



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

July 31, 2019

To: Terrence D. McCracken, Secretary to the Authority

From: Russell J. Stoll, Executive Engineer

A handwritten signature in blue ink, appearing to read "R. Stoll", is written over the name "Russell J. Stoll" in the "From:" line.

Subject: Progress of Strategic Infrastructure Improvement Plan

Two memos were previously prepared to discuss the Capital Improvement Project Decision Process and Goals Considerations- Comprehensive Infrastructure Strategic Plan. These memos are the basis for development of the Strategic Infrastructure Improvement Plan. This plan assesses the needs and establishes priorities of the proposed capital infrastructure projects.

Authority staff engineers from production, treatment plants, and distribution met to discuss the various project needs. These needs were developed into projects that matched the goals brought forth from the Authority's mission statement. These projects are then prioritized using a scoring system that addresses the projects and their ranking with the criteria. Those criteria were established in the above referenced memos and included such items as safety and health, redundancy of facilities, impact of failure, regulatory compliance, etc. Scoring was weighted against how well each project met the prioritization criteria.

The project list is developed and scored and prioritized by senior staff and considers the inter-relationship of the various projects and their role in meeting the goals established.

The above work including the project identification, scoring, ranking, and general scheduling and sequencing are complete. This work was developed using excel spread sheets and can be readily updated as new projects are developed or priorities change. In addition to the project scoring and ranking of the various projects, planning level costs have also been prepared. As studies and designs are completed for the various projects these costs will be updated.

The current plan has approximately 10-years of projects identified based upon a logical sequencing for most project groups. The plan is still draft and additional documentation is being added to clarify the overall process. We plan on having the document being available by August 12, 2019 for use during the budget process.

RJS:jmf

Attachments

cc: Jerome D. Schad, Chairman

Mark S. Carney, Vice Chairman

E. Thomas Jones, Treasurer

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 31st day of May, 2018, by and between

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

hereinafter referred to as the "Authority", and

NUSSBAUMER & CLARKE, INC.
3556 Lake Shore Road, Suite 500
Buffalo, New York 14219

hereinafter referred to as "Consultant".

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

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

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

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

1. **QUALIFICATION OF CONSULTANT:**

The Consultant shall perform its services under this agreement in a skillful and competent manner in accordance with the prevailing standards of the consulting profession. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and failure to perform thereof.

2. **SCOPE OF SERVICES:**

A. PROJECT DESCRIPTION:

The Erie County Water Authority (ECWA) performs routine electrical improvement projects at various sites throughout the Authority's service area; these sites include office buildings, tank/pump stations and water treatment plants. This project consists of providing engineering services on an as needed basis in support of the of the Authority's routine electrical improvements.

B. ENGINEERING SERVICES:

1. Consultant shall provide services upon authorization by the Authority as directed based on a labor cost breakdown and time schedule for each task. The services may include, but are not necessarily limited to, the following:
 - a. Perform site visits to take field measurements and perform investigations.
 - b. Perform electrical designs which include the development of drawings, specifications, and cost estimates.
 - c. Attend meetings as requested and provide technical assistance.
 - d. Develop technical reports.
 - e. Develop electrical drawings for rehabilitation projects.
 - f. Develop electrical drawings for new construction projects.
 - g. Develop equipment specifications for procurement purposes.
 - h. Interface with vendors for retrofits to existing equipment.
 - i. Interface with electrical utilities for electrical service modifications or data requests.
 - j. Provide structural engineering services for duct bank design.
 - k. Provide in-house support staff for minor civil, structural, architectural, and mechanical design.
 - l. During construction; make on-site visits, review material submittals, shop drawings and test results, and respond to RFI's.
 - m. Start-up assistance.
 - n. Power system and arc-flash hazard studies and/or field data collection.
2. Tasks under this contract shall be requested on an as needed basis. Requests shall be made via email or formal letter. The process of identifying, approving and undertaking work is as follows:
 - a. ECWA staff shall identify a need for electrical engineering services.
 - b. ECWA staff shall document the scope and requirements.
 - c. The consultant shall provide a written estimate of the hours, staff and costs of the work.
 - d. The proposal shall be reviewed, if accepted the work shall be initiated. ECWA shall provide acceptance of proposal via email.
 - e. ECWA staff shall monitor the progress of the work. The work and estimate shall be revisited and reviewed if the scope cannot be completed within the cost estimate provided. Consultant shall provide timesheet backup upon request to verify hours worked.
 - f. The consultant shall invoice the Contract Administrator, documenting the work completed against each approved assignment.
3. The term of the Contract shall be through December 31, 2019.

