereinafter referred to as the “Authority,” and

SHENEHON COMPANY
88 South 10th Street, Suite 400
Minneapolis, MN 55403
hereinafter referred to as “Consultant.”

WHEREAS, the Authority desires to contract with the Consultant to render professional independent appraisal services upon the terms and for the consideration hereinafter stated,

WHEREAS, the Consultant represents it is properly qualified to render such services, and

WHEREAS, the parties desire to set forth herein the terms and conditions under which the said professional services (the “engagement”) will be furnished,

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties agree as follows:

ARTICLE 1 – CONSULTANT SERVICES

1.01 The recital paragraphs are incorporated as substantive terms and conditions of the Agreement and as representing the parties’ intent.

1.02 Consultant’s Obligations:

A. *Standard of Performance:*

1. *Standard of Care:* The Consultant shall perform its services under this Agreement in a manner consistent with the level of care and skill customarily exercised by other professionals with the same degree of knowledge and experience under similar circumstances.
2. *Technical Accuracy:* The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Consultant’s services. The Consultant shall correct deficiencies in technical accuracy without additional

compensation unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

3. *Professional Opinion:* The Consultant will render no opinion for matters requiring legal or other specialized expertise, investigations, or knowledge beyond that customarily employed by the Consultant as an appraiser in the real estate and business valuations.

B. ***Doing Business Status:*** Prior to the engagement, the Consultant shall obtain the necessary professional license to perform appraisal services in the State of New York and will register with the New York Secretary of State as a foreign business entity authorized to do business in the State of New York.

C. ***Independent Status:***

1. Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant, an owner, member, officer, partner, employee, or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
2. The Consultant is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in this Agreement.
3. Neither the Consultant nor its employees or agents 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.
4. In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state, and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.
5. The Authority understands and agrees the Consultant's services will be delivered in a manner that is independent, impartial, and objective. The Consultant does not warrant the outcome of the engagement, and neither the amount nor payment of fees is contingent on any result.

D. *Equal Employment Opportunity:*

1. The Authority and the Consultant affirm and agree they are equal employment opportunity employers and are in full compliance with all applicable anti-discrimination laws, rules, and regulations.
2. The Authority and the Consultant agree not to harass, discriminate against, or retaliate against any employee of the other because of his or her race, national origin, age, sex, religion, disability, marital status, or other category protected by law; nor shall either party cause or request the other party to engage in such discrimination, harassment, or retaliation. In the event of any complaint of unlawful discrimination, harassment, or retaliation by any employee, the Authority and Consultant agree to cooperate in the prompt investigation and resolution of such complaint.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. The Authority and the Consultant shall comply with all applicable federal, state, or local laws and regulations and all applicable Authority policies and procedures.
2. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. The Consultant will submit and sign the Public Authorities Law forms, copies of which are attached to, and incorporated in this Agreement as Appendix A.
3. The Consultant shall comply with the provisions set forth in State Finance Law §§ 139(j) and 139(k). The Consultant will submit and sign Forms A, B, and C, copies of which are attached to, and incorporated in, this Agreement as Appendix A.
4. The Consultant shall comply with the provisions of the Human Rights Law (Executive Law §290, *et. seq.*) and Labor Law § 201-g of the laws of the State of New York. The Consultant will submit and sign the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement, as Appendix A.
5. When applicable, the Consultant shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
6. The Authority shall provide the Consultant in writing all other Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with its professional practice requirements.

- F. ***Health Screening Questionnaire:*** Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Consultant, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York or the Authority including, but not limited to, completing a health screening questionnaire before entering any Authority worksite.

