

**REQUEST FOR PROPOSALS  
FOR CONSULTING ENGINEERING SERVICES  
DISTRIBUTION SYSTEM LEVEL OF SERVICE DEVELOPMENT**

**ECWA Project No. 202300160**

**General**

The Erie County Water Authority (Authority) will accept proposals for consulting engineering services for distribution system Level of Service development.

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**

The project consists of engineering services required to develop a comprehensive process for identifying an optimum level of service for the Authority's transmission and distribution systems. In general, the project will include the identification of future optimal repair and replacement strategies and investment levels of buried infrastructure within the Authority Service area including Direct Service and Lease Managed areas, using a combination of risk tolerance and level of service expectations including but not limited to factors such as break rate, likelihood and consequence of failure using a validated machine learning-powered model. The results of this modeling effort will be quantifiable as direct and indirect costs of a break. Deliverables shall include modeling results, a report describing the process and the results as well as a working copy of the final model that can be manipulated in the future by Authority Engineering Department Staff.

The ultimate goal of the project will be to develop a comprehensive, repeatable machine learning model-based program that can provide justification for future capital planning decisions not only for Authority owned infrastructure, but also similar infrastructure owned by Lease Managed municipalities and operated by Authority staff.

Below find a table of the current inventory of the distribution and transmission system assets in the Authority service area inclusive of all Direct Service and Lease Managed areas as obtained from the current Authority GIS.

Size	Direct Service		Lease Managed	
	Length (Ft.)	Length (Mi.)	Length (Ft.)	Length (Mi.)
Unknown	2,134	0	30	0
Less than 4	20,073	4	9,517	2
4	62,197	12	12,560	2
5	-	-	229	0
6	2,101,216	398	1,038,516	197
8	3,737,020	708	3,368,263	638
10	249,832	47	405,568	77
12	1,133,058	215	540,545	102
14	3,831	1	272	0
15	34	0	-	-
16	362,943	69	83,605	16
18	2,226	0	-	-
20	131,987	25	23,905	5
24	263,879	50	27,634	5
30	68,770	13	-	-
36	185,242	35	-	-
42	116,582	22	-	-
48	143,199	27	-	-
54	7,729	1	-	-
60	1,040	0	-	-
72	3,865	1	-	-
78	75	0	-	-
84	2,175	0	-	-
Total:	8,599,104	1,629	5,510,647	1,044

Note that in general, distribution piping includes all mains from 6-inches through 12-inches in diameter. All other sizes are typically considered transmission mains. Note also that there is a nominal amount (less than 100 linear feet) of 15-inch diameter transmission main. The Authority maintains an extensive database of watermain break history for both Direct Service and Lease Managed mains.

## **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, Marc Bellacose, Distribution Engineer at 716-685-8215, email: [mbellacose@ecwa.org](mailto:mbellacose@ecwa.org), in accordance with New York State Finance Law §139-j and §139-k.

## **Proposal Requirements**

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

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

**Item 1 Page Limit – 4 Pages**, including related project summaries. More detailed project descriptions may be provided as an appendix.

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

**Item 2 Page Limit – 5 pages.**

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

**Item 3 Page Limit – 4 pages including the organization chart.** Full resumes for key staff members may be provided as an appendix.

Item 4 - Work performed for the Authority in 2021, 2022, and 2023.

**Item 4 Page Limit – 1 page.**

Item 5 - Current remaining workload with the Authority.

**Item 5 Page Limit – 1 page.**

Item 6 - 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.

Item 7 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix C.

Item 8 - Proposed project schedule, showing duration of all tasks.

**Item 8 Page Limit – 1 page.**

Item 9 - 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 Contingency lump sum cost of \$20,000 for the purposes of this proposal.

**Item 9 Page Limit – 2 pages.**

Proposals shall include the following form for comparison purposes:

<b>Project 202300160 – RFP for: Distribution System Level of Service Development</b>	
<b>General Engineering</b>	<b>\$</b>
<b>Task 1 – Likelihood of Failure Model Development</b>	<b>\$</b>
<b>Task 2 – R&amp;R Investment Scenario Development</b>	<b>\$</b>
<b>Task 3 – R&amp;R Scenario Financial Evaluation</b>	<b>\$</b>
<b>Task 4 – Statistical Analysis of Pipe Condition</b>	<b>\$</b>
<b>Contingency Allowance</b>	<b>\$ 20,000.00</b>
<b>TOTAL:</b>	<b>\$</b>

**Proposals will be accepted until 4:00 p.m. on Wednesday, January 17, 2024.** Four copies of each proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, New York 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: “PROPOSAL – Distribution System Level of Service Development, PN 202300160”

### **Evaluation and Selection**

All proposals will be evaluated by a small in-house committee made up of 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. A Professional Service Contract will then be executed pending successful negotiation and authorization by the 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 February 2024 and that the agreement will be executed in March 2024.

