

**REQUEST FOR PROPOSALS
FOR CONSULTING ENGINEERING SERVICES**

WATER STORAGE TANK INSPECTIONS

ECWA Project No. 202300023

General

The Erie County Water Authority (Authority) will accept proposals for consulting engineering services for the inspection and evaluation of various water storage tanks.

The Authority reserves the right to modify or cancel this Request for Proposals (RFP) and/or the project; 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 the project or to reimburse any costs associated with the preparation of any proposal.

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

Project Description

The project consists of engineering services for the inspection and evaluation of the following water storage tanks located throughout the Authority's system. The work is scheduled to be performed in 2023, 2024 and 2025.

Tank Name	Scheduled Inspection	Owner	Construction	Type	Capacity (MG)	Tank Diam. (ft)	Tank Height (ft)
Ball North	2023 Fall	ECWA	Concrete	Ground	4.2	56	42
East Church	2023 Fall	Town of Eden	Steel	Standpipe	0.2	22	74
Emery	2023 Fall	ECWA	Concrete	Ground	0.44	65	18
Guenther	2023 Fall	ECWA	Steel	Ground	5	150	40
Van de Water North Equalization Tank ⁽¹⁾	2023 Fall	ECWA	Steel	Ground	0.38	40	61
Sturgeon Point East Clearwell	2023 Fall	ECWA	Concrete	Ground	5.3	160	36
Ball South	2024 Spring	ECWA	Concrete	Ground	4.2	56	42

Eden 3	2024 Spring	Town of Eden	Steel	Torospheroid	0.2	36	95
Sturgeon Point West Clearwell	2024 Spring	ECWA	Concrete	Ground	5.3	160	36
Trevett	2024 Spring	ECWA	Steel	Standpipe	0.12	17	72
Van de Water South Equalization Tank ⁽¹⁾	2024 Spring	ECWA	Steel	Ground	0.38	40	61
East and West	2024 Fall	Town of West Seneca	Steel	Spheroid	0.5	59	130
Pleasantview	2024 Fall	ECWA	Steel	Torospheroid	1.5	97	144
Van de Water Sludge Holding Tank	2024 Fall	ECWA	Steel	Ground	0.25	40	28
Ward	2024 Fall	ECWA	Steel	Ground	0.5	42	49
Wehrle	2024 Fall	ECWA	Steel	Hydropillar	1.5	86	163
Benning	2025 Spring	Town of Orchard Park	Steel	Standpipe	0.25	28	56
Scherff	2025 Spring	Town of Orchard Park	Steel	Standpipe	0.25	31	45
Veteran's Park	2025 Spring	ECWA	Concrete	Ground	4	187	20
Windom	2025 Spring	ECWA	Concrete	Ground	15	231	48

⁽¹⁾Cone-shaped bottom

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, Clayton J. Johnson, PE, Production Engineer at 716-345-5076 (email: cjohnson@ecwa.org), in accordance with New York State Finance Law §§139-j and 139-k. A pre-proposal meeting will not be held for this project, but individual site inspections can be requested by prospective bidders.

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. Each proposal is to include the following:

- Item 1 - Qualifications and related experience, particularly on the inspection and evaluation of steel and concrete water tanks. Consultant shall demonstrate completion of directly applicable projects involving the key personnel included in Item 3 below. Include a maximum of five references (related projects) 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, of the five reference projects, 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. Identify innovative ideas to improve upon the quality of the work, reduce schedule and optimize costs.
 - 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 an organizational chart showing all of the proposed personnel with a brief summary of experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.
 - Item 3 Page Limit – 5 pages; Resumes for key staff members may be provided as an appendix; limit each staff member's resume to 2 pages.
- Item 4 - Qualifications of engineer(s) and inspector(s) including applicable education, training, experience, and certification, including qualifications related specifically to water storage tank inspections and evaluations.
 - Item 4 Page Limit – 2 pages, including inspector's resume.
- Item 5 - Work performed for the Water Authority in 2020, 2021, and 2022.
 - 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. 31-43).
- Item 8 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix C.
- Item 9 - Fee proposal which is to include a detailed breakdown of engineering fees for each task and subtask showing personnel (including title/grade), hours, hourly rates (billing and direct labor), overhead rates, and subcontractor costs for each task. Include multiple subtask items as necessary to convey effort provided by individual personnel. As this project will continue through 2025, identify any anticipated rate increases over the duration of the project.

