



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

February 10, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer *LFK*

Subject: Center Street Reconstruction and Improvement Project  
City of Lackawanna  
Cooperative Agreement  
ECWA Project No. 201900019

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This project was previously presented as a staff item on 10/27/2020 and 11/19/2020, memos are attached. Since that time a Cooperative Agreement (Agreement) was developed by the Legal and Engineering Departments and presented to the City of Lackawanna (City). The City approved the Agreement at their February 1<sup>st</sup> Council meeting.

This Agreement is necessary to coordinate and facilitate the replacement of 3,300 linear feet of existing 6-inch cast iron waterline with new 8-inch ductile iron waterline and appurtenances on Center Street between Kirby Avenue and Ridge Road. The City of Lackawanna will complete all phases of the project retaining CPL Architects, Engineers, Landscape Architect and Surveyor, DPC as their Consulting Engineer.

The Authority will review and approve the proposed plans and specifications prior to bidding of the project, determine whether the cost of the waterline portion of the project is acceptable, approve contractor, and will be notified of any unexpected changes occurring during the construction phase of the project. The Authority will reimburse the City of Lackawanna for costs associated with the design, bidding, and construction of the waterline project, which is located in the Authority's Direct Service Area.

The Authority recently received bids on five waterline replacement projects and excess funding is available from those projects to fund this project. \$1,500,000 will be reallocated with Unit 2590 Eng/Const Distribution Mains to fund Capital Item 101188 Betterments.

Attached is the Agreement signed by the City of Lackawanna. At this time, we are asking that the Agreement be processed appropriately and executed by the Chairman. An executed copy must be returned to the City.

Please feel free to contact me if you have any questions.

LFK:jmf  
Attachments  
cc: R.Stoll  
M.Quinn  
LACY-159-2101-X-10



## ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair  
Mark S. Carney, Vice Chair  
Peggy A. LaGree, Treasurer

From: Leonard F. Kowalski, Executive Engineer

A handwritten signature in blue ink, appearing to be "LFK", is written over the name Leonard F. Kowalski.

Subject: Center St. LACY – Potential Cooperative Agreement

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The Mayor of the City of Lackawanna, Annette Iafallo and the Commissioner of Public Works, Antony DeSantis recently contacted me about a project they have scheduled for the Spring of 2021. They are planning a full rehabilitation of Center St and are inquiring if the Authority would be interested in replacing the waterline as part of this project.

The watermain on Center St was installed in 1902 and this would be an opportune time to replace it. The length of the project is approximately 3,400 ft. By replacing the watermain as part of the rehabilitation project, the Authority would not need to pay for any of the restoration costs. The benefits of the project are twofold, we remove a pipe from our system that is 118 years old and we get it done at a reduced cost.

The City has a consultant onboard for the design work of the street rehabilitation, the Authority would need to pay for the design and installation of the waterline. Due to the timing of the project, the Authority would need to enter into a Cooperative Agreement with the City of Lackawanna in order to meet the project schedule.

If there are no objections, I will contact the City and start coordinating a Cooperative Agreement.

cc: R. Stoll  
M.Quinn



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

November 10, 2020

To: Jerome D. Schad, Chair  
Mark S. Carney, Vice Chair  
Peggy A. LaGree, Treasurer

From: Leonard F. Kowalski, Executive Engineer

A handwritten signature in blue ink, appearing to be "LFK", is written over the name Leonard F. Kowalski.

Subject: Center St. LACY – Potential Cooperative Agreement

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After the October 27<sup>th</sup> Board Meeting, I had a discussion with Margaret Murphy, General Counsel to the Authority about the potential Cooperative Agreement with the City of Lackawanna. I explained that the City does not have the funding to cover the costs associated with the waterline work and then be reimbursed from the Authority and she offered the following solution. The solution to this problem is to include language in the Cooperative Agreement that dictates once the City receives an invoice from their consultant for waterline work, the City would invoice the Authority, the Authority would make payment and then the City would pay the consultant. The same procedure would be used during the construction phase. The bidding documents will contain unit price items for the waterline work, once the City is invoiced for the waterline work, the City will then invoice the Authority.

