

**REQUEST FOR PROPOSALS
FOR CONSULTING ENGINEERING SERVICES**

**VAN DE WATER TREATMENT PLANT AND
RAW WATER PUMP STATION HVAC UPGRADES**

ECWA Project No. 202000034

General

The Erie County Water Authority (Authority) is seeking Professional Services Proposals for consulting engineering services for upgrades and improvements to the existing HVAC systems at the Van De Water Treatment Plant (WTP) and the Van De Water Raw Water Pump Station (RWPS).

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

The Request for Proposal (RFP) is being conducted pursuant to the New York State Finance Law §§139-j and 139-k and the Erie County Water Authority's 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

In general, the existing Heating, Ventilation and Air Conditioning (HVAC) systems at the WTP and RWPS consist of the original equipment installed when the facility was constructed. The systems at each location are operational, however due to their age, increasing maintenance requirements, and existence of more advanced and efficient heating and cooling technology the Authority would like to replace the existing equipment to provide greater reliability, operational flexibility, automation/control and redundancy.

The HVAC systems, included in this request for proposals (RFP), are located throughout the main WTP and the RWPS. Primary components of the HVAC system in the WTP include: four (4) boilers, five (5) thermostatically controlled heating and ventilating units, four (4) hot water circulation pumps and six (6) gravity louvers located on the roof above the high service pump floor, the roof above the Switchgear room, and the roof above the raw water pipeline. Additional gravity louvers are located on the roof above the raw water pump floor in the RWPS.

To heat the WTP, one to four hot water pumps may be used to pump hot water from the boiler to each heating and ventilating unit. Each heating and ventilating unit is equipped with multi-position actuators that open or close dampers based on the amount of hot air needed in the facility. The damper opening is varied based on a thermostat located in the general vicinity to the area specified to be heated or cooled, or a Direct Digital Control System. In some locations, the heating and ventilating unit actuators can be adjusted automatically by plant staff via switches near the main

heating unit. The WTP has many gravity louvers that allow hot and cold air to escape from the facility. WTP staff must access the roof and manually open or close the louvers to operate them.

The WTP and RWPS are located in two separate geographic locations. The RWPS is an unmanned facility, and presently the HVAC functions in the pumping station cannot be controlled remotely from the WTP.

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, Michael J. Quinn, PE at 716-685-8203, in accordance with New York State Finance Law §§139-j and 139-k. An optional pre-proposal meeting will be held on July 7, 2020 at the Van de Water Treatment Plant (3750 River Road, Tonawanda, NY 14150) at 10:00 a.m., local time, to view the work locations and discuss the project.

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. Each proposal is to include the following:

- Item 1 - Qualifications and related experience, particularly on the type of projects outlined above. Include a minimum of three references for similar work including project name, location, contact person, budget, date of completion and state the relevance to this project.
- Item 2 - Project understanding, technical approach and detailed scope of services. Identify any suggested revisions to and expand upon the detail of the general scope of work as outlined herein.
- Item 3 - Project staffing for all key personnel and subcontractors. Identify the proposed role of all staff proposed for this project. Provide a table of the current and projected workload of each proposed project staff member as it relates to availability to perform the proposed work. Provide the office of each proposed project staff member and the location(s) where work will be performed. Provide resumes of the proposed personnel with listed experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.
- Item 4 - Qualifications of resident inspector(s) including applicable education, training, experience, and certification.

- Item 5 - Work performed for the Water Authority in 2017, 2018, and 2019.
- Item 6 - Current remaining workload with the Water Authority.
- Item 7 - Completed Section 139 of State Finance Law per Attachment 1, Appendix C (pp. 40-48).
- Item 8 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix B.
- Item 9 - Proposed project schedule, showing duration of all tasks from preliminary design through construction completion.
- Item 10 - Fee proposal which is to include a breakdown of engineering fees for each task showing personnel, hours, hourly rates (billing and direct labor), overhead rates, and subcontractor costs for each task. Provide information on direct costs including estimated total direct cost for non-lump sum tasks. Note that the direct labor multiplier for resident inspection shall be limited to 2.80. All consultants shall include Special Services lump sum cost of \$20,000 for the purposes of this proposal.

Proposals shall include the following form for comparison purposes:

Project 202000034 – RFP for Van de Water WTP and Raw Water Pump Station HVAC Upgrades	
Basis of Design	\$
Design	\$
Construction and General Services	\$
Resident Inspections	\$
Record Drawings	\$
Authority Program/Procedure Updates	\$
Special Services	\$ 20,000.00
TOTAL:	\$

Proposals will be accepted until 4:00 p.m. on July 21, 2020. Five hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, 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 – VAN DE WATER TREATMENT PLANT AND RAW WATER PUMP STATION HVAC UPGRADES.”