Provide an estimate of cashflow (by month or quarter) for engineering fees over the duration of the project.

Provide information on direct costs including estimated total direct cost for non-lump sum tasks. Note that the direct labor multiplier for inspection shall be limited to 2.80.

All consultants shall include a Special Services lump sum cost of \$75,000 for the purposes of this proposal. Provide fixed hourly billing rates for applicable personnel to be included in the Professional Services Contract as Appendix A.

- Item 9 Page Limit – 3 pages.

Proposals shall include the following table for comparison purposes:

Project 202300023 RFP for Water Storage Tank Inspections				
Tank Name	FEES			
	Inspection, Records, Documentation, and Report	Tank Cleaning and Disinfection	Structural Analysis	Fee per Tank
Ball North				
East Church				
Emery				
Guenther				
Van de Water North Equalization Tank				
Sturgeon Point East Clearwell				
Ball South				
Eden 3				
Sturgeon Point West Clearwell				
Trevett				
Van de Water South Equalization Tank				
East and West				
Pleasantview				
Van de Water Sludge Holding Tank				
Ward				
Wehrle				
Benning				
Scherff				
Veteran's Park				
Windom				
Subtotal =				
Special Services				\$75,000
TOTAL ENGINEERING COST =				

Proposals will be accepted until 4:00 p.m. on Wednesday, August 23, 2023. Three hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, NY 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: “PROPOSAL: WATER STORAGE TANK INSPECTIONS”

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. Professional Service Contracts will then be executed pending successful negotiation and authorization by the Water Authority Board of Commissioners. All firms submitting a proposal will be notified of the selection results. It is anticipated that the selection process will be completed in September 2023, and that the agreement will be executed in October 2023.

ERIE COUNTY WATER AUTHORITY

REQUEST FOR PROPOSALS – ATTACHMENT 1

SAMPLE AGREEMENT

ATTACHMENT 1

Project No. XXXXXXXX
Contract XX-XX

PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

This Agreement, effective as of DATE OF BOARD APPROVAL (“Effective Date”), is
by and between

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

hereinafter referred to as the “Authority,” and

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

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to creation of engineering reports summarizing the water storage tank inspections (the “Project”).

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

ARTICLE 1 – THE PROJECT

1.01 The Engineer shall provide engineering services for the inspection and evaluation of twenty existing water storage tanks at various locations. The Engineer shall oversee all work involved in this Project including, but not limited to:

- A. Structural investigations;
- B. Safety investigations;
- C. Sanitary investigations;
- D. Coating systems investigations; and
- E. Security investigations.

1.02 The Engineer shall inspect and evaluate the water storage tanks at the following locations:

- A. Ball North and South Tanks - 1201 Sweethome Rd., Buffalo, NY 14228

- B. East Church Tank - 3252 East Church St., Eden, NY 14057
- C. Emery Tank – 1797 Center St., Aurora, NY 14052
- D. Guenther Tank – 3478 Pleasant Ave., Hamburg, NY 14075
- E. Van de Water North/South Equalization and Sludge Tanks – 3750 River Rd., Tonawanda, NY 14150
- F. Sturgeon Point East and West Clearwells - 722 Sturgeon Point Rd., Derby, NY 14047
- G. Eden 3 Tank – 4210 East Eden Rd., Eden, NY 14057
- H. Trevett Tank – 10566 Trevett Rd., Concord, NY 14141
- I. East and West Tank – 1750 East and West Rd., West Seneca, NY 14224
- J. Pleasantview Tank – 12 Pleasantview Dr., Lancaster, NY 14086
- K. Ward Tank – east of 7173 Ward Rd., Orchard Park, NY 14127
- L. Wehrle Tank – 450 Wehrle Dr., Amherst, NY 14225
- M. Benning Tank – south of 5685 Benning Rd., Orchard Park, NY 14127
- N. Scherff Tank – north of 6086 Scherff Rd., Orchard Park, NY 14127
- O. Veteran’s Park Tank – 777 Niagara St., Tonawanda, NY 14150
- P. Windom Tank – 6007 Lake Ave., Orchard Park, NY 14127

ARTICLE 2 – COMPLIANCE STANDARDS

2.01 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 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.