Language will need to be included in the bidding documents and contract between the City and contractor stating the contractual obligations between the Authority and City for payment of the waterline items.

I attended a meeting on November 5<sup>th</sup> at Lackawanna City Hall to discuss the project and potential Cooperative Agreement. Mayor Iafallo, Commissioner of Public Works, Antony DeSantis and Council President Marrano along with two representatives from their consultant (Clark Patterson Lee) were in attendance. The information listed above was discussed and all parties have a good understanding of the process. I let them know that I will be reporting on this at the November 19<sup>th</sup> Board Meeting.

The benefits of the Cooperative Agreement are twofold, we remove pipe from our system that is 118 years old and the Authority would not need to pay for any of the restoration costs. The length of the main is approximately 3,400 ft and will cost approximately \$1.5M - \$1.6M for both engineering and construction. Approximately \$900,000 has been identified to use towards the project, additional funds would be identified under Unit 2590 Eng/Const Distribution Mains and Unit 2595 Eng/Const Transmission Mains to fund the remainder of the project.

If there are no objections, I will contact the City and start coordinating a Cooperative Agreement.

cc: R. Stoll  
M. Quinn  
M. Murphy  
K. Prendergast

## **COOPERATIVE AGREEMENT**

This Cooperative Agreement ("Agreement"), effective as of February 18, 2021 ("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

**CITY OF LACKAWANNA**  
714 Ridge Road  
Lackawanna, New York 14218

hereinafter referred to as the "City."

### **Recital**

**WHEREAS**, the City has initiated a capital improvement project, known as the Center Street Reconstruction and Improvement Project, for the reconstruction of the roadway, water mains, storm sewers, sidewalks, curbs, driveway approaches, and handicap accessible curb cuts on Center Street. (the "Project");

**WHEREAS**, the City proposes to replace 3,300 linear feet of waterlines with new ductile iron water mains and appurtenances on Center Street between Kirby Avenue and Ridge Road for which the City request to be reimbursed by the Authority for all costs associated with the design, bidding and reconstruction of such water mains and appurtenances (the "Water Main Project");

**WHEREAS**, the City has retained the services of CPL Architects, Engineers, Landscape Architect and Surveyor, D.P.C., as the consulting engineering firm to oversee the Project (the "Consulting Engineer");

**WHEREAS**, the Water Main Project is located within the Authority's direct service area;

**WHEREAS**, the City and the Authority now desire to enter into a cooperative agreement to coordinate and facilitate the Water Main Project;

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

## **ARTICLE 1**

### **THE WATER MAIN PROJECT**

**1.01** The City will install approximately 3,300 +/- linear feet of 8-inch ductile iron water main to replace the existing 6-inch cast iron water main, with the existing water main to be abandoned in place. The City will also install new valves, hydrants, and appurtenance necessary for a complete installation including interconnections to all side streets.

**1.02** The Consulting Engineer will design and submit to the Authority's Executive Engineer the proposed plans and drawings for the Water Main Project, which must be reviewed and approved by the Authority's Executive Engineer.

**1.03** The City agrees all plans and drawings for the Water Main Project must be approved and signed by the Authority's Executive Engineer prior to the advertisement of any bid notice.

**1.04** In accordance with the General Municipal Law § 103, the City will be responsible for soliciting sealed bids from responsible, responsive contractors for the Water Main Project.

**1.05** Prior to the advertisement of any bid notice involving the Water Main Project, the Consulting Engineer will review the proposed bid notice with the Authority. No bid notice involving the Water Main Project will be advertised without the Authority's approval.

**1.06** Following the opening of sealed bids, the City, through its Consulting Engineer, will review the bid submissions relating to the Water Main Project with the Authority's Engineering Department. The Authority, in its sole judgment, will determine whether the cost of the Water Main project portion of the bid is acceptable.