Evaluation and Selection

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

The final scope of work and fee for the engineering services for the project will be negotiated with the selected firm(s). Professional Service Contracts will then be executed pending successful negotiation and authorization by the Water Authority Board of Commissioners. All firms submitting proposals will be notified of the selection results. It is anticipated that the selection process will be completed in July 2020, and that the agreement will be executed in August 2020.

ATTACHMENT 1

Project No. _____

Contract _____

PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

This Agreement, effective as of _____, 2020 (“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

Consultant Name

Consultant Address

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to upgrades and improvements to the Van de Water Treatment Plant and Raw Water Pump Station HVAC Upgrades (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 Authority intends to conduct a series of improvements related to the HVAC system of the Van de Water Treatment Plant (“WTP”) and Raw Water Pump Station (“RWPS”). This project will involve six distinct components all of which will be included in a single set of design documents to be constructed under this Agreement.

A. Van de Water WTP Boiler Room End Suction Pumps

The four (4) end suction centrifugal pumps located in the boiler room have reached the end of their useful life. The pumps are used to circulate hot water from the boiler to the WTP’s heating and ventilating units. Pump improvements include, but are not limited to:

1. Replace four (4) end suction centrifugal pumps and motors. Capacity as required for associated HVAC equipment.
2. Replace four (4) pressure gauges, associated isolation valves, and pressure snubbers on pump branch piping.
3. Demolish existing pumps and associated equipment.

B. Van de Water WTP Gravity Louvers and Actuators

Gravity louvers (dampers) are located in multiple places throughout the WTP roof. The current equipment is manually operated and requires operators to access the roof to open/close the louvers. Louver improvements include, but are not limited to:

1. Replace six (6) gravity louvers located throughout the WTP, including three (3) above the raw water pipeline, two (2) above the high service pumping equipment, and one (1) above the sludge processing equipment (“Sludge Plant”).
2. Provide six (6) fiberglass opposed blade dampers and 2-position actuators.
3. Provide switches for operating actuators.
4. Provide options for preventing water from impacting electrical equipment within the WTP Electrical Switch Gear Room. Currently the rooftop louver is located directly above electrical equipment.

C. Raw Water Pumping Station Gravity Louvers

Gravity louvers are located on the roof of the RWPS. The current equipment is manually operated and requires operators to travel to the pumping station site and obtain access the roof to adjust the existing louvers. Louver improvements include, but are not limited to:

1. Replace two (2) gravity louvers located within the RWPS.
2. Investigate automation options for remote operation of the gravity louvers.

D. Direct Digital Control Package

Heating and ventilating units are located throughout the WTP and RWPS. The heating and ventilating units are controlled by thermostats throughout the facilities. The front vestibule area of the main plant which includes one (1) heating and ventilating unit is currently controlled by a Direct Digital Control system (“DDCS”). The boiler, and one (1) heating and ventilating unit in the RWPS is currently being added to the DDCS under a separate project.

The Direct Digital Control Package shall be independent of the existing WTP and RWPS SCADA system. Upgrades include, but are not limited to:

Van de Water WTP:

1. Extend the DDCS to include eight (8) heating and ventilating units.
2. Provide new control valves and actuators for five (5) hot water coils.
3. Provide five new control damper actuators.
4. Relocate piping to accommodate new control valves.

5. Relocate and replace defective thermostats as necessary, approximately 14 throughout both the WTP and Pumping Station.

Van de Water RWPS:

1. Extend the DDCS to control the remaining heating and ventilating units not included in the current construction project.
2. Provide new control valve for hot water coil.
3. Relocate piping to accommodate new control valve.
4. Relocate and replace defective thermostats as necessary, approximately 14 throughout both the WTP and RWPS.

E. **Server Room HVAC**

Climate control in the WTP server room is currently performed by two HVAC units located on each end of the server racks. This equipment provides inadequate control of both temperature and humidity in the room, critical to the long-term health to the computer equipment housed there.

Upgrades include, but are not limited to:

1. Replace two (2) existing rack HVAC units with units of capacity to adequately control temperature and humidity in the WTP server room.
2. Install multiple thermostats as necessary to control the two (2) proposed new HVAC units.
3. Extend the Direct Digital Control Package to include the two (2) proposed new HVAC units.