Structural Engineer	\$121.00
Mechanical Engineer	\$93.00
Architect	\$112.00
Landscape Architect	\$90.00
Licensed Surveyor	\$112.00
Survey Technician	\$98.00
2-Person Survey Crew (NYS Prevailing Wage Rates)	\$242.00
Construction Observer	\$90.00
CADD Drafter	\$93.00
Technical Typist	\$62.00
Subcontractor Costs	
Electrical Subcontractor	\$135.00

Estimated Special Services: \$25,000.00

Direct expenses shall include reproduction, travel, mileage, long distance telephone, rental equipment, materials, and may be invoiced at cost plus 5%.

4. **SUBCONTRACT AND ASSIGNMENT:** The Consultant may not subcontract or delegate any of the work, services, and/or other obligations of the Consultant without the express written consent of the Authority. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

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

6. **RIGHT TO TERMINATE:** The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days' written notice. Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

7. **INDEMNIFICATION:** The Consultant shall indemnify the Authority against any and all claims arising from the services performed by the Consultant herein and shall defend and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees based upon or arising out of damage to property or injury to persons or other tortious conduct caused or contributed to it by the Consultant or anyone under its direction or control or on its behalf in the course of its performance under this Agreement. The Consultant further agrees to indemnify, defend and hold harmless the Authority from any and all claims in reference to the services performed by the

Consultant hereunder which may infringe on a patent, copyright, trade secret or other proprietary right of any third party.

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

The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the consultant's benefit or for the benefit of others shall be permitted.

In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

9. **INSURANCE:** The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Exhibit "A". The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.

10. **COPYRIGHTS, TRADEMARKS, AND LICENSING:** All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether or not registered.

In performing work under this agreement, the Consultant may be granted access to the Authority's GIS data, documents, and other information. The Consultant understands and agrees that the use of such data, documentation and information shall be treated as confidential information and the Consultant shall abide by the terms and conditions of any confidentiality and copyright leasing agreements (attached as Exhibit "B").

11. **NEW YORK LAW AND JURISDICTION:** Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a Court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.
12. **CONFLICTS OF INTEREST:** The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Consultant, except to pay for services actually rendered.
13. **ADDITIONAL CONDITIONS:** The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.
14. **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 agreement hereafter 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 thereby.
15. **INDEPENDENT STATUS:** Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant a partner, employee or agent of the other, nor shall either party have authority to bind the other in any

manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

The Consultant is free to choose the aggregate number of hours worked and substantially all of the scheduling of such hours as it shall see fit at its discretion within the limitations set forth hereinbefore in Paragraph 2.

Neither the Consultant, 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.

In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

16. **COMPLIANCE**: The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York. The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.
17. **GRATUITIES**: The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.
18. **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.
19. **SEVERABILITY**: If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and

enforceability of all other provisions of this agreement shall not be affected thereafter.

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

21. **GROUND FOR RENEWAL OF CONTRACT:** If the Authority and the Consultant mutually agree to continue the agreement after the 31st day of December, 2019, it shall be extended for the term of one (1) year on the same terms and conditions provided herein and hourly rates in effect at that time. Consultant shall provide written notification to the Authority of the extension prior to expiration of the initial term of this Agreement.