**1.07** The City, through its Consulting Engineer, will consult with the Authority's Executive Engineer prior to the award of any construction contract. The City agrees no construction contract for the Water Main Project will be awarded unless the proposed contractor, and the terms and conditions of the construction contract are acceptable to the Authority's Executive Engineer and its Chief Operating Officer.

**1.08** During the construction of the Water Main Project, the City, through its Consulting Engineer, will be responsible for resident inspection and will immediately notify the Authority's Executive Engineer or his designated project engineer of any unanticipated problems or additional costs associated with the Water Main Project.

## **ARTICLE 2 BID REQUIREMENTS**

### **2.01 Insurance:**

- A. Prior to the advertisement of any bid notice involving the Water Main Project, the Authority will retain Lawley Services, Inc. to perform a risk assessment and recommend insurance coverage and limits for contractors and subcontractors involved in the Water Main Project.
- B. Pursuant to ¶ 1.05 of this Agreement, the Authority must approve the insurance coverage and limits set forth in the bid requirements for contractor and subcontractors involved in the Water Main Project.
- C. All contractors or subcontractors involved in the Water Main Project shall secure and maintain the insurance coverage and limits, set forth in the bid requirement, necessary to protect itself, the City, and the Authority, from claims under the Workmen's Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or any person other than its employees; and from claims of damages because of injury to or destruction of property including loss of use resulting thereof in the amount as approved by the parties.
- D. Such contractor or subcontractors shall provide and maintain insurance certifying that each party to this Agreement is insured under the policy. The issuance of the insurance policy shall not release the contractor or subcontractor from any claims in excess of the insurance coverage.

### **2.02 Addendum to all Subcontracting Agreements.**

- A. The City will include in the bid requirements a subcontracting addendum agreement that must be used by all contractors and subcontractors involved in the Water Main Project.
- B. The addendum agreement must be in accordance with the sample Addendum Agreement, in the form set forth in Appendix A of this Agreement.
- C. Before work commences, the City agrees it will review and approve any proposed subcontracting agreement prior to its execution.

**2.03 Indemnification.** The City will include in its bid requirement an indemnification provision that provides:

- A. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold the Erie County Water Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Erie County Water Authority, its officers, directors, employees, and agents 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 contractor, its officers, directors, employees, agents and those of its contractors or subcontractors or anyone for whom the Contractor is legally liable.

**2.04 Bonds.** In the bid requirements, the City will include provisions for payment and performance/maintenance bonds.

A. Performance/Maintenance bond.

1. A performance/maintenance bond in a form satisfactory to the City and the Authority and issued by a carrier satisfactory to the City and the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances. A sample performance/maintenance bond in a form acceptable to the Authority is attached and made a part of this Agreement as Appendix B.
2. Said bond shall cover a period of twenty-four (24) months following the completion of the installation of water mains and appurtenances. During this 24-month period, the contractor must agree to maintain and repair the water mains and appurtenances.
3. The completion date shall be established as the date of the acceptance of the work by the Authority's Executive Engineer.
4. If the contractor defaults on its obligation, the Authority may seek to recover the cost of maintenance and repair from the carrier/surety of the performance/maintenance bond.

B. Payment bond.

1. A payment bond in a form satisfactory to the City and the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances. A sample payment bond in a form acceptable to the Authority is attached and made a part of this Agreement as Appendix C,
2. The contractor will provide said payment bond, insuring all labor and materials supplied for the construction and installation of the water mains and appurtenances have been fully paid, and such water mains and appurtenances are free of any liens or encumbrances.
3. Said bond shall cover a period of twelve (12) months following completion of the installation of water mains and appurtenances.
4. The completion date shall be established as the date of acceptance of the work by the Authority's Executive Engineer.

**2.05** Within the bid requirements, the City will include all applicable prevailing wage schedules and will required all contractors and subcontractors to prepare and submit certified payroll records prior to any invoices being paid.