F. **Drive (VFD) Room HVAC**

The WTP Variable Frequency Drive (VFD) room contains five (5) VFD units. These VFD's generate a significant amount of heat during operation. Currently, the cooling method consists of drawing ambient air in through the drive unit of the VFD. This air is drawn through the basement of the facility, and then into the VFD room. Due to air temperature fluctuations throughout the year and the higher chlorine concentration in the air, the VFD's have been experiencing corrosion and improper cooling. There are two existing openings in the WTP VFD room roof which were formerly skylights which may provide access for rooftop HVAC units. Upgrades include, but are not limited to:

1. Calculate heat loads in the WTP VFD room in order to specify a sufficient heating and cooling system utilizing the two existing roof openings and rooftop HVAC units.

2. Ensure the requirement of (N+1) redundancy is met with the proposed HVAC system.
3. Design and install an (N+1) redundant rooftop HVAC unit heating and cooling system using the existing roof openings.
4. Ensure the system, and the VFD room is protected from water ingress.

ARTICLE 2 – COMPLIANCE STANDARDS

2.01 Standard of Performance

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by the Engineer under this Agreement will be the 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 Forms A, B, and C, a copy of which is attached to, and incorporated in, this Agreement as Appendix C.
- C. 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.
- D. The Engineer shall comply with the provisions of State Finance Law § 139-L of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Sexual Harassment Bidding Certification, a copy of which is attached to, and incorporated in, this Agreement, as Appendix C.
- E. 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.
- F. 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.

- G. 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 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 to take place at the same time as the site walkthroughs referenced in § 3.02 of this Agreement.

3.02 Preliminary Investigation and Due Diligence. The Engineer shall provide all engineering services necessary to design and install the Project improvements including, but not limited to, the following:

A. *Basis of Design (“BOD”):*

1. In contemplation of the basis of design, the Engineer shall:
 - a. Review reports, drawings, specifications, and other records furnished by the Authority.
 - b. Verify site conditions at each location.
 - i. Complete a site walkthrough and conduct meetings with operating staff to discuss current operational strategies and challenges.
 - ii. Review applicable operating records.
 - iii. Determine the condition of critical assets and document the need for rehabilitation, remaining life, and required replacement.
 - iv. Specifically note the condition of equipment to remain in relation to the improvements described in § 1.01 of this Agreement.

- c. Identify locations of suspected hazardous materials (e.g., lead paint, asbestos, etc.) or concerning environmental conditions, based on known/assumed age and type of construction at each location.
 - i. If material sampling and testing becomes necessary, such sampling and testing would be considered a Special Service, subject to the provisions of paragraph B of this Agreement.
 - d. Prepare preliminary design documents for the new HVAC systems at each location. Preliminary design documents should:
 - i. Include final design criteria including but not limited to equipment selection, component capacity, and compliance with applicable regulatory/code requirements and industry best practices.
 - ii. Include preliminary design drawings including:
 - (a) Plan views showing general layout and sizing of proposed equipment.
 - (b) Details required to relay the design intent.
 - (c) Process and Instrumentation Drawing.
 - iii. Include an equipment/motor list for all electrical equipment and identify code compliance requirements for electrical components.
 - iv. Include product information including manufacturer's cut sheets, dimensional information, and installation guidance.
 - v. Include a process control narrative for operation and monitoring of the system.
 - vi. List the required technical specifications for final design.
 - vii. Describe the construction sequencing in conjunction with the continuation of plant operations.
 - viii. State an opinion of probable project costs.
 - ix. Set forth a Project schedule identifying the duration of final design, bid, and construction phases.
2. The Engineer shall prepare a draft BOD Report, setting the factors considered by the Engineer including, but not limited to, those specifically identified in paragraph A, subparagraph 1 of this section. The Engineer

shall supply the Authority with ten (10) copies of the draft BOD Report with supporting documentation, along with a digital .pdf file of the draft BOD Report with supporting documentation.

3. The Engineer shall meet with the Authority to review the draft BOD Report and will incorporate all comments into a final version. The Engineer shall supply the Authority with ten (10) copies of the final BOD Report with supporting documentation, along with a digital .pdf file of the final BOD Report with supporting documentation.
4. The Engineer will prepare a Project schedule identifying the duration of final design, bid, and construction phases.
5. The Engineer will conduct at least two (2) review meetings with the Authority.