2.02 Compliance with Laws and Regulations, and Policies and Procedures

- A. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. 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.
- C. 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 is attached to, and incorporated in, this Agreement as Appendix A.

- D. 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.
- E. The Engineer 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. 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.
- F. 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.
- G. 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.
- H. 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.

2.03 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, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using a personal protective face mask, or complying with any testing or vaccination requirements, before entering any Authority worksite.

2.04 **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.

ARTICLE 3 – SCOPE OF SERVICE

3.01 Kick-off Meeting. Prior to rendering any professional services, the Engineer will conduct a kickoff meeting with Authority personnel as referenced in § 3.03(B) of this Agreement.

3.02 Special Services. The Engineer shall provide all engineering services necessary to inspect and evaluate the water storage tanks including, but not limited to, the following:

A. ***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. Wetlands investigations, delineation, and mitigation;
6. Cathodic protection systems;
7. Hazardous material testing and assessment, including TCLP testing of tank sediment;
8. Disposal of tank sediment characterized as hazardous;
9. Vacuum truck removal of sediment;
10. Underwater evaluations by a Certified Commercial Diver;
11. Remotely operated vehicle (ROV) inspection services;
12. Providing thawing/deicing equipment;
13. Potable water tank rental;
14. 2" – 6" centrifugal or submersible pump rental;
15. Disinfection of tanks that are not included in this scope of work.

16. Assistance with permit and other applications with the New York State Department of Environmental Conservation (DEC);
17. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
18. Magnetic flux leakage detection, magnetic particle testing, penetrant testing, radiographic testing, and vacuum box testing;
19. Certified welding inspection services;
20. Ground penetrating radar;
21. Inspection and evaluation of additional water storage tanks;
22. If, after the inspection is performed, additional inspection (at the Authority's discretion) is required due to the condition of the tank then additional cleaning and rigging services shall be provided under this item.
23. Extra travel and subsistence for the Engineer and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority;
24. 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
25. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officer.

B. **Reliance on Others.** Subject to the standard of care set forth in § 2.01, paragraph A, 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.

C. **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.

3.03 **Project Coordination:**

A. Review available as-built drawings and prior tank inspection reports for use as comparison and for determining inspection locations. Discuss tank history with

Authority staff prior to inspecting tank. The historical information shall be reviewed prior to the kickoff meeting for each round of tank inspections.

- B. Coordinate inspection schedule with the Authority for each round of inspections. The Authority will remove from service and drain each tank as required to complete field assessment. The Authority will open the manway and reinstall the gasket and bolts after the inspection. Consultant shall be responsible for cleaning tank prior to inspection and then cleaning and disinfecting tank after the inspection.
- C. Perform inspections and evaluations for all tanks, but excluding any tanks deleted by the Authority. It is anticipated that there will be four (4) mobilizations required to complete the inspections. This work shall be completed by the Spring of 2023.
- D. Tank inspection reporting format, forms, and checklist shall be reviewed and approved by the Authority prior to performing the inspections. Report format, forms, and checklist should be prepared by consultant prior to the kick-off meeting and presented to the Authority at the kick-off meeting.
 - 1. An executive summary shall be provided for each tank's inspection report. The executive summary shall include, at a minimum, the following:
 - a) Original tank construction date.
 - b) Most recent previous inspection date.
 - c) Most recent tank rehabilitation/recoating year.
 - d) Summary statement regarding condition of tank exterior.
 - e) Summary statement regarding condition of tank interior.
 - f) Summary statement regarding ANSI/OSHA and safety-related deficiencies.
 - g) Summary statement regarding AWWA and operational deficiencies.
 - h) Summary statement regarding the tank foundation.
 - i) Timeframe (No. of years) for when tank repairs should begin.
 - j) Estimated cost of tank repairs.

3.04 Water Storage Tank Inspections:

- A. Tank inspections and evaluations shall be completed in accordance to API 653 (latest edition), all applicable AWWA standards, OSHA standards and as specified herein. The interior and exterior of each tank shall be inspected.
- B. Tank inspection shall consist of a careful study of tank's interior, exterior, and accessories. Inspections shall include: structural conditions, safety conditions, sanitary conditions, coating system conditions, and security conditions. All necessary surfaces on the tank shall be accessed by rigging and rappelling the interior and exterior as required by the condition and design of each tank.
 - 1. Structural investigations include, but are not limited to:
 - a) Anchor bolts.
 - b) Foundations.