**ERIE COUNTY WATER AUTHORITY**  
**REQUEST FOR PROPOSALS – ATTACHMENT 1**  
**SAMPLE AGREEMENT**

## ATTACHMENT 1

*This is a sample Agreement. All shaded provisions are examples for illustration purposes only and will be changed to reflect the appropriate agreement between the Authority and the Engineer awarded the contract.*

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 the distribution system level of service development project (the “Project”).

In consideration of the mutual promises set forth in this Agreement, the Authority and the Engineer agrees to perform work through a single contract as follows:

#### ARTICLE 1 – THE PROJECT

**1.01** The base project consists of the development of a comprehensive process for identifying an optimum level of service for the Authority’s transmission and distribution systems. In general, the project will include the identification of future optimal repair and replacement (R&R) strategies and investment levels for Authority owned Direct Service and Lease Managed buried infrastructure using a combination of risk tolerance and level of service expectations including but not limited to factors such as break rate, likelihood and consequence of failure using a validated machine learning-powered model.

## 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 and provide associated meeting minutes. The Engineer shall provide meeting minutes to the Authority within five business days of the meeting date.

**3.02** **General Engineering Services.** In addition to the specific work tasks outlined below, Consultant shall provide general engineering services necessary to develop a level of service model for the transmission and distribution systems as detailed in section 1.01, The General Engineering Services shall include but not be limited to the following:

- A. Report to the Authority bi-weekly on the progress of the report of the work via email, with the following information:
  - a. Work performed during the previous two weeks;
  - b. 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 status;
  - d. Budget status/percent complete;
  - e. Input needed from the Authority or others;
  - f. Requests for scope changes; and
  - g. Other issues/concerns
- B. Data Review:
- a. At the Kickoff Meeting, Consultant shall provide a clear list of the data necessary to conduct the study. Prior to obtaining such documents, the Consultant will be required to sign a confidentiality agreement with the Authority as the documents relate to its critical infrastructure. The Confidentiality Agreement is included as Appendix D.
  - b. All data shall then be collected and reviewed and any data issues shall be identified and the source of any issues, impact and suggestions for remedies shall be provided.
  - c. Consultant shall also provide recommendations on improving data quality for this project as well as for future model updates.
- C. Bi-weekly Progress Meetings: Consultant shall hold bi-weekly progress meeting to discuss Project progress and schedule, data needs, concerns and etc. For each progress meeting, Consultant shall provide and agenda and develop and distribute meeting minutes. Progress meetings can be either virtual (MS Teams, Zoom, etc.) or in person as necessary.

**3.03 Task 1 - Likelihood of Failure Model Development:** Under this task, the Consultant shall develop state of the industry Likelihood of Failure (LOF) model that will allow the Authority to make LOF predictions for its water system piping network that can be utilized for annual and multi-year water pipe capital planning and budgeting.

- A. The model shall utilize advanced analytics, including artificial intelligence and machine learning.
- B. The model shall require minimal calibration by an Authority user(s).
- C. Transparent validation shall be provided after each run of the model.
- D. Computations shall be repeatable, and results shall be generated using a platform to which Authority staff can have access either to generate results themselves, visualize and download results, and to eventually update existing results.

- E. Results shall be in the form of future break number or rate and shall be in the form of a LOF score for each pipe and each budget year. Results shall be presentable in excel spreadsheet format.
- F. The fee for this task shall include any software procurement costs associated with the model as well as one year's work of data hoisting. The one year period shall begin upon the Authority's acceptance of the model.
- G. Fee shall also include training of Authority Staff in the calibration/validation, use and maintenance of the model.