### **ARTICLE 3 ACCEPTANCE OF THE WORK BY THE AUTHORITY**

**3.01** Upon the completion of the Water Main Project, the City shall provide the Authority with a statement, signed and sealed by the Consulting Engineer and the General Contractor, that all work involved in the installation of water mains and appurtenances was completed in accordance with plans and drawings approved by the Authority and in accordance with the Authority's specifications, that all valves, hydrants and appurtenances are in satisfactory operating condition and that the Consulting Engineer provided full time resident inspection of the work.

**3.02** The City, through its Consulting Engineer, shall provide the Authority with one (1) reproducible and electronic file AutoCad 2017 version on CD Rom or diskette record drawing, to a scale determined by the Authority, showing the constructed location of all mains with at least three readily identifiable ties to all fittings, valves and services. The record drawing shall be marked "As-Built" and bear the seal and license number of the Consulting Engineer. The Consultant Engineer shall certify by seal and signature that the Consulting Engineer has measured or has supervised the measurement of all dimensions shown on the "As-Built" drawing.

**3.03** Title to all water mains, hydrants, services, and appurtenances shall vest in the Authority and the Authority shall provide service to the City in the same manner as if the mains were originally installed by the Authority.

### **ARTICLE 4 COST REIMBURSEMENT**

**4.01** The City will be responsible for the payment of all professional or construction-related services for the Project and the Water Main Project, and will take whatever steps are necessary to extend the payment terms for such services while seeking reimbursement from the Authority for charges relating to the Water Main Project.

**4.02** The Authority agrees to reimburse the City for all contracted professional or construction-related services relating to the Water Main Project, as provided in ¶ 1.07 of this Agreement and in ¶ 4.04 of this Article. The parties agree costs associated with work performed by City employees are not subject to reimbursement.

**4.03** The Authority will be responsible for all work performed by Authority's employees, as well as any agent or consultant under contract with the Authority.



**4.04** Prior to the commencement of any work, the City will review with the Authority's Executive Engineer and its Chief Financial Officers the estimated fees and expenses for which the City shall seek reimbursement relating to its Consulting Engineer. The City and the Authority shall agree in writing to a "not to exceed" amount for these estimated fees and expenses to be charged by the City's Consulting Engineer. This written agreement shall be in a form of an Amendment to this Agreement, requiring the approval of the Authority's Board of Commissioners.

**4.05** The City may seek reimbursement upon the receipt of any itemized invoice relating to the Water Main Project.

**4.06** The Authority agrees to reimburse the City for costs associated with the Water Main Project when an itemized invoice is submitted by the City to the Authority. The Authority will not require the City to pay such invoices prior to seeking reimbursement.

**4.07** Upon receipt of a properly submitted invoice, the Authority will remit payment within 30 calendar days.

**4.08** The City may either mail or email any itemized invoice as provided below:

A. By mailing the itemized invoice to the Erie County Water Authority, Attention: Accounts Payable, 295 Main Street, Room 350, Buffalo, New York 14203, or

B. By emailing the itemized invoice to [accountspayable@ewca.org](mailto:accountspayable@ewca.org).

**4.09** The Authority shall have the right to audit any itemized invoices submitted for reimbursement, upon written notice to the City given at least ten (10) business days in advance of such audit.

A. During such audit, the Authority or its representative may review the direct costs, disbursements and expenses incurred in connection to the services provided to the Authority pursuant to this Agreement. The Authority may also review all certified payroll records submitted by contractors and subcontractors.

B. The period of audit shall be limited to three (3) years following the payment of any such invoice.

## **ARTICLE 5 GENERAL PROVISIONS**

**5.01** **Independent Status:** Nothing contained in the Agreement shall be constructed to render either the Authority or the City, employee or agent of the other, nor shall either party have authority to bind the other in any matter, other than set forth in this Agreement. It is intended that each party shall remain independent and separate from the other, and fully responsible for its own actions.