ERIE COUNTY WATER AUTHORITY

By [Signature]
Chairman

NUSSBAUMER & CLARKE, INC.

By [Signature]
Michael T. Marino, P.E., CEO - Engineering

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 31st day of May, in the year 2018, before me personally came Jevonne 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 Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

[Signature]
Notary Public

PATRICIA FABOZZI #4957585
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2021

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 2 day of MAY, in the year 2018, before me personally Michael T. Marino, P.E., to me known, who, being by me duly sworn, did depose and say that he resides in North Tonawanda, New York, that he is the CEO – Engineering of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

[Signature]
Notary Public

MARGARET M. LAWLESS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8/31/18

EXHIBIT A
INSURANCE REQUIREMENTS
ERIE COUNTY WATER AUTHORITY

Erie County Water Authority Insurance Requirements for Professional Services

Project Number: 201800056 **Contract Number:** NC-037

Description: Engineering services for the design and installation of miscellaneous electrical improvements at Authority facilities

The following minimum insurance requirements shall apply to professional service providers under agreement with the Erie County Water Authority (ECWA). The professional service provider carries relevant insurance for the services covered. If at anytime, in the opinion of ECWA, there is an unusual or exceptional risk, ECWA may establish additional insurance requirements for the duration of the agreement. All insurance required herein shall be obtained at the sole cost and expense of the professional service provider, including deductibles and self-insured retentions. These requirements include but are not limited to the minimum insurance requirements.

An X indicates insurance coverage is required.

X **Commercial General Liability Insurance:** (including, but not limited to, Bodily (Personal) Injury, Premises Operations, Property Damage Liability (broad form), Contractual Liability, Advertising Injury, Independent Contractors, Product Liability, Completed Operations Liability and Explosion, Collapse and Underground Coverage) – in an amount not less than \$1,000,000 combined single limit and \$2,000,000 in the aggregate:

X **Per Policy**

___ **Per Project or Job**

___ **Per Location**

There should be no exclusions for any claims filed, actual or alleged, for violation of any applicable statute including, but not limited to, the New York State or federal labor laws, ordinances, administrative orders, executive orders, rules, regulations, or decrees of any court of competent jurisdiction.

X **Commercial Business Automobile Insurance** in an amount of not less than \$1,000,000 each accident and shall cover liability arising out of any automobile owned, leased, hired, borrowed and non-owned automobiles. Additionally, if vehicles are used for transporting hazardous materials, the contractor shall obtain and maintain the "broadened" coverage (endorsement CA 99 48 10 01 or CA 99 48 12 93), as well as proof of MCS 90 04 00.

Excess Umbrella Liability Insurance:

\$1,000,000 in the aggregate

\$2,000,000 in the aggregate

\$3,000,000 in the aggregate

\$4,000,000 in the aggregate

\$5,000,000 in the aggregate

Per Policy

Per Project or Job

Per Location

Professional Liability Insurance: Per each occurrence and in the aggregate. Continuous coverage shall be maintained, or on an extended discovery period ("tail coverage"), for a period of not less than two years from the time the agreement has been completed in an amount of not less than:

\$1,000,000 in the aggregate

\$2,000,000 in the aggregate

\$3,000,000 in the aggregate

\$4,000,000 in the aggregate

\$5,000,000 in the aggregate

Per Policy

Per Project or Job

Per Location

X Workers' Compensation and Employers' Liability and New York State Disability Benefits Insurances, as required by New York State statute.

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

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.

Acceptance of a Certificate of Insurance and/or approval by ECWA shall not be construed to relieve the professional service provider of any obligations, responsibilities or liabilities.

Certificates of Insurance should be e-mailed to AALESSI@ECWA.ORG, or mailed to Mr. Anthony Alessi, ECWA Claims Representative/Risk Manager, Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or if you have any questions you can contact Mr. Alessi by e-mail or phone (716) 849-8477.

Please refer to the bid and the contract document(s) for additional information regarding insurance requirements.