- c) Riser/shell steel.
 - d) Spider rods.
 - e) Roof trusses.
 - f) Weld seams.
2. Safety investigations include, but are not limited to:
 - a) All applicable regulations (OSHA, AWWA, FAA, etc.)
 - b) Ladders.
 - c) Fall prevention.
 - d) Guardrails.
 - e) Access manways.
 - f) Confined space.
 - g) Radiation.
 3. Sanitary investigations include, but are not limited to:
 - a) Roof openings.
 - b) Access hatches.
 - c) Low spots on roofs.
 - d) Vents.
 - e) Overflows.
 4. Coating system investigations include, but are not limited to:
 - a) Type and general condition.
 - b) Approximate percentage and type of coatings system failure.
 - c) Adhesion.
 - d) Coating system thickness.
 - e) Extent of pitting damage.
 - f) Heavy metal presence.
 5. Security investigations include, but are not limited to:
 - a) Physical deterrents: fences, locks, barricades, lighting, ladder guards, and vents.
 - b) Telemetry: alarm systems and control systems.
- C. Entire tank floor and first shell ring (at a minimum) on steel tanks shall be cleaned using a high-pressure pump, as necessary, to remove any sediment, scaling, etc. to allow for a thorough inspection of the surfaces. Entire tank floor and fifteen (15) ft. of tank wall of concrete tanks shall be cleaned using a high-pressure pump, as necessary, to remove any sediment, scaling, etc. to allow for a thorough inspection of the surfaces. The Authority will provide drums to the Contractor, the Contractor will place the sediment in that is removed from the bottom of the tank into the drums, and the Authority will dispose of the material.

- D.** The tanks shall be inspected, from several standpoints, to provide an accurate evaluation of its condition and to identify sanitary, safety and/or structural deficiencies and to provide detailed recommendations for required remedial work.
- E.** Assess condition of interior and exterior tank surfaces and evaluate effect of corrosion. The evaluation shall include an analysis of the roof, floor, nozzles, vents and shell for the intended design conditions and determine the tank's suitability for service, based on the existing roof, floor and shell plate thickness and material. The analysis shall take into consideration all anticipated loading conditions, including pressure due to fluid static head, internal and external pressures, wind loads, seismic loads, roof live loads, nozzle loads, settlement, and attachment/accessories loads. All assumptions used in the analysis shall be provided to the Authority in detail for review and approval.
- F.** Personnel Requirements: Inspections shall be performed by an inspection team consisting of a Team Leader (TL) and an Assistant Team Leader (ATL). The use of additional ATL's may be required based on the complexity and size of the tank being inspected. All field personnel assigned to the project must be physically capable of performing the task associated with their positions. All field personnel must be able to work at heights, on ladders, on scaffolding and on aerial lifts, or other tank inspection access equipment. They must be able to climb, work in confined spaces, and be able to work under adverse weather conditions as required. All field personnel shall satisfy OSHA requirements.
1. The Team Leader shall have, at a minimum, the following certifications:
 - a) API 653 – Mechanical Integrity
 - b) NACE Level II/III – Coatings Inspection
 2. The Assistant Team Leader(s) shall have, at a minimum, one of the following certifications:
 - a) NACE Level II/III – Coatings Inspection
 - b) SNT-TC-1A – Nondestructive
 - c) API 653 – Mechanical Integrity
 - d) AWS CWI - Mechanical Integrity
 - e) NICET Level III – General Construction

All work performed by field personnel shall be reviewed by a New York State Licensed Professional Engineer (PE) with a minimum of five (5) experience with the design, construction, and maintenance of water storage tanks. The PE is responsible for checking all field reports for completeness, accuracy and conformance with this document. The PE must be present at a minimum of one tank inspection during each round of tank inspections to observe the inspection work being performed. The PE shall verify that the TL and ATL(s) meet the requirements listed above.