1.03 Scope of Services:

- A. The Authority has submitted two applications for Utility Occupancy Licenses relating to railroad crossings traversing property owned by the Buffalo & Pittsburgh Railroad, Inc. (“BPRR”) and managed by Genesee & Wyoming Railroad Services, Inc. (“GWRS”) in the City of Lackawanna, County of Erie, State of New York.
1. The first application was submitted on February 23, 2022 (Permit No. BPRR220316975) and resulted in the draft Occupancy License Agreement emailed to the Authority on March 25, 2022 (“Application No. 1” or “Ridge Road Crossing”). In Application No. 1 (relating to ECWA Contract EA-013), the Authority seeks to upgrade an underground 8-inch water main, in existence since 1902, traversing BPRR property beneath the BPRR tracks near Ridge Road, an encroachment of approximately 160 feet. The proposed upgrade would remove and relocate the water main from beneath the tracks to an elevated bridge owned by the City of Lackawanna, reducing the encroachment by 53 feet and traversing BPRR property by approximately 107 feet. Copies of Application No. 1 and the proposed license agreement are attached and made a part of this Agreement in Appendix C.
 2. The second application (Permit No. BPRR220518018) was submitted by the Authority on May 9, 2022. In Application No. 2 (“Willet Road Crossing” and relating to ECWA Contract GP-010), the Authority seeks to upgrade a 24-inch water main that has been in existence since 1929. The current water main encroaches approximately 110 feet onto BPRR property near Willet Road. The proposed upgrade would reduce the encroachment by 40 feet, traversing BPRR property by approximately 70 feet. Copies of Application No. 2 and the proposed license agreement are attached and made a part of this Agreement in Appendix D.
 3. Both applications relate to century-old public water mains that have never interfered with the operation of this rail line.
- B. The Authority has engaged the Consultant to review these proposed licensing agreements for purposes of evaluating whether proposed licensing fees are reasonable, or whether the Authority should “take” by condemnation permanent easements for these railroad crossings.
- C. The Consultant will identify the valuation problems to be solved and determine the appropriate scope of work to produce credible assignment results. Information or conditions discovered during the course of the assignment may cause the Consultant to broaden the scope of its investigation, inspection, or work. The Consultant will

comply with the requirements and guidelines of the Uniform Standards of Professional Appraisal Practice (“USPAP”).

D. *Written Appraisal Report:*

1. *Independent Appraisal:*

- a. To assist the Authority in its evaluation, the Consultant will prepare before and after appraisals in a written Appraisal Report using all relevant approaches to value and estimate the market value of the subject property associated with these railroad crossings. The appraisal will address the diminution in value associated with a permanent easement as well as the value, if any, of any claim for severance damages relating to the partial taking.
- b. The Authority understands the Consultant cannot agree to provide a value opinion that is contingent on a predetermined amount. The Consultant cannot guarantee the outcome of the engagement in advance. The Consultant cannot ensure the opinion of value developed as a result of this Agreement will serve to facilitate any specific objective of the Authority or others or advance any particular cause. The Consultant’s opinion of value will be developed competently and with independence, impartiality, and objectivity.

2. *Intended Use:* The Consultant must prepare an Appraisal Report suitable for use in a condemnation proceeding before the New York State Supreme Court and commenced in accordance with the provisions of the New York Eminent Domain Procedure Law.

3. *Intended Users:* The Consultant will prepare for the Authority a written report, using one or more reporting options identified within the USPAP guidelines, for the purposes of making offer of “just compensation” to BPRR/GWRS to obtain licenses or permanent easements for these railroad crossings. The intended users of the written appraisal report will be the Authority, and in the Authority’s sole discretion, to employees, representatives, or agents of BPRR/GWRS.

4. *Restricted Appraisal Report:* If the Consultant determines that a Restricted Appraisal Report may be used to fulfill its professional obligations under the terms and condition of this Agreement, as well as the intended use of such report, then the Consultant must obtain the prior approval of the Authority’s General Counsel before submitting a Restricted Appraisal Report.

5. *Valuation Date:* The Authority will be responsible for providing the Consultant with the date of the proposed taking, which will be used by the Consultant as the valuation date. The Authority understands that an appraisal of the same property with different valuation dates constitutes a new assignment.