B. *Special Services:*

1. The Engineer may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
 - a. Soils investigations including test borings, pavement cores, and the related analysis;
 - b. Detailed mill, shop and/or laboratory inspection of materials and equipment;
 - c. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
 - d. Air, water, and/or soil sampling, testing, and/or analysis;
 - e. Hazardous material testing and assessment;
 - f. Wetlands investigations, delineation, and mitigation;
 - g. Technical assistance with operation and maintenance manuals;
 - h. Start-up services relating to equipment to be installed by the contractor;
 - i. Technical assistance with preparing any necessary documents if required by the New York State Environmental Quality Review Act (SEQRA) for Type I or Unlisted actions

- j. Technical assistance with preparing with Storm Water Pollution Prevention Plans (SWPPP), if required;
 - k. Assistance with permit and other applications with the New York State Department of Environmental Conservation (DEC);
 - l. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
 - m. Laboratory testing, jar testing, and pilot testing;
 - n. Extra travel and subsistence for the Engineer and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority;
 - o. 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
 - p. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officers.
2. **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.
3. **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 Design: The Engineer will complete design documents for the improvements of the HVAC system improvements at each location. It is anticipated the work at each location will be designed and bid together as a single project.

A. *Detailed Design Drawings, Specifications and Contract Documents:* Upon authorization from the Authority, the Engineer shall complete the following design services:

- 1. Prepare detailed design drawings and specifications at 60%, 90%, and 100% design stages including, but not limited to:
 - a. Preparing engineering calculations to support the design of the HVAC improvements, including related civil, mechanical,

electrical/ instrumentation, structural, and architectural features of the project;

- b. Preparing draft and final plans and job specific detail drawings that include editing of the Authority's standard detail drawings where appropriate;
 - c. Using the quantity take-off method, provide detailed measurements of the Project's components, materials, and construction labor to determine a scope of work required and a cost estimate of the construction project;
 - d. Submitting plans to various utility companies and regulatory agencies to incorporate all existing utilities within the project limits;
 - e. Preparing engineering data, where necessary, for regulatory permit applications as required to obtain local, state, federal and public utility approval for the initiation and construction of the work;
 - f. Submitting the BOD Report with contract specifications, drawings, application forms and fees to Erie County Health Department for approval;
 - g. Preparing any necessary and applicable documentation for compliance with New York State SEQR, including Type II declaration;
 - h. Preparing and updating, as needed, a schedule for the Project utilizing the Authority's standard format; and
 - i. Preparing base drawings in AutoCAD version 2018 from the available records furnished by the Authority and other agencies.
2. Prepare contract documents including, but not limited to:
- a. Preparing contract specifications with edited Authority's standard "front end" specifications and standard technical specifications where appropriate;
 - b. Preparing additional technical specifications as required;
 - c. Obtaining New York State Prevailing Wage Rates and inserting such rates into the specifications;
 - d. Assisting the Authority with assembling known reports and drawings of existing conditions, and identifying the technical data contained in such reports and drawings upon which bidders may rely; and

- e. Using the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 1996 Edition) or other general conditions mutually agreed to by the Authority and the Engineer and setting forth the exceptions to these general conditions, specific to this Project.

B. *Design Phase Meetings and Reports.* The Engineer shall:

1. Conference with the Authority and other related Project stakeholders, as necessary and as required;
2. Report to the Authority bi-weekly on the progress of the design work via email, with the following information:
 - a. Design work performed during the previous two weeks;
 - b. Design work scheduled for the next two weeks;
 - c. Schedule status/deliverable status, attaching an updated project schedule in Microsoft Project format, identifying all project milestones and current project status;
 - d. Budget status/percent completed;
 - e. Input needed from the Authority or others;
 - f. Requests for scope changes; and
 - g. Other issues or concerns;
3. Furnish the Authority with five (5) hardcopy sets of review copies of the drawings, specifications and other contract documents, to the Authority during 60%, 90%, and 100% design and providing digital .pdf file version of each set of documents;
4. Conduct at least three meetings with the Authority engineers and operators to discuss and/or review detailed design drawings, specifications and contract documents; and
5. Attend a final design meeting with the Authority.

3.04 Construction Services

A. *Construction Bids.* Upon authorization from the Authority, the Engineer shall:

1. Assist Authority personnel in preparing bid invitation and contract documents;

2. Refrain from discussing the Project or the bid process with anyone outside of the Authority prior to the advertisement of bids and during the restricted period for the submission and award of bids;
3. Furnish twenty (20) sets of contract drawings, final specifications, and other documents required for bidding and construction purposes for each contract;
4. Conduct, at the appropriate time, a pre-bid meeting:
 - a. Prepare and distribute addenda for pre-bid meeting;
 - b. Record, publish, and distribute minutes from the pre-bid meeting; and
 - c. Prepare, if necessary, publish, and distribute any addendum to the bid invitation and contract documents; and
5. Evaluate and determine whether substituted materials and equipment proposed in a bid submission of a prospective contractor is acceptable and at least equal to the materials and equipment set forth in bid and contract documents; and
6. Assist the Authority in securing bids, bid results, analyzing bid results, and making recommendations on the award of each construction contract;

B. *Pre-Construction.* Prior to construction, the Engineer shall:

1. Provide pre-construction meeting notice to all municipalities, utility companies, fire districts, and all other interested stakeholders;
2. Conduct a pre-construction meeting:
 - a. Prepare and distribute agenda for pre-bid meeting; and
 - b. Record, publish, and distribute minutes from the pre-bid meeting.