**3.04 Task 2 - R&R Investment Scenario Development:** Under this task, the Consultant shall develop and evaluate strategies to identify future pipe R&R investment needs and adequate budget using fluctuating risk tolerance and level of service expectations. These strategies will afford an understanding of the tradeoffs between various capital spending scenarios and identify the preferred investment schedule (that meets objectives and respects constraints). This effort shall allow Authority staff to easily simulate scenarios of R&R using various factors and constraints, and then afford a comparison of multiple alternatives. The approach, model and tool are intended to be used as follows:

- A. The model shall identify, for each scenario, the specific pipes recommended for replacement each budget year.
- B. Within the model pipes shall be prioritized based on:
  - a. Various factors including LOF, Consequence of Failure (COF) and risk.
  - b. Constraints Level of Service (LOS) such as maximum tolerable break rate, risk level, or cost.
  - c. Other Capital Improvement Plan (CIP) priorities such as, for example, hydraulic capacity or coordination with other infrastructure projects or fire flow.
- C. Model output results shall include the resulting:
  - a. Break rate and estimate cost of failure
  - b. Risk score
  - c. Scope, and duration of R&R alternatives
- D. Results shall be generated using a user-friendly platform to easily create a scenario, visualize and download previously generated results. Results shall be in the form of downloadable charts or excel spreadsheets that identify the pipes to be replaced at a given year and the resulting break rate, risk score, cost and replacement rate.

**3.05 Task 3 - R&R Scenario Financial Evaluation:** For each R&R strategy, Consultant shall develop R&R replacement cost. Costs shall be developed based upon recent replacement R&R cost. Before use, Consultant shall evaluate the main factors impacting those costs and extrapolate the likely R&R cost of each pipe based on its physical and environmental characteristics. R&R cost evaluation shall consider the following factors:

- A. Direct cost of a break using recent direct break cost data. Consultant shall evaluate all data to be used to identify the main factors driving those costs and, extrapolate the likely direct cost of each pipe based on its physical and environmental characteristics.
- B. Indirect cost of a break including for example proximity factors and hydraulic consequences (for interruption in water delivery service) using data from the distribution hydraulic model.

**3.06 Task 4 – Statistical Analysis of Pipe Condition:** The Authority has identified the need to engage in statistical analysis that evaluates pipe condition, past and current. This effort is intended to be used to inform stakeholders and communicate the process and techniques used to develop the annual R&R projections and to monitor the performance of future R&R programs and the overall condition of the system. The statistics to be analyzed and monitored shall include break rate, length, and age of all or groups of pipes based on various pipes or environmental factors including material, diameter, year of installation, soil, pressure, etc. Results shall be generated using a user-friendly platform to which Authority staff can have access to easily generate a chart and visualize and download previously generated results. Results shall be configurable and be in the form of charts, tables and be accessible via a dashboard that can be easily imported in presentations and reports.

**3.07 Contingency Allowance:** The Engineer may use contingency allowance when the original scope of work for the Project was not sufficient to allow for subsequent changes in scope to improve the completed Project. The Engineer may use the contingency allowance to accommodate specific scope modifications necessary for overall project completeness. The Engineer may only use contingency allowance following review and approval of the Authority’s Engineering Department, Chief Operating Officer, and Chief Financial Officer.

**3.08 Service Timeframe:** Unless otherwise extended by mutual agreement of the parties, the professional services to be rendered in this Project shall be performed within **90 days** of the Authority’s notice to proceed.

#### **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. ***Engineering Service:*** For services described under §3.03, §3.04, §3.05, and §3.06 of this Agreement, the Authority shall the 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 Contingency Allowance:** For services described under §3.07, of this Agreement, the Authority shall pay the Engineer for special services pre-approved by the Authority’s Chief Operating Officer or in their absence the Executive Engineer in an amount approved by the Authority’s Chief Financial Officer or in their absence the Comptroller.

- A. When the Engineer is performing the services described in §3.07 of this Agreement, such services will be billed at the fixed rates included in Appendix B of this Agreement.
- B. When the Engineer obtains services required as part of a contingency items from a third party, the Engineer will be reimbursed based on the actual invoice cost paid by the Engineer, plus 5%.