G. Tank Inspections: Exterior.

1. Exterior of tanks may be inspected while the tank is in service. Coordinate with Owner to determine what equipment would not be accessible while the tank is in service.
2. Inspect, record and evaluate the tank site and special considerations, such as, but not limited to security, site drainage, electrical service, and proximity to buildings.
3. Discuss repair history with Authority staff to determine if there have been any signs of leakage since the last inspection; especially in areas of seams, foundations, welds, and/or rivets.
4. Inspect, record and evaluate concrete surfaces for spalling, cracking, exposed reinforcing wire, evidence of leakage, and other items requiring rehabilitation.
5. Inspect, record and evaluate tank foundation for spalling, cracking, settling, etc. Note evidence of anchor bolt corrosion, distortion or loose/missing anchor bolt nuts.
6. Inspect, record and evaluate tank roof and shell for distortion, bulging, blistering, leakage, pitting, corrosion of outside stiffeners and wind girders, cracking of attachment welds, etc.
7. Inspect, record and evaluate tank ladders, fall protection systems, walkways, platforms, and/or stairways for corroded, bent, broken, or missing structural parts; loose or missing bolting; worn stair treads and/or rungs; safety latches are in place and are operational.
8. Inspect, record and evaluate tank nozzles and penetrations for distortion, bulging, blistering, leakage, corrosion, and pitting.
9. Inspect, record and evaluate tank grounding connections, as applicable, to ensure good electrical contact and condition of grounding bolts, bands, straps and rods.
10. Inspect, record and evaluate the overall coating condition with description of chalking, peeling, coating faults, along with dry film thickness and overall coating adhesion conditions to the surface. Determine the anticipated remaining useful life of the coating system(s).
 - a) Estimate percentage of coating failure and corrosion on all coated surfaces.
 - b) Test adhesion of coating as per ASTM D3359.
11. Summarize and describe the overall configuration and coatings history of the tank based on available record information and site observations.

12. Obtain paint chip samples of the existing coating system(s) and analyze for lead, cadmium, and chromium content. Repair coating as directed by ECWA.
13. Inspect, record and evaluate all equipment, antennas, cables, mounting brackets, penetrations, etc. of the various cellular phone companies. Consultant must be cognizant about working in close proximity to cellular antennas and other communication antennas.

H. Tank Inspections: Interior.

1. Upon tank draining, inspect and record evidence of excessive sedimentation prior to removal.
2. Interior and exterior tank surfaces and tank internal parts shall be cleaned, as needed, prior to the inspection. All scale, etc. shall be removed so that a thorough inspection may be conducted, and satisfactory operation can be achieved. All floor welds and the bottom 4-feet of all shell welds shall be cleaned.
3. Baffles and attachments shall be inspected for deterioration, damage, and/or proper installation.
4. Inspect, record and evaluate tank nozzles and penetrations for distortion, bulging, blistering, leakage, corrosion, and pitting.
5. Inspect, record and evaluate tank roof for mechanical integrity and leaks.
6. Based on visual observation, ultrasonic thickness measurements shall be taken at plates with evident (at the Authority's discretion) corrosion and pitting. At a minimum, obtain ultrasonic thickness measurements, for each steel tank, as follows:
 - a) A minimum of three (3) thickness readings, per shell plate, shall be obtained from ten (10) shell plates.
 - b) A minimum of four (4) shell plate thickness readings shall be obtained from each heavily corroded shell plate.
 - c) Thickness readings shall be made about the internal circumference of each accessible nozzle. Nozzles having too small an internal diameter to permit access shall be tested from the outside of the tank.
 - d) A band of ultrasonic thickness measurements shall be taken around the tank circumference, 2-inches above the bottom to shell weld, spacing the measurements four (4) per shell plate, at a minimum. Note additional measurements shall be obtained in all areas of apparent corrosion, or as the Inspector determines necessary to determine tank's overall suitability for service.