**5.02 Indemnification**

- A. To the fullest extent permitted by law, the City 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, employees and agents 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 City, its officers, directors, employees and agents under this Agreement and those of its contractors or subcontractors or anyone for whom the City is legally liable.
- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the City and/or the Contractor 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.

**5.03 Amendments and Modifications:** No modification, amendment or changes in the Water Main Project shall be valid unless the Authority is given prior written notice by the City and/or the Contractor and the Authority gives the City and the Contractor prior written approval of same.

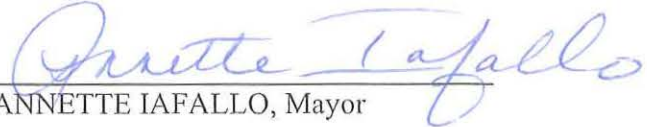
**5.05 Notice:** Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses stated above. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

**5.05 Entire Agreement:** This Agreement contains the entire Agreement between the parties relating to its subject matter. All prior or contemporaneous contracts, understandings and statements are merged herein.

**5.06 Approval:** This Agreement is subject to approval by the respective parties in accordance with the authority granted to each party.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals as of the Effective Date.

CITY OF LACKAWANNA

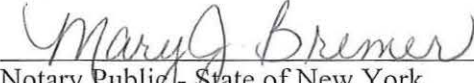
  
ANNETTE IAFALLO, Mayor

ERIE COUNTY WATER AUTHORITY

\_\_\_\_\_  
JEROME D. SCHAD, Chair

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

On the 3rd day of FEBRUARY, in the year 2021, before me personally came ANNETTE IAFALLO, to me known, who being by me duly sworn did depose and say that she resides in Lackawanna, New York, that she is the Mayor of the City of Lackawanna, described in the above instrument, and she signed her name thereto by the authorization of the City Council of the City of Lackawanna pursuant to a duly enacted resolution.

  
\_\_\_\_\_  
Notary Public - State of New York

**MARY J BREMER**  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires 01/30/23

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

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came JEROME D. SCHAD, to me known, who being by me duly sworn did depose and say that he resides in Amherst, New York, that he is the Chairman of the ERIE COUNTY WATER AUTHORITY, the corporation named in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by a duly adopted resolution of the said Authority and that he signed his name thereto by like resolution.

\_\_\_\_\_  
Notary Public - State of New York



## APPENDIX A

**[THIS FORM IS INTENDED TO BE USED AS AN EXHIBIT OR ADDENDUM TO ANY SUBCONTRACT—IT SHOULD NOT BE USED BY ITSELF AS A SOLE CONTRACT DOCUMENT]**

### ADDENDUM AGREEMENT

This Addendum to the Agreement (“Addendum Agreement”) between [ **Insert name of Upstream Contractor or Upstream Subcontractor**] (hereinafter referenced as “Contractor”) and [ **Insert name of Downstream Subcontractor**] (hereinafter referenced as “Subcontractor”) is being entered into by the parties for any and all work done for, with, or on behalf of **the Erie County Water Authority** (hereinafter the “Authority”) under the Cooperative Agreement between the City of Lackawanna and the Authority, dated February \_\_, 2021, a copy of which is attached to this Addendum Agreement (hereinafter the Cooperative Agreement).

In accordance with the terms and conditions of the Cooperative Agreement entered into with the Erie County Water Authority, an **ACORD25-Certificate of Liability Insurance** and **ACORD 855 NY-NY Construction Certificate of Liability Addendum** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing the Authority as Certificate Holder and additional insured. You should share these requirements with your current insurance agent, broker or insurance company.

#### **Insurance Requirements**

Prior to the commencement of any work designated in any contract or agreement to which this Addendum Agreement is attached, and until at least the final completion and acceptance of the work under the contract or agreement to which this Addendum Agreement is attached, the Subcontractor, at its sole expense, shall maintain the following minimum insurance on its own behalf, and furnish to the Authority certificates of insurance evidencing same and reflecting the effective date of such coverage as listed below. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Authority of the Subcontractor’s obligation to maintain the insurance set forth herein. The insurance required shall not be canceled, not renewed or materially changed after the issuance of the certificate of insurance required by this Addendum Agreement.