**4.03 Engineering Cost Schedule:**

A. **Engineering Costs:**

1. Task 1 Cost:	[Insert\$]
2. Task 2 Cost:	[Insert\$]
3. Task 3 Cost:	[Insert\$]
4. Task 4 Cost:	[Insert\$]
TOTAL LUMP SUM COST:	[Insert\$]

B. **Contingency Allowance:** \$ 20,000.00

C. **Other Costs:**

1. Estimated Mileage (IRS rate)	[Insert\$]
2. Estimated Copy Costs (per copy)	[Insert\$]
3. Prints (per print)	[Insert\$]
4. Other Direct Non-Salary Costs	At cost

**4.04 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 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.

**5.06 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 Engineer agrees to abide by the terms and conditions of the Authority's Confidentiality and Non-Disclosure Agreement, which is attached to and incorporated in this Agreement as Appendix D.
- E. The terms of this section shall be binding during and after the expiration or termination of this Agreement.

**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 \_\_\_\_\_  
*<Name & Title>*

**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 \_\_\_\_\_**         ) 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/she resides in \_\_\_\_\_, New York, that he/she is the \_\_\_\_\_ of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

\_\_\_\_\_  
Notary

Public

**APPENDIX A**  
**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)



## **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**

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.

**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 C

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

#### DISTRIBUTION SYSTEM LEVEL OF SERVICE DEVELOPMENT

##### ECWA Project No. 202300160

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). 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.

**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
- Coverage shall be included for allegations of Sexual Abuse/Molestation

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

**APPENDIX D**  
**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**



## ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

---

THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT (hereinafter “Agreement”) is hereby executed between:

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

hereinafter referred to as the “Authority”, and

**NAME**  
Address  
City, State, Zip

hereinafter referred to as the “Consultant.”

### **Certification & Affirmation**

[Name of Authorized Representative], an individual who is Consultant’s duly authorized representative (hereafter “Authorized Representative”), by signing this Agreement in the name and on behalf of the Consultant, subscribes and affirms the following:

1. that he/she is signing this Agreement on behalf of Consultant intending to bind said Consultant to the representations made in this Agreement,
2. that Consultant will comply with all requirements of this Agreement, and
3. that Consultant will certify the return or destruction of Confidential Information received as specified in this Agreement, if applicable.

### **Purpose**

This Agreement is being entered into regarding services being provided by Consultant in response to a Request for Proposals (Project No. 202300160) and the contract resulting from the RFP.

## **PART 1. DEFINITIONS**

### **A. Confidential Information**

Confidential Information shall be defined to include any information, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or the source of information (e.g., electronic systems licensed by third-party contractors), which the Authority provides to



## ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

---

Consultant, or which Consultant obtains, discovers, derives, or otherwise becomes aware solely because of Consultant's contractual relationship with the Authority.

Confidential information does not include the following:

- (a) information that is previously rightfully known to Consultant without restriction on disclosure,
- (b) information that is or becomes, from no act or failure to act on the part of Consultant, generally known in the relevant industry or in the public domain, or
- (c) information that is independently developed by Consultant without the use of Confidential Information.

Title to all Confidential Information remains the property of the Authority. Confidential Information is provided on an "as is" basis, and the Authority makes no warranties, guarantees or representations of any kind express or implied, or arising by custom or trade usage, as to any matter whatsoever, without limitation, and specifically makes no implied warranty of fitness for any particular purpose or use, including but not limited to adequacy, accuracy, completeness or conformity to any representation, description, sample, or model.

### **B. Authorized Use**

"Authorized Use" shall be defined as the use of Confidential Information by Consultant, its employees, or agents, solely for the purpose of performing the services as agreed to, as now or hereafter modified, or amended. Disclosure, display, use, duplication, storage, or transmittal of Confidential Information, in any form, for any purpose other than as agreed to, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an "unauthorized use."

### **C. Authorized Person**

"Authorized Person" shall be defined as those persons within Consultant's employ or control identified by Consultant to the Authority as having a need to receive, possess, store, access, or view Confidential Information for an Authorized Use.



## ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

---

### **PART 2. CONFIDENTIALITY & NON-DISCLOSURE REQUIREMENTS**

#### **A. Duty to Protect Confidential Information**

Upon proper execution of this Agreement, Consultant will be granted a non-exclusive, non-transferable license to display, use, duplicate, store, and disclose Confidential Information only for an Authorized Use. Consultant shall safeguard all Confidential Information which is delivered from the Authority to Consultant to ensure its authorized use and to protect and prevent its unauthorized use or disclosure.