C. *Construction.*

1. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work (the “Work”). The Engineer shall not be held liable to the Authority for the failure of the construction contractor (the “Contractor”) to execute the Work in accordance with the contract documents (the “Contract Documents”).

2. The Engineer shall notify the Authority of all permanent Work which does not conform to the result required in the Contract Documents, prepare a written report describing any apparent non-conforming permanent Work and make recommendations to the Authority for its correction and when requested by the Authority, have recommendations implemented by the Contractor.
3. The Engineer shall have responsibility over the following:
 - a. Defective Work:
 - i. Based on the Engineer's observations, if the Engineer believes that the Work is defective under the terms and standards set forth in the Contract Documents, the Engineer shall reject the Work and provide the Authority with its recommendations regarding whether the Contractor should correct such Work or remove and replace such Work, or whether the Authority should consider accepting such Work as provided in the Contract Documents.
 - b. Compatibility with Design Concept:
 - i. If the Engineer has actual knowledge a specific part of the Work, although not defective under the terms and standards set forth in the Contract Documents, but nonetheless is not compatible with the design concept of the completed Project as a functioning whole, the Engineer will inform the Authority of such incompatibility, and provide recommendations for addressing such Work.
 - c. Clarifications and Interpretations:
 - i. When the Contractor and the Authority submits to the Engineer any question concerning the requirements of the Contract Documents, including any requests for information (RFIs), or relating to the acceptability of the Work under the Contract Documents, the Engineer shall, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents.
 - d. Differing Site Conditions:
 - i. When the Contractor notifies the Engineer of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental

conditions, the Engineer shall promptly review the condition and prepare findings, conclusions, and recommendations to the Authority as to how to address the condition.

e. Substitutes and “Or-equal”:

- i. The Engineer shall evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor.

f. Change Orders:

- i. The Engineer shall notify the Authority when a change in the Work is proposed, which will cause an adjustment in the contract cost.
- ii. The Engineer will evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval by the Authority’s Board of Commissioners.
- iii. The Engineer shall discuss changes in the plans or procedures recommended by the Engineer with the Authority prior to implementation.
- iv. The Engineer must obtain approval for all change orders from the Board of Commissioners prior to implementation.

g. Change Proposals and Claims:

- i. Review and respond to Change Proposals.
 - (a) The Engineer shall review each submitted Change Proposal from Contractor and either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part.
 - (b) Such actions shall be in writing, with a copy provided to the Authority and Contractor.
 - (c) If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, the Engineer will

notify the parties that the Engineer will not resolve the Change Proposal.

ii. Reporting of Claims

- (a) When the Engineer becomes aware of a situation from which a legal dispute or claim (“Claim”) could be filed by a contractor, subcontractor, property owner or other third party against the Authority, the Engineer will promptly report the situation to the Authority.
 - (b) Upon request, the Engineer will assist the Authority’s Legal Department in its investigation and examination of any Claim. The Engineer will provide the names and, if available, addresses and phone numbers of individuals involved or having knowledge of the Claim.
 - (c) The Engineer will also gather information or data to the Authority regarding engineering or technical matters pertaining to the Claim.
- 4. The Engineer shall consult, report and advise appropriate Authority personnel as to all relevant and pertinent matters relating or affecting the progress of construction.
 - 5. The Engineer shall review and determine the acceptability of any and all schedules that the Contractor is required to submit to the Engineer, including a Progress Schedule, Schedule of Submittals, and Schedule of Values.
 - 6. The Engineer shall supply the Authority with a construction schedule, which has been submitted by the Contractor and approved by the Engineer.
 - 7. The Engineer will prepare elementary sketches and supplementary sketches, when necessary or required, to resolve issues with actual field conditions encountered.
 - 8. The Engineer shall interpret Contract Documents and resolve problems as to amount, quality, acceptability, and fitness.
 - 9. The Engineer will review the Contractor’s submittals of material and/or equipment for compliance with the design concept and take appropriate

action such as but not limited to: “approved”, “approved as corrected”, “revise and resubmit”; or “not approved”.