6. *Delivery Date:*

- a. The Consultant shall deliver to the Authority a Final Appraisal Report on or before Friday, April 7, 2023.
- b. The delivery date assumes that the Consultant has been provided with the following:
 - i. Written authorization to proceed and the retainer has been received by the Consultant by the dates specified in this Agreement,
 - ii. All information requested by Consultant is readily available or provided by the Authority in a timely manner, and
 - iii. The Consultant will have ready access to the property to appraised.
- c. The Consultant shall be responsible for providing the Authority with written notice as to any event or occurrence, which could cause a delay in the delivery of the Final Appraisal Report by Friday, April 7, 2023.

7. *Number of Reports:* The Consultant shall provide the Authority with one electronic and two hard copies of the Final Appraisal Report.

G. ***Trial Preparation and Testimony:*** The Consultant will work with the Authority and its attorneys in preparing for any condemnation hearing, including without limitation reviewing appraisal reports submitted by other experts, assisting in the preparation of hearing exhibits, preparing for direct and cross-examination of witnesses, attending and testifying in the hearing.

H. ***Consultant Personnel:*** The Consultant has assigned the following individuals with the following roles and responsibilities relating to this engagement:

1. Robert J. Strachota, MAI, MCBA, CRE ®, President. Mr. Strachota will review, consult and approve the final appraisal reports for each railroad crossing. The Consultant estimates that Mr. Strachota will have a total of 4 or 5 hours of billable time. Mr. Strachota's billing rate is \$595.00 per hour.
2. Christopher J. Stockness, Senior Vice President, Managing Director. Mr. Stockness will review, consult, and verify the contents of the interim appraisal reports. The Consultant estimates that Mr. Stockness will have a total of 5 or 6 hours of billable time. Mr. Stockness's billing rate is \$325.00 per hour.
3. John T. Schmick, Vice President, Director of Special Projects. Mr. Schmick will be the Authority's principal contact, as well as the principal investigator and appraiser on these projects. He will be responsible for all field work,

collection of data relating to comparable properties and other research, and the drafting of interim and final appraisal reports. Mr. Schmick will also be responsible for retaining the services of a local appraiser who will work at Mr. Schmick's direction in the initial research relating to these railroad crossings, prior to any field investigation. Mr. Schmick's billing rate is \$250.00.

ARTICLE 2 – PAYMENT OF PROFESSIONAL SERVICES

2.01 The Consultant shall submit periodic invoices to the Authority, detailing the hours and description of the services rendered to the Authority, as well as expenses incurred, in a form acceptable to the Authority's Chief Financial Officer and/or Comptroller. The invoice shall breakdown the number of hours spent on each railroad crossing, using the following project numbers: Ridge Road Crossing (EA-013) and Willet Road Crossing (GP-010).

2.02 Costs for the services provided under this Agreement shall be billed at the following rates:

Robert J. Strachota	\$595.00 per hour
Christopher J. Stockness	\$325.00 per hour
John T. Schmick	\$250.00 per hour

2.03 The Consultant shall keep accurate records and books of all disbursements, or expenses made or incurred by the Consultant pursuant to the services provided under this Agreement.

- A. Payments for services will be based on detailed actual hours worked with a total cost not to exceed \$24,000.
- B. The Consultant will be reimbursed for all incidental expenses such as courier services, travel expense, document preparation, copying, and other related expenses. Expenses will be reimbursed upon presentation of paid receipts with a total cost not to exceed \$3,500.
- C. The Authority will not be charged for expenses relating to licensing and other approvals required to do business in the State of New York.
- D. The Consultant may seek reimbursement for special services billed to the Consultant relating to any research assistance provided by a local appraiser. The Consultant will be reimbursed upon the presentment of paid invoices in an amount not to exceed \$4,000.

2.04 **Retainer:**

- A. Before any services can be provided, the Consultant requires an advanced retainer fee of Nine Thousand Dollars (\$9,000.00). This retainer fee will be held in escrow, deposited into a non-interest-bearing account, and will remain the property of the Authority until the Consultant has submitted an invoice to the Authority, thereby

allowing the Consultant to draw against the funds held in escrow. The Consultant will note the balance held in escrow on each invoice submitted to the Authority.