#### **A. Worker’s Compensation, Occupational Disease & Employer’s Liability Insurance:**

Worker’s Compensation, Occupational Disease & Employer’s Liability Insurance in accordance with the applicable laws and statutes to cover any injuries or illness to employees and any other person eligible for compensation, and the liability of the employer thereof to any person or organization, as follows:

**Worker's Compensation & Occupational Disease: Statutory**

**Employer's Liability:** \$1,000,000 bodily injury by accident or disease, except for work work/employers subject to the New York Worker's Compensation Law, in which this insurance shall be unlimited.

All such coverage shall: not contain any exclusion for injuries to sole proprietors, partners, members of limited liability companies or executive officers of any corporate entity; and provide for a "Waiver of Subrogation" endorsement in favor of the Owner/Contractor.

Any Contractor/Subcontractor with a principal place of business located outside of the State of New York must include New York under Part 3A of the policy.

**B. Commercial General Liability:**

Commercial general liability insurance as provided under the ISO Commercial General Liability Coverage Form, CG 00 01, or its equivalent, for claims of Bodily Injury, Property Damage and Personal and Advertising Injury, with limits of not less than:

Per Occurrence and Personal & Advertising Injury-	\$____.00
General Aggregate & Products/Completed Operations Aggregate-	\$____.00
Fire Damage Legal Liability/Damage to Rented Property-	\$____.00
Medical Payment (per-person)	\$____.00

The coverage must include the following:

1. Liability assumed by the insured in an "insured contract" as that term is defined in the ISO Commercial General Liability Coverage Form, CG 00 01.
2. Products/Completed Operations liability for a period of three years after acceptance of the work.
3. A per project aggregate of \$\_\_\_\_\_.
4. A "Waiver of Subrogation" Endorsement in favor of the Owner/Contractor.
5. Exterior Insulation Finish System ("EFIS") coverage must be specifically included or provided separately where the Contractor/Subcontractor work under this Agreement or in any contract or agreement to which this Addendum is attached in any way involves EFIS.
6. **The coverage shall not include any provision, definition, exclusion or endorsement which in any way would serve to eliminate the insurance to any insured or additional insured for liability for bodily injury or property damage**

**arising from work performed in New York State, for claims made under the New York Labor Law or for claims made by employees, subcontractors and employees of subcontractors hired to perform work by any insured or additional insured pursuant to work that is subject to this Addendum Agreement or in any contract or agreement to which this Addendum Agreement is attached.**

7. The insurance is to be provided through insurers licensed and admitted to do business in the State of New York, with an A. M. Best financial rating of "A" or better, or otherwise specifically approved by the Owner.

The Authority, its officers, directors, partners, representatives, agents and employees must be named as Additional Insureds on a primary and non-contributory basis on both the ongoing and completed operations coverage required herein utilizing the ISO endorsements: CG 2010 04 13 or CG 2038 04 13 (or their equivalent) for ongoing operations; and CG 2037 04 13 (or its equivalent) for completed operations. The Additional Insured coverage shall contain no special limitation or limitation on the scope of the protection afforded to the Additional Insureds.

**C. Commercial Automobile Liability Insurance:**

Commercial Automobile Liability insurance covering the ownership, maintenance and use of all Owned, Non-Owned and Hired Vehicles by the Subcontractor with combined Bodily Injury and Property Damage limits including pollution transit coverage of \$1,000,000.00 per accident. The Authority, its officers, directors, partners, representatives, agents and employees must be named as Additional Insureds on a primary and non- contributory basis. A "Waiver of Subrogation" in favor of the Authority must be included.