10. The Engineer will provide the Contractor and the Authority with detailed stakeout information, including benchmarks, reference and axis lines along the routes of the construction or wherever necessary.
11. The Engineer shall check installation for preparation of record drawings.

D. *Construction Meetings and Reports.*

1. The Engineer will schedule and attend progress meetings with the pertinent Authority personnel, the Contractor, subcontractors and other interested stakeholders at a minimum every two (2) weeks.
2. The Engineer will report to the Authority monthly on the progress of the Work with a written monthly summary including daily inspector reports.
3. The Engineer will report, via email, to the Authority bi-weekly on the progress of the Work with the following information:
 - a. Summary of the Work performed in the previous two-week period;
 - b. Updated project schedule, attached and in Microsoft Project format, identifying all project milestones and current project status;
 - c. Forecast of all upcoming work and project costs expected for the project, including the identification of any contract items which may exceed bid quantities; and
 - d. Copies of final inspection reports attached in .pdf format for reports in the previous two-week period.
4. As previously stated in paragraph C, subparagraphs 3f and 3g of this section, the Engineer shall notify the Authority when a change in the work is proposed which will cause an adjustment in the contract cost and will:
 - a. Evaluate whether the proposed change is justified and reasonable, and if necessary, prepare change orders, field directives, and make recommendations for approval.
 - b. Discuss changes in the plans or procedures authorized by the Engineer with the Authority prior to implementation.
 - c. Obtain approval for all change orders from the Authority’s Board of Commissioners prior to implementation.

5. The Engineer will make a final inspection, furnish a report on project completion, and make recommendations for final payments to contractors and for the release of retained amounts, if any.

3.05 Resident Inspections:

A. Upon authorization from the Authority, the Engineer shall furnish a full-time Resident Project Inspector (RPI) who will conduct technical inspection of the Work relating to the Project;

1. *Inspector's duties and responsibilities:* The Engineer, through the RPI's observations, shall protect the Authority against defects and deficiencies in the Work.

2. *RPI's duties and responsibilities:*

a. The RPI shall not:

- i. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), without written approval by the Authority and the Engineer;
- ii. Exceed limitations of the Engineer's authority as set forth in this Agreement;
- iii. Undertake any of the responsibilities of the Contractors, subcontractors, or suppliers;
- iv. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work;
- v. Advise on, issue relating, or assume control over security or safety practices, precautions, and programs in connection with the activities of the Authority or its Contractors;
- vi. Participate in specialized field or laboratory tests or inspections conducted off-site by others; or
- vii. Accept shop drawings or sample submittals from anyone other than the Contractor.

b. The RPI shall:

- i. Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values prepared by the

Contractor and consult with the Engineer concerning acceptability;

- ii. Attend meetings with Contractor and subcontractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings;
- iii. Provide email updates to the Engineer and the Authority regarding meetings with Contractor and subcontractors;
- iv. Conduct daily on-site inspections of all Work in progress;
- v. Prepare daily inspection reports to determine if the Work is progressing in accordance with Contract Documents;
- vi. Report to the Authority and the Engineer whenever the RPI believes any portion of the Work will not produce a completed Project, conforming with the Contract Documents, or will imperil the integrity of the Project design as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made;
- vii. Advise the Authority and the Engineer whether any part of the Work in progress should be corrected or rejected or should be uncovered for observations, or requires special testing, inspection, or approval;
- viii. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Authority personnel, and that the Contractor maintains adequate records relating to the same;
- ix. Observe, record, and report to the Engineer appropriate details relative to the test procedures and systems start-ups;
- x. Report to the Engineer and the Authority when clarifications and interpretations of the contract documents are needed and transmit to the Contractor clarifications and interpretations as issued by the Engineer;
- xi. Advise the Engineer and the Contractor of the commencement of any portion of the Work requiring a Shop

Drawing or Sample submittal for which RPI believes that the submittal has not been approved by the Engineer; and

- xii. Submit, via email, bi-weekly updates to the Authority summarizing the resident inspection costs and projecting further resident inspection costs for the duration of the Work.

3.06 General Services:

A. *Contractor's Request for Payment:*

1. As a general service to the Authority, the Engineer will review applications for payment with the Contractor for compliance with the established procedure for their submission and forward recommendation to the Authority, noting particularly the relationship of the payment requested to the schedule of values, work completed, and materials and equipment delivered to the Project site but not incorporated in the work.
2. Based on the Engineer's observations and on review of Applications for Payment and accompanying supporting documentation, the Engineer shall:
 - a. Determine the amounts that the Engineer recommends Contractor be paid;
 - b. Recommend reductions in payment based on the provisions stated in the Construction Documents;
 - c. Such recommendations of payment will be in writing and will constitute the Engineer's representation to the Authority, based on such observations and review, that, to the best of the Engineer's knowledge, information and belief, the Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents:
 - i. Subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation, and
 - ii. Subject to the conditions precedent that permits a Contractor to receive payment based on the Work performed, which has been reviewed and accepted by the Engineer;
 - d. In the case of unit price Work, the Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work subject to any subsequent adjustments allowed by the Contract Documents.