- B. The Authority will pay the retainer fee within 10 days after the Authority's Board of Commissioners authorizes by resolution the execution of this Agreement, or within 10 days after the Consultant has submitted proof to the Authority it has been given the permission to do business in the State of New York, whichever date is later.

2.05 **Audit:** The Authority shall have the right, upon notice given at least ten (10) business days in advance, to audit any invoice, including invoices submitted by the Consultant, before or after payment of such invoice is made.

- A. The period of audit shall be limited to three (3) years following the payment of such invoice.
- B. During such an audit, the Authority will review the direct costs, disbursements and expenses made or incurred in connection to the services provided to the Authority pursuant to this Agreement.
- C. During such an audit, the Consultant will provide the Authority with the books and records relating to direct costs, disbursements and expenses listed on such invoice(s).

2.06 Upon receipt of a properly submitted invoice, the Authority will remit payment within 45 calendar days. All invoices shall be emailed to accountspayable@ecwa.org.

2.07 **Collection Fees:** If the Authority defaults on its payment obligation, the Consultant shall have the right to reasonable attorney fees and expenses relating to the collection of any just debt.

ARTICLE 3 – GENERAL PROVISIONS

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

3.02 **Amendments:** Any modification or variation from the terms of this Agreement shall be in writing, authorized by a resolution of the Board of Commissioners of the Authority, and signed by all parties to be effective.

3.03 **Right to Terminate:**

- A. The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days written notice. The Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs. The Authority will be responsible for the payment of all fees and expenses incurred prior to the service of the termination notice.

B. The Consultant reserves the right to terminate

3.04 **Liability Limitation:** In consideration of the performing the services rendered at the fee charged, the Authority agrees to limit the liability of the Consultant to five (5) times the fee amount paid or \$100,000, whichever is less.

3.05 **Insurance:**

- A. The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix B.
- B. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant shall provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email addresses. does not include non-cash compensation or commissions, signing bonuses, and other candidate non-cash, based salary incentives.

3.06 **Warranties:** The Consultant warrants the services will be performed in a professional manner in accordance with established appraisal industry standards. The Consultant makes no further warranty of any kind, expressed or implied.

3.07 **Confidentiality:**

- A. To assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this Agreement, is considered confidential. The Consultant 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.
- B. The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No

other use of the confidential information whether for the Consultant's benefit or for the benefit of others shall be permitted.

- C. All data and information in any format submitted or made available to the Consultant by the Authority or any other person on behalf of the Authority, unless otherwise publicly available, and all data and information, and other work developed by the Consultant under this Agreement, shall be utilized by the Consultant solely in connection with the performance of services under this Agreement only and shall not be made available by the Consultant to any other person.
- D. In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. Consultant may provide such information to its Authority-approved subcontractors for the purpose of performing 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 following the termination of this Agreement.

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

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

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

3.07 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.

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

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

3.09 **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 If any provision of this Agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this Agreement shall not be affected thereafter.

ARTICLE 5 -- DURATION

5.01 This Agreement shall remain in effect until the services described in Article 1 of this Agreement have been completed, or otherwise terminated by the terms of this Agreement.

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

IN WITNESS WHEREOF, the parties do hereby enter and execute this Agreement effective **17th day of November, 2022**, the date of the Authority’s adopting resolution authorizing its execution.

ERIE COUNTY WATER AUTHORITY

By: _____
Jerome D. Schad, Chairman

SHENEHON COMPANY

By: _____
Robert J. Strachota, MAI, MCBA, CRE®
President

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

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

Notary Public

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss:

On the _____ day of _____, in the year 2022, before me personally came Robert J. Strachota, to me known, who, being by me duly sworn, did depose and say that he resides in _____ Minnesota, that he is a President of Shenehon Company; and that he was authorized by said company to sign this instrument.