**D. Commercial Umbrella/Excess Liability Insurance:**

Commercial Umbrella/Excess Liability Insurance with limits of \$5,000,000.00 per occurrence and a \$5,000,000.00 aggregate. The Authority, its officers, directors, partners, representatives, agents and employees must be named as Additional Insureds on a primary and non-contributory basis. A "Waiver of Subrogation" in favor of the Authority must be included.

**E. Pollution Liability:**

Where the Subcontractor is performing work that is subject to this Addendum Agreement or to any contract or agreement to which this Addendum Agreement is attached, that involves abatement or remediation of hazardous substances or any manner of environmental work, pollution liability coverage applicable to the type of work/operations being performed in the amount of \$5,000,000.00 per occurrence and

\$5,000,000.00 aggregate limit. The Authority, its officers, directors, partners, representatives, agents and employees must be named as Additional Insureds on a primary and non-contributory basis. A "Waiver of Subrogation" in favor of the Authority must be included.

**F. Builder's Risk/Installation Floater:**

"All Risk" Property Insurance coverage afforded by a Builder's Risk/Installation Floater or its equivalent insuring all materials, equipment and supplies provided by the Subcontractor and intended to become a permanent part of the construction, whether stored on the premises, away from the project site and/or while in transit, in an amount equal to the replacement cost of such materials, equipment and supplies. A "Waiver of Subrogation" in favor of the Authority must be included.

**G. Owned and/or Rented Tools or Equipment:**

Property insurance covering all owned, rented, leased and/or borrowed tools or equipment of the Subcontractor or used by the Subcontractor in connection with the work that is subject to this Agreement or to any contract or agreement to which this Addendum is attached, in an amount equal to the replacement cost of such tools or equipment. A "Waiver of Subrogation" in favor of the Authority must be included.

**JOB-SITE SAFETY:**

The Authority makes no representation with respect to the physical conditions or safety of the Project Site. The Subcontractor shall, at its own expense, protect from injury its employees engaged in the performance of the Work. The prevention of accidents to all workers engaged in the Subcontractor's work and others affected by the Subcontractor's work is the responsibility of the Subcontractor. Subcontractor shall comply with all applicable federal, state, labor and local laws, regulations and codes concerning safety.

For purposes of this Addendum Agreement, "Project Site" means the entire construction site or the various separately identifiable part of the site described in any contract or agreement to which the Addendum Agreement is attached, and as described in the Primary Contract with the Authority.

**WORKERS COMP IMMUNITY WAIVER:**

In any and all claims against the Authority by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor (including any of the Subcontractor's subcontractors) or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **HOLD HARMLESS / INDEMNIFICATION:**

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

### **MISCELLANEOUS:**

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

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

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

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



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

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

---

[Insert Name of Representative]

---

[Insert Name by Representative]

(Print name and title)

(Print name and title)

Date:

Date:

**APPENDIX B**  
**SAMPLE PERFORMANCE/MAINTENANCE BOND**

## Maintenance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
of Business):

OWNER (Name and Address):

Erie County Water Authority  
295 Main St., Room 350  
Buffalo, NY 14203

### CONTRACT

Project No.: 202100019

Date:

Amount:

Description: Cooperative Agreement by and between the Erie County Water Authority and the City of Lackawanna  
(Center Street Water Main Project)

### BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

### CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

### SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

### CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

### SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER'S right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR'S right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract; or

3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER'S concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1 After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2 Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to

the OWNER.

6. After the OWNER has terminated the CONTRACTOR'S right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR'S Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here-from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2 Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3 CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

**APPENDIX C**  
**SAMPLE PAYMENT BOND**

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

Erie County Water Authority  
295 Main St., Room 350  
Buffalo, NY 14203

CONTRACT

Project No.: 202100019

Date:

Amount:

Description: Cooperative Agreement by and between the Erie County Water Authority and the City of Lackawanna (Center Street Water Main Project)

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

- 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
- 2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

- 4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
- 4.2. Claimants who do not have a direct contract with the CONTRACTOR:
  1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
  2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and
  3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

- 6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- 6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.