B. Standards for Certain Construction-Phase Decisions:

1. The Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Contract for initial interpretations, Change Proposals, and acceptance of the Work.
2. In rendering such decisions and judgments, the Engineer will not show partiality to the Authority or the Contractor, and will not be liable to the Authority, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

C. Certificates, Operation and Maintenance Materials:

1. During the course of construction, as a general service, the Engineer will verify whether materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents.
2. After receipt from the Contractor, the Engineer will review and transmit to the Authority:
 - a. Any maintenance and operating instructions,
 - b. Schedules,
 - c. Guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents,
 - d. Certificates of inspection, tests and approvals, and
 - e. Shop Drawings, Samples, and other data as required.
3. Upon receipt from the Contractor, the Engineer will review and transmit to the Authority the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.
4. The Engineer must deliver to the Authority those documents described in subparagraph 2 of this paragraph, prior to the payment for such work.

D. *Completion:*

1. Upon authorization from the Authority, as general services, the Engineer shall:
 - a. Participate in visits to the Project to determine substantial completion, assist in the determination of substantial completion and the preparation of lists to be completed or corrected;
 - b. Participate in a final visit to the Project with Authority personnel; and prepare a final list of items to be completed and deficiencies to be remedied; and
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to the Authority concerning acceptance of the Project and final payment.

3. *Substantial Completion:*

- a. After a notice has been given by the Contractor as to the substantial completion or completion of Work, the Engineer will promptly visit the Project site to review the Work and determine the status of completion.
- b. The Engineer will follow the procedures in the Contract Document regarding the following:
 - i. the preliminary certificate of Substantial Completion,
 - ii. punch list of items to be completed,
 - iii. objections made by the Authority,
 - iv. notice to Contractor, and issuance of a final certificate of Substantial Completion.
- b. The Engineer will assist Authority regarding any remaining engineering or technical matters affecting Authority's use or occupancy of the Work following Substantial Completion.

4. *Final Notice of Acceptability of the Work:*

- a. After conducting a final visit to the Project, the Engineer will determine if the Work is complete and acceptable so that the Engineer may recommend, in writing, final payment to the Contractor.

- b. Accompanying the recommendation for final payment, the Engineer shall also provide a notice to the Authority and the Contractor that the Work is acceptable to the best of the Engineer's knowledge, information, and belief, and based on the extent of the services provided by the Engineer under this Agreement.

3.07 Record Drawings:

A. Upon authorization from the Authority, the Engineer shall:

1. Provide record drawings, including the base mapping of all completed Work according to the latest Authority As-Built Standards, using the AutoCAD Version 2018 platform.
2. Furnish all AutoCAD files on CD to the Authority.
3. Submit two stamped/signed full size sets, AutoCAD files, .pdf version of the drawings and Project Manual (with addenda) and GPS coordinates no later than one month after final payment of the Work is recommended for approval and in accordance with Authority Standards.

3.08 Authority Program/Procedure Updates:

A. Upon authorization from the Authority, the Engineer shall:

1. Revise the Authority's Standard Operating Procedures (SOPs) for the filtration system improvements. Revisions shall be done in accordance with the Authority's existing format.
2. Revise the Authority's Arc Flash program for the filtration system improvements. Revisions shall be done in accordance with the Authority's existing format.
3. Revise the Authority's Lock-out Tag-out ("LOTO") program documentation for the filtration system improvements. Revisions shall be done in accordance with the Authority's existing format.

3.09 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 § 3.02, paragraph A of this Agreement, Basis of Design, shall be completed and delivered to the Authority within 90 days of the issuance of the Authority's notice to proceed;
- B. All services under § 3.03 of this Agreement, Design, shall be completed and delivered to the Authority within 180 days of the issuance of the Authority's notice to proceed;

- C. All services under § 3.08 of this Agreement, Authority Program/Procedure Updates, shall be completed and delivered to the Authority within 90 days following the contractor's date of Substantial Completion;
- D. All other services should be completed by the end of the project with an estimated completion date of < date to be inserted based on consultant's proposal >.