- e) A band of ultrasonic thickness readings shall be taken around the tank circumference, 3-feet above the bottom to shell weld, spacing the readings two (2) per shell plate. Note additional measurements shall be obtained in all areas of apparent corrosion, or as the Inspector determines necessary to determine tank's overall suitability for service.
 - f) Tank regions, including regions of the bottom, shell, roof or nozzles, that exhibit visually detectable metal loss shall require multiple ultrasonic thickness measurements to determine the thinnest area within the region and to define the dimensions of the affected region. Localized thinning shall be evaluated per API 653.
 - g) A representative number of areas on the floor shall be scanned (ultrasonic) to determine if soil side corrosion is occurring.
 - h) Tank ultrasonic thickness measurements shall also be recorded and located on a drawing(s) of the tank. For badly pitted areas, pit gauges shall be used to determine the depths of the deepest pits within each steel wall and floor plate. Location of pit filler shall be identified and located on drawing of the tank. Localized and random pitting shall be evaluated per API 653. ECWA will provide all existing tank drawings, as required.
- 7. Inspect, record, and evaluate all tank roof components, including roof supports, roof trusses, vents and rafters, for mechanical integrity, corrosion, leaks, evidence of buckling, distortion, and/or deterioration. Thickness measurements of apparently badly corroded areas shall be obtained using ultrasonic thickness equipment. A minimum of four (4) measurements per roof plate (exterior side) shall be obtained. Additional measurements shall be obtained to the extent necessary to determine tank's overall suitability for service.
 - 8. Inspect, record and evaluate all tracks, rollers, ladders, rolling ladders for mechanical integrity, corrosion/deterioration, leaks, evidence of buckling, distortion, and/or deterioration. Internal ladders or "painters ring" shall not be used for inspection purposes.
 - 9. Take elevation measurements (survey) around the tank circumference and across the tank diameter, in accordance with API 653 Appendix B, to gain a baseline for tank bottom settlement.
 - 10. Inspect, record and evaluate all concrete surfaces for spalling, cracking, exposed reinforcing wire, evidence of leakage, wall/floor seam condition, and other items requiring rehabilitation.
 - 11. Inspect, record and evaluate the overall coating condition with description of chalking, peeling, coating faults, along with dry film thickness and overall coating adhesion conditions to the surface. Determine the anticipated remaining useful life of the coating system(s).

- a) Estimate percentage of coating failure and corrosion on all coated surfaces.
12. Summarize and describe the overall configuration and coatings history of the tank based on available record information and site observations.
13. Obtain samples of the existing coating system(s) and analyze for lead, cadmium, and chromium content.
14. Obtain measurements and identify components, configuration, and condition of the tank overflow system. A hands-on inspection of the tank overflow system is required.
15. After the interior inspection is complete, disinfect the tank according to AWWA Standard C652-02 Method 2. The Authority will be responsible for filling each tank, collecting bacteriological samples, and having the samples analyzed. If the bacteriological tests fail, the Contractor is responsible for all costs associated with draining/refilling the tank, disinfecting the tank, any additional bacteriological testing, and any other work necessary to bring the tank into compliance with applicable regulations.

I. Records, Documentation and Report Format

1. Provide a drawing(s) of each tank which accurately illustrates the identifying points which have been marked on the tank. Inspection findings shall be reported relative to their location in/on the tank, with sufficient detail to permit relocation and evaluation of the reported condition(s). Provide additional notes, sketches, or documents appended to the report, as necessary, to more fully describe the inspection findings.
2. Provide photographic record of observations to adequately portray the overall findings of the inspection of each tank.
3. Provide recommendations, as necessary, for repairs and modifications to bring each tank inspected into compliance with present AWWA, OSHA, NYSDOH, DHS, FAA and sanitary standards and regulations.
4. Identify and prioritize the need for structural, site, and coating repairs. If applicable, offer alternatives that may extend the tank's useful life prior to the need for major rehabilitation.
5. Identify items to be detailed in the preparation of contract documents for repairs and rehabilitation and provide recommendations and alternatives for repair methods and techniques. Provide details of the advantages and disadvantages of each alternative given.

6. Evaluate impact of coatings containing lead, cadmium, or chromium, if found, on repair procedures.
7. Prepare present worth cost analyses for the recommended repairs, modifications, and painting options. Provide the replacement cost of the tank for cost comparison.
8. Provide three copies and one (1) electronic copy of the Draft Engineering Report for each tank for review and comment by the Authority, including the observations and recommendations for rehabilitation and maintenance as well as budget cost estimates.
9. Provide three copies and one (1) electronic copy of the Final Engineering Report for each tank that addresses the Authority's comments from the draft reports. Reports shall be certified by a New York State Licensed Professional Engineer (PE) familiar with the design, construction, and maintenance of water storage tanks. See paragraph 3f for personnel requirements.