“Safeguard all Confidential Information” shall be defined as Consultant taking either one, or a combination of the following security measures, whichever standard is higher:

- (a) Where Consultant has established security procedures for its own confidential, sensitive business information which impose security requirements for the protection of its own trade secret, proprietary or confidential information, Consultant shall protect the Confidential Information using the same means; and/or
- (b) Where Consultant has not established such internal procedures, Consultant shall take the commercial measures defined below, to protect the Confidential Information.

#### **Commercial Measures to Protect Confidential Information**

For purposes of this Agreement, “commercial measures” shall be defined and will include each of the following responsibilities to be undertaken by Consultant:

##### **1. Use Restriction**

Confidential Information shall only be received, possessed, stored, accessed and/or viewed by Authorized Persons.

##### **2. Access by Authorized Person(s)**

- a. Consultant shall be responsible for identifying those persons within its employ or control (e.g., employees and agents) who have a need to receive, possess, store, access, or view Confidential Information for an authorized use (hereinafter “Authorized Person(s)”).
- b. Consultant shall be required to take commercially reasonable steps to inform each Authorized Person of their individual obligation to protect the security of Confidential Information in accordance with the requirements of this Agreement.



## ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

---

- c. Consultant shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any Authorized Person until such person has agreed and acknowledged in writing to comply with the required security obligations set forth below.

### **3. Access by Third-Party Consultant or Subcontractor**

- a. Consultant shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any third-party consultant or subcontractor without the express written consent of the Authority's General Counsel.
- b. The Authority's General Counsel may only give such written consent after the legal representative of the third-party consultant or subcontractor has been made aware of and has agreed in writing to comply with the required security obligations of this Agreement.
- c. If such written consent is given by the Authority's General Counsel, the third-party consultant or subcontractor shall not be allowed to further disseminate or distribute Confidential Information, other than to provide access by Authorized Person(s) within third-party consultant's or subcontractor's control and oversight.

### **4. Security Obligations Regarding Confidential Information**

Any person(s) who receive, possess, store, access, or view Confidential Information from either Consultant or its approved third-party consultant or subcontractor (hereinafter "Custodian") shall be subject to the following security obligations:

- a. Custodian is the SOLE entity authorized to duplicate, distribute, or otherwise transmit Confidential Information,
- b. Custodian's legal representative must approve any process used to duplicate, distribute, or otherwise transmit Confidential Information to Authorized Person(s), and may NOT approve or use any process which involves the use of any public internet or other non-secure medium,
- c. Unless otherwise authorized by Custodian's legal representative, Confidential Information may NOT be stored on personal (non-business) computing or other electronic devices (including zip drives, thumb drives, disks, or any similar computing storage or copying device) or taken or removed in any form outside of the physical premises of Custodian.



## ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

---

- d. Confidential Information may only be duplicated, distributed, or otherwise transmitted “as is”, without alteration of any kind. “Confidential” or “Copyright” notices, whether originally in physical or electronic medium, shall not be removed from and shall be duplicated on Confidential Information when such information is duplicated, distributed, or otherwise transmitted pursuant to (b) above.
- e. Other than as set forth in (a-d), above, Confidential Information may not be duplicated, distributed, stored, or otherwise transmitted or communicated to or by any person or system. Authorized Person(s) may not copy, re-duplicate, re-transmit or re-distribute Confidential Information, in any form, whether whole or in part, or in any medium, whether electronic or hard copy.
- f. Upon termination of employment, or upon completion or expiration of the services performed by Consultant or any third-party party consultant or subcontractor, each Authorized Person(s) shall be required to return Confidential Information to Custodian’s legal representative, and/or to certify that all electronic, optical, or other copies have been destroyed within any electronic storage or other medium, and all device(s) used or provided to and in the possession of such Authorized Person for the possession or storage of Confidential Information shall be surrendered and returned to the Custodian who shall then deliver it to the Authority for whatever forensic review of the activity logged into or disseminated from said device(s) the Authority may determine to implement.

### **5. Chain of Custody**

Consultant shall be required to keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of Consultant, and to any third-party consultant or subcontractor who has a need to access Confidential Information for such authorized use.

Any third-party consultant or subcontractor receiving Confidential Information from Consultant shall, as a condition of accessing such information, certify that such entity shall keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of such entity, and that such entity will provide its written certification of compliance with the provisions of this Agreement to the Consultant as provided in paragraph VI, below.





## ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

---

### 6. **Certification by Consultant of Return of Confidential Information**

Consultant and its third-party consultant or subcontractor who have received Confidential Information shall certify the chain of custody of such information as follows:

#### a. **Consultant:**

Upon termination of the engagement, Consultant shall independently certify, in writing, to the Authority, its compliance, during the period agreed to, with the terms of this Agreement. Consultant shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s), consultants and subcontractors to whom the Confidential Information was duplicated, distributed, or transmitted,
- (ii) As to Authorized Person(s) within the internal employment or control of Consultant, that all copies of Confidential Information have either been returned to the Authority or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage, and Consultant shall attach the certifications of its consultants and subcontractors.

#### 2. **Third-Party Consultant or Subcontractor:**

Upon termination of the engagement, such entity shall independently certify, in writing its compliance with the terms of this Agreement, and shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s) to whom the Confidential Information was duplicated, distributed, or transmitted, and
- (ii) As to such Authorized Person(s) within the internal employment or control of such entity, that all copies of Confidential Information have either been returned to the Authority or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage.

### **Termination**

The license to use, possess, or retain any Confidential Information or any of the devices upon which it was accessed, downloaded, transferred or stored, terminates automatically upon the happening of any of the following: (a) breach of this agreement or (b) completion of Consultant's services as agreed to or (c) any notice of termination by the Authority of the services agreement with or without cause and solely on the demand of the Authority to any



**ERIE COUNTY WATER AUTHORITY  
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

---

representative of the Consultant (given orally or in writing in any format) without regard to any other claims, controversies, demands, or alleged legal rights claimed by Consultant, including but not limited to any amounts alleged to be owed for services rendered or any other legal or equitable claims. Consultant and all prior Authorized Users shall be legally liable, both criminally and civilly, for any violation of this provision which shall be deemed a wrongful taking or withholding of the Confidential Information to the same extent as if it had been obtained by all such parties without the Authority's permission and consent in the first instance.

**Compliance**

Should Consultant breach or threaten to breach this Agreement, the Authority shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorney's fees) for losses or damages resulting from such breach. Consultant is deemed to acknowledge that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information.

Consultant affirms that its employees with access to Confidential Information will not disclose such Confidential Information to anyone, except as provided in this Agreement. In addition, Authorized Persons shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. Consultant shall notify the Authority immediately upon becoming aware that Confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

**Governing Laws**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

**IN WITNESS WHEREOF**, Consultant has caused this Non-Disclosure Agreement to be signed as of the date set forth below.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





**ERIE COUNTY WATER AUTHORITY  
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

---

**CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL  
INFORMATION**

Consultant, having a principal place of business at \_\_\_\_\_  
(hereinafter \_\_\_\_\_), and having entered into a Confidential Non-Disclosure Agreement  
(NDA) with the Erie County Water Authority on \_\_\_\_\_, and having been provided  
by the Authority with Confidential Information in accordance with that NDA, now certifies on  
behalf of itself and all Authorized Persons provided Confidential Information as agreed to, as to  
the following:

- i. that the documented chain of custody, attached hereto, names all Authorized  
Person(s) to whom the Confidential Information was duplicated, distributed, or  
transmitted, and
- ii. as to such Authorized Person(s), that the Confidential Information provided by the  
State has been returned to the State, and that all duplicates, regardless of format, have  
been destroyed or permanently deleted from all forms of electronic storage, and
- iii. Consultant has attached certifications of Authorized Person(s) to whom the  
Confidential Information was duplicated, distributed or transmitted, that all copies of  
Confidential Information have been returned to Consultant and that the Authorized  
Person has destroyed or permanently deleted all duplicates of Confidential  
Information from all forms of electronic storage.

This Certification is hereby executed

By:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**ERIE COUNTY WATER AUTHORITY  
CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

---

STATE OF New York            )  
  ) SS:.  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, before me personally came \_\_\_\_\_, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that she/he is the \_\_\_\_\_ (title) of \_\_\_\_\_ (Consultant), with its principal place of business located at \_\_\_\_\_, and that she/he executed the foregoing instrument in the name of the Consultant, and that she/he executed the same as the act and deed of the Consultant for the uses and purposes mentioned therein.

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