Notary Public

APPENDIX A

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

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

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

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

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

NOTICE
(Penal Law § 210.45)

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

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

FIRM NAME _____

ADDRESS _____

_____ ZIP _____

AUTHORIZED SIGNATURE _____

TYPED NAME OF AUTHORIZED SIGNATURE _____

TITLE _____ TELEPHONE No. _____

APPENDIX A

SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

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

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

- (a) Such person, and any firm, partnership, or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation termination shall be paid.

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)
(SEAL)

APPENDIX A

SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

§2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

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

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

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury,

APPENDIX A

head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

APPENDIX A

FORMS A, B, and C

STATE FINANCE LAW REQUIREMENTS

The Erie County Water Authority (the “Authority”) is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). When the Authority seeks to procure goods or services by means of an Invitation or Notice to Bid, or a Request for Proposals, the State Finance Law imposes certain restrictions on anyone who may wish to offer goods or services to the Authority as an Offerer, as that term is defined in §§ 139-j(1)(h) and 139-k(1)(h).

During the Restricted Period, as defined in §§ 139-j(1)(f) and 139-k(1)(f), when bids or proposals are being solicited, the Authority will designate a contact person with whom the Offerer may contact for information and other authorized purposes as set forth in §139-j of the State Finance Law. The designated contact is identified in the Notice to Bidders, or in the Request for Proposal. An Offerer is authorized to contact the Authority’s designated contact for such purposes as set forth in § 139-j(3).

Pursuant to the State Finance Law, the Authority is also required to make certain findings before making any determinations as to the qualifications and eligibility of those seeking a procurement contract, as that term is defined in State Finance Law §§ 139-j(1)(g) and 139-k(1)(g). Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings of non-responsibility occurring within a 4-year period, the Offerer will be debarred from obtaining procurement contracts with the Authority. Further information about these requirements can be found in §§139–j and 139–k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

The following forms will be used by the Authority to make such findings:

Form A - Offerer’s Affirmation of Understanding of, and Agreement to Comply with, the Authority’s Permissible Contact Requirements During the Restricted Period.

Form B - Offerer’s Certification of Compliance with State Finance Law.

Form C - Offerer’s Disclosure of Prior Non-Responsibility Determinations.

APPENDIX A

FORM A

Offerer's Affirmation of Understanding of, and Agreement to Comply with, the Permissible Contact Requirements During the Restricted Period

Instructions:

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a written affirmation of understanding and agreement to comply with procedures regarding permissible contacts with the Authority in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

APPENDIX A

FORM B

**Offerer's Certification of Compliance
With State Finance Law §139-k(5)**

Instructions:

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a Certification that the information submitted for a procurement contract is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to sign the Certification, under penalty of perjury, and to provide the Certification to the Authority. The Certification should be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

Offerer Certification:

I certify that all information provided to the Authority relating to the awarding of a procurement contract is complete, true, and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

APPENDIX A

Page 1 of 3

FORM C

Offerer's Disclosure of Prior Non-Responsibility Determinations

Background:

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §§139-j(1). And §139-k(1). These sections also set forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement, as that term is defined in State Finance Law §§ 139-j(1)(b) and 139-k(1)(b), within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

Instructions:

The Authority must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Authority conducting the Governmental Procurement no later than when the Offerer submits its proposal.

APPENDIX A

FORM C (Continued)

Offerer's Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

- 1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No
Yes

If yes, please answer the next questions:

- 2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No
Yes
- 3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle) No Yes
- 4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

APPENDIX A

FORM C (Continued)

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

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

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

By: _____ Date: _____
Signature

Name: _____

Title: _____

APPENDIX A

CONTRACT TERMINATION PROVISION

Instructions:

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

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

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

Sample Contract Termination Provision

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

APPENDIX A

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

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

Offerer Statement:

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

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

By: _____ Date: _____

Name: _____

Title: _____

Offerer Name: _____

Offerer Address: _____