K. Equipment Required for Inspection Services:

1. Listed below are the minimum equipment requirements. The list is not intended to be all inclusive:
 - a) Portable generator and extension cords.
 - b) Adequate lighting.
 - c) 2-inch submersible pump.
 - d) Pressure washer with hoses. Authority will provide water source and power if available.
 - e) Extension ladder – variable lengths shall be available for tank sizes listed above.
 - f) Scaffolding – stationary or rolling. If the use of an extension ladder is not feasible, scaffolding shall be used.
 - g) Manlift - If the use of an extension ladder isn't feasible.
 - h) PPE.
 - i) Climbing gear and rappelling equipment.

3.05 Tank Structural Analysis: a structural analysis of the tank shall be performed if the inspection of the tank deems that further evaluation is required. Written authorization from the Authority shall be required prior to performing the structural analysis.

- A. Assess condition of interior and exterior tank surfaces and evaluate effect of corrosion.
- B. The evaluation shall include an analysis of the roof, floor, nozzles, vents and shell for the intended design conditions and determine the tank's suitability for service, based on the existing roof, floor and shell plate thickness and material.

- C. The analysis shall take into consideration all anticipated loading conditions, including pressure due to fluid static head, internal and external pressures, wind loads, roof live loads, nozzle loads, settlement, and attachment/accessories loads.
- D. All assumptions used in the analysis shall be provided to the Authority in detail for review and approval.

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

- A. All services under § 3.01, § 3.02, § 3.03, § 3.04, and § 3.05 of this Agreement shall be completed and delivered to the Authority by December 31, 2025. The inspections are complete when the final reports are submitted to the Authority;

ARTICLE 4 – PAYMENT OF PROFESSIONAL SERVICES

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

- A. **Inspections:** For services described under § 3.01 through § 3.04 of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.
- B. **Structural Analysis:** For services described under § 3.05 of this Agreement, the Authority shall pay the Engineer a lump sum which will include all expense, labor and cost associated with this service. Payment will be made monthly based on the percentage of completion up to 100% of the total lump sum amount.

4.02 **Tank Cleaning and Disinfection:** For services described under § 3.04.H.2 and § 3.04.H.15 of this Agreement, the Authority shall pay the Engineer the payable hourly rates listed under §4.04, paragraph B and direct non-salary expenses. Overtime premium will be paid at 50% of the Contractor's direct hourly rate in addition to the payable hourly rate listed under §4.04, paragraph B. Payment for cleaning and disinfection services and expenses will be made monthly.

4.03 **Special Services:** For services described under § 3.02, paragraph A 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 § 3.02, paragraph A of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.

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

4.04 Engineering Cost Schedule:

A. *Engineering Costs:*

1. Lump Sum – Inspection Costs < insert cost >
2. Lump Sum – Structural Analysis Costs* < insert cost >

*Service, per tank, will only be used if requested by the Authority.

TOTAL LUMP SUM COST: < insert cost >

B. *Tank Cleaning and Disinfection Costs:*

	Payable Hourly Rate ⁽¹⁾
< Insert Staff Title >	< insert cost >
< Insert Staff Title >	< insert cost >

⁽¹⁾The Dollar amount for Estimated Contractor Cleaning and Disinfection costs is based on a fixed hour estimate of 500 hours of < insert staff title > during the duration of the project. Payment will be made for actual hours worked during the duration of tank interior cleaning and disinfection. Any equipment necessary for tank cleaning and disinfection shall be included in the staff hourly rate. Actual hours will vary based on production rates of the Contractor during work, unforeseen circumstances that develop during work and weather conditions.

1. Estimated Contractor Cleaning and Disinfection Costs < insert cost >
2. TOTAL NOT TO EXCEED CONTRACTOR
CLEANING AND DISINFECTION COSTS:

< insert cost >

C. *Special Services (not to exceed)* \$75,000.00

D. *Other Costs:*

The following costs are only applicable to expenses incurred under § 3.02, Special Services, and § 3.04.H.2 and § 3.04.H.15, of this Agreement. All other direct non-salary costs are to be included with the costs set forth as lump sum payments listed in § 4.04, Paragraph A of this Agreement.

1. Estimated Mileage (IRS rate) < insert cost >/mile
2. Estimated Copy Costs (per copy) < insert cost >/sheet

- | | |
|--|-----------------------|
| 3. Prints (per print) | < insert cost >/print |
| 4. Subcontractor Expenses, invoiced
as special services | Cost plus 5% maximum |
| 5. Other Direct Non-Salary Costs | At cost |

4.05 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, the Engineer agrees to refund the excess.