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. ***Basis of Design:*** For services described under § 3.02, paragraph A of this Agreement, the Authority shall pay 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. ***Design:*** For services described under § 3.03 of this Agreement, the Authority shall pay 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.
- C. ***Construction and General Services:*** For services described under § 3.04 and § 3.06 of this Agreement, the Authority shall pay 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.
- D. ***Record Drawings:*** For services described under § 3.07 of this Agreement, the Authority shall pay 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.
- E. ***Authority Program/Procedure Updates:*** For services described under § 3.08 of this Agreement, the Authority shall pay 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 Resident Inspection: For services described under § 3.05 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 Resident Inspectors' direct hourly rate in addition to the payable hourly rate listed under §4.04, paragraph B. Payment for Resident Inspection and expenses will be made monthly.

4.03 Special Services: For services described under § 3.02, paragraph B 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 B of this Agreement, such services will be billed at the fixed rates included in Appendix A of this Agreement.
- B. When the Engineer obtains special services from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

4.04 Engineering Cost Schedule:

A. *Engineering Costs:*

- 1. Lump Sum – Basis of Design Cost < insert cost >
- 2. Lump Sum – Design Cost < insert cost >
- 3. Lump Sum – Construction and General Services Cost < insert cost >
- 4. Lump Sum – Record Drawings Cost < insert cost >
- 5. Lump Sum – Authority Program/Procedures Update Cost < insert cost >

TOTAL LUMP SUM COST: < insert cost >

B. *Resident Inspections Costs:*

	Payable Hourly Rate	Employee Direct Hourly Rate
< Insert Staff Title >	< insert cost >	< insert cost >
< Insert Staff Title >	< insert cost >	< insert cost >

The Dollar amount for Estimated Resident Inspection is based fixed hour estimate of < insert hours > hours of < insert staff title > Payable Hourly Rate and < insert hours > hours of < insert staff title > Payable Hourly Rate during the duration of the project. Payment will be made for actual hours worked during the duration of construction. Actual hours will vary based on production rates of the Contractor during construction, unforeseen circumstances that develop during construction, and weather conditions.

- 1. Estimated Resident Inspection < insert cost >
- 2. TOTAL NOT TO EXCEED RESIDENT INSPECTION: < insert cost >

C. *Special Services (not to exceed)* \$20,000.00

D. *Other Costs:*

- 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. 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: No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.

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

5.06 Insurance:

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

5.07 Copyrights, Trademarks and Licensing: All materials produced under this Agreement, whether produced by the Engineer alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Engineer shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.

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

5.15 Gratuities: The Engineer shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under 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.

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

ARTICLE 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 2020, 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 2020, 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

FIXED RATES FOR SPECIAL SERVICES

Grade	Hourly Billing Rate

APPENDIX B

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

VAN DE WATER TREATMENT PLANT AND RAW WATER PUMP STATION HVAC UPGRADES

ECWA PROJECT No. 202000034

Insurance Specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the “Authority”). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract. These requirements include but are not limited to the minimum insurance requirements.

Insurance Requirements:

a. Workers Compensation:

Part 1: Workers Compensation: Statutory

Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

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

c. Commercial General Liability:

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- 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:

- \$1,000,000. Each Occurrence
- \$1,000,000. Aggregate

- Erie County Water Authority to be scheduled as an Additional Insured

e. Professional Liability:

- \$1,000,000 Per Claim
- \$1,000,000 Aggregate

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

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

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

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

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

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

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

APPENDIX C
RESPONSE TO RFP
STATE FINANCE LAW REQUIRED FORMS

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

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>

SECTION 139-L OF THE STATE FINANCE LAW
STATEMENT RELATING TO SEXUAL HARASSMENT POLICY

1. "Bidder" has the same meaning as the term, "Offerer," as that term is defined in State Finance Law § 139-k(1)(h), and includes anyone who submits a bid or proposal.
2. Every proposal or bid hereafter made and submitted to the Erie County Water Authority, where competitive bidding or a sealed proposal is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the Bidder and affirmed by such Bidder as true under penalty of perjury:

SEXUAL HARASSMENT BIDDING CERTIFICATION

- (a) "By submission of this bid/proposal, EACH BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section two hundred one-g of the Labor Law."
3. A bid/proposal shall not be considered for award nor shall any award be made to a Bidder who has not complied with subdivision one of this section; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid/proposal a signed statement which sets forth in detail the reasons therefore.

The undersigned CERTIFIES, under penalty of perjury, that he is authorized to make this bid/proposal and execute this statement on sexual harassment; that he is familiar with the statements contained in ¶2(a) of this document, as well as the provisions of State Finance Law §139-L and Labor Law §201-g, and such statements are true and have been complied with by the Bidder.

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)