ARTICLE 5 – GENERAL PROVISIONS

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

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

5.03 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. The Engineer shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

5.04 Indemnification:

- A. To the fullest extent permitted by law, the 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.

5.05 Confidential Information:

- A. 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 performance of services including but not limited to information relative to the services to be performed.
- 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. The Engineer may provide such information to its subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- D. The terms of this section shall be binding during and after the expiration or termination of this Agreement.

5.06 Insurance:

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

5.07 Copyrights, Trademarks and Licensing: The Engineer agrees all materials or work product 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 after the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.

5.08 New York Law and Jurisdiction: Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the 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.

5.09 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 being subject to further obligations under its terms, except for the payment of services already rendered by the Engineer. So long as the Engineer reports such a conflict as required by this section, the Engineer will have no further obligations for completing the scope of services under the terms of this Agreement.

5.10 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.

5.11 Entire Agreement: This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No subsequent agreement made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound by such agreement.

5.12 Independent Status:

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the 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 4.
- 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.

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

5.14 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 circumstances 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.

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

ARTICLE 6 – SEVERABILITY

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

ARTICLE 7 – TERMINATION

7.01 The Authority reserves the right to terminate this Agreement in the event it is found that the Certification filed by the 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

< insert name of Engineer >

By _____

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2023, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

Notary Public

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

On the _____ day of _____, in the year 2023, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in _____, New York, that he is the _____ of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Notary Public

APPENDIX A
RESPONSE TO RFP
REQUIRED FORMS

< Consultant's RFP response including the following required forms to be inserted here >

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

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

- (1) The prices in this bid or proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/respondent or with any competitor; and
- (2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder/respondent and will not knowingly be disclosed by the bidder/respondent prior to opening, directly or indirectly, to any other bidder/respondent or to any competitor; and
- (3) No attempt has been made or will be made by the bidder/respondent to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTICE
(Penal Law § 210.45)

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

Affirmed under penalty of perjury this _____ day _____, 20

FIRM NAME _____

ADDRESS _____

_____ ZIP _____

AUTHORIZED SIGNATURE _____

TYPED NAME OF AUTHORIZED SIGNATURE _____

TITLE _____ TELEPHONE No. _____

SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

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

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

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

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

§2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

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

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

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

FORMS A, B, and C

STATE FINANCE LAW REQUIREMENTS

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

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

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

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

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

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

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

FORM A

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

Instructions:

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

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

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

FORM B

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

Instructions:

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

Offerer Certification:

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

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

FORM C**Offerer's Disclosure of Prior
Non-Responsibility Determinations****Background:**

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

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

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

Instructions:

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

FORM C (Continued)**Offerer's Disclosure of Prior Non-Responsibility Determinations**

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

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
- No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
- No Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle) No Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

FORM C (Continued)

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

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

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

By: _____ Date: _____
Signature

Name: _____

Title: _____

CONTRACT TERMINATION PROVISION

Instructions:

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

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

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

Sample Contract Termination Provision

<p>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.</p>

**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: _____

APPENDIX B

FIXED RATES FOR SPECIAL SERVICES

Grade	Hourly Billing Rate

APPENDIX C-1

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

WATER STORAGE TANK INSPECTIONS

ECWA RFP No. 202300023

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 lifetime use of vendors "Product" and/or applicable statute of limitation. These requirements include but are not limited to the minimum 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. **C 105.2 required**

b. **New York Disability Benefits Liability:** Statutory coverage if New York State domiciled employees are used. **DB 120.1 Required.**

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

f. Professional Liability:

- \$5,000,000. Per Claim
- \$5,000,000. Aggregate

Certificates of Insurance to be provided to the Authority prior to start of work as follows: ACORD 25 including copy of Additional Insured Endorsement

Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

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

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract.

Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than “A-” with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name the Authority, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies.

Any liability coverage on a “claims made” basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

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

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

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, Claims 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 C-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-	\$100,000.000
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 \$1,000,000.00 per occurrence and a \$1,000,000.00 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. 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.

F. 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
Downstream or Upstream Subcontractor]

[Insert name of
Subcontractor]

[Name of Representative]

(Print name and title)

Date:

[Insert Name by Representative]

(Print name and title)

Date: