



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

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

Cc: Karen A. Prendergast, Chief Financial Officer
Russell J. Stoll, Chief Operating Officer
Margaret A. Murphy, General Counsel
Leonard F. Kowalski, Executive Engineer

From: Terrence D. McCracken, Secretary of the Authority

Date: July 7, 2020

Subject: Professional Service Agreement for Information Technology Services
Hi-Tech Computer Systems, Inc.
Project No. 202000180
Contract No. HT-07

The Erie County Water Authority (the “Authority”) has had a business relationship with Ralph Giambra doing business as Hi-Tech Services for nearly thirty years. On May 6, 2019, the Authority’s Board of Commissioners (the “Board”) granted a one-year extension to the current contract with Hi-Tech Services (Contract No. HT-06, Project No. 201600166). That extension expires on July 31, 2020.

The Legal Department has prepared a new one-year, professional service agreement for Hi-Tech Computer Services, Inc., a New York domestic corporation, formed by Ralph Giambra in 1996. Based on recommendations from Lawley Services, Inc., the Authority has revised the insurance requirements, increasing the Professional Liability Coverage to include Cyber/Privacy Coverage and raising the limits from \$1,000,000 to \$5,000,000. Hi-Tech personnel will continue to be compensated on an hourly basis, in an amount not to exceed \$420,000.00.

If you have any questions regarding the scope or the terms of the agreement, you may contact either me or the Authority’s General Counsel, Margaret Murphy.

**PROFESSIONAL SERVICES AGREEMENT
FOR INFORMATION TECHNOLOGY SERVICES**

This Agreement is effective as of July 16, 2020 (“Effective Date”). The parties to this Agreement are:

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

HI-TECH COMPUTER SYSTEMS, INC.

5999 South Park Avenue, Suite 200
Hamburg, New York 14075

and

RALPH L. GIAMBRA d/b/a HI-TECH SERVICES

5999 South Park Avenue, Suite 200
Hamburg, New York 14075

hereinafter referred collectively as “Consultant.”

The Consultant (formerly known as Hi-Tech Services) has provided the Authority with information technology services for more 30 years and would like to continue that relationship upon the terms and conditions set forth in this Agreement.

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

ARTICLE 1 – CONSULTANT SERVICES

1.01 **Standard of Performance**

- A. ***Standard of Care:*** The Consultant shall perform its service under this Agreement in a skillful and competent manner in accordance with the standard of care ordinarily practiced by members of the subject profession under similar circumstances at the same time and in the same locality.
- B. ***Technical Accuracy:*** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of Consultant’s services. Consultant shall correct deficiencies in technical accuracy without additional compensation, unless

such corrective action is directly attributable to deficiencies in Authority-furnished information.

1.02 **Scope of Services**

- A. The Authority and the Consultant will identify and quantify the tasks and activities undertaken under this Agreement prior to executing the work and billing the Authority, in the manner described as follows:
1. The Secretary of the Authority (the “Secretary”) will monitor and oversee the tasks and activities being performed by the Consultant pursuant to this Agreement. The Manager or Acting Manager of Data Processing (the “Manager”) must have the Secretary’s approval before a task or assignment may be given to the Consultant or its personnel.
 2. Division and Department Heads may request and identify a function, task or parcel of work requiring assistance from the Information Technology (IT) unit. Such requests must be in writing, via a memo or an email, and sent to the Manager with a copy to the Secretary.
 3. Before the task or assignment is undertaken, the Consultant may be required to estimate time (broken down by title) and expenses to complete the work. Under such circumstances, no work should proceed until the Secretary has approved the estimate after consulting with the Manager or other Division or Department Heads.
 4. The Manager has the authority to assign short tasks or assignments to the Consultant and its personnel if the work can be completed within 2 hours.
 5. The Consultant will keep the Manager updated on all deliverable tasks and assignments. Before any task or assignment exceeds the estimated time or expenses, the Consultant will advise the Manager and the Secretary revising the original estimate for time and expenses to complete the work. The Secretary’s approval is necessary before the Consultant can invoice the Authority for additional time and/or expenses.
 6. All deliverable tasks and assignment must be tested and reviewed by the Manager prior to acceptance of such work by the Secretary.
 7. The Consultant will only bill for actual time and expenses.
 - a. The Consultant’s invoice must identify the task or assignment by project name and project number, except for short tasks or assignments.
 - b. For short tasks or assignment, the Consultant shall provide a short description on the invoice. The Authority and Consultant anticipate 25% of monthly charges will consist of short tasks and assignments.

- B. The Consultant will assign to the Authority qualified individuals who have the skills and experience to perform the tasks assigned to them under the following titles:

1. Senior Solution Programmer

- a. The individual must have application development expertise in public utilities information management systems including, but not limited to, systems for Enterprise Resource Planning (general ledger, budget and forecasting, inventory, fixed asset and asset management, records management, payroll, human resources), City Works (work orders, meter reading), customer relationship management system, project tracking, document archival and retrieval system.
- b. The individual must have experience working with users as part of a project team, examining business processes and workflows, defining user and application requirements within an IBM Power System and Window environments, defining ILE RPG program specifications, writing programs and documentation, conducting integrated system testing, user training, implementation, and post implementation follow up.
- c. The individual must have thorough knowledge of ILE RPG, TCP/IP networking, ILE, CL, SQL, Query and using application programming interfaces relating to the IBM Power System integrated file system. IBM's Content Manager Visual Info and OnDemand (report archiving).
- d. The individual must have 10 or more years of experience in application design and RPG programming in an IBM Power System environment.
- e. The individual will be responsible for assisting and training Authority personnel in public utility application design, programming, IBM Power System operation, APAR initiation, PTF installation, backup, and recovery and implementation.

2. Business Analyst and Network Specialist

- a. This individual must have experience in systems analysis, system design, network support and RPG programming skills in public utilities information management systems, as well as defining user and application requirements, writing ILE RPQ online and batch programs, conducting integrated system testing, training users, and implementing systems.

- b. The individual must have seven (7) years or more application design and RPG programming experience in an IBM Power System environment and 4 years of experience with TCP/IP networking in a Window environment with specific experience configuring and maintaining Cisco routers, fire walls, wireless controllers and access points and monitoring and alarming using the Solar Winds package.
- c. The individual must be responsible for assisting and training Authority personnel in public utility application design, programming and implementation.
- d. The individual must be able to configure applications on thin clients running Rockwell's thin manage product within a GE IFIX SCADA environment.

C. Web Design, Development and Maintenance.

- 1. The Consultant will make available, on an as-needed-basis, individuals who have the skills and experience to provide web page analysis and design using HTML and PHP programming with experience configuring and maintaining Apache webserver running on IBM Power server.
 - 2. The Consultant agrees to charge a different rate, as set forth in Article 2, § 2.02, for web design and development and for web maintenance.
- D. The Consultant shall complete the task and assignments, as well as supply such personnel, as required by § 1.02 of this Agreement.
- E. Consultant personnel may work on-site at one of the Authority's facilities, or at the Consultant's office.
- F. The Consultant shall supply the Authority with cell phone numbers of all Consultant personnel assigned to tasks and activities under the Agreement.

1.03 Access to Authority Property:

- A. The Consultant must notify the Authority's Security Officer and provide government-issued photo identification of all employees retained by the Consultant who will be working on-site at one of the Authority's facilities and any additional information reasonably requested by the Authority's Security Officer.
- B. The Security Officer will issue security passes to the Consultant's employees assigned to work on-site at one of the Authority's facilities, allowing entrance to such Authority facility subject to the same conditions as an Authority employee.
- C. No person may visit any Authority property without the authorization of the Authority and/or its Security Officer.

1.04 **Compliance with Laws and Regulations, and Policies and Procedures**

- A. The Authority and the Consultant shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875 and 2876 of the laws of the State of New York.
- C. The Consultant shall comply with the provisions of State Finance Law § 139-L of the laws of the State of New York. The Consultant will submit and sign the Sexual Harassment Bidding Certification, a copy of which is attached to, and incorporated in, this Agreement, as Appendix C.
- D. The Consultant 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.
- E. The Authority shall provide the Consultant in writing any and all other Authority policies and procedures applicable to the Consultant’s performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.

1.05 ***Health Screening Questionnaire:*** The State of New York (the “State”) has declared a state of emergency due to the COVID-19 pandemic. The Authority is currently operating under a Declaration of Emergency. While the Authority continues to operate under the Declaration of Emergency, the Consultant, its employees, and agents shall comply with all health safety rules and regulations adopted by the State or the Authority including, but not limited to, completing a health screening questionnaire before entering any Authority worksite.

ARTICLE 2 – PAYMENT OF PROFESSIONAL SERVICES

2.01 The Consultant shall submit monthly invoices to the Authority, detailing the hours and description of the services rendered to the Authority, as well as expenses incurred, in a form acceptable to the Authority’s Chief Financial Officer and/or Comptroller. The Consultant will be responsible for completing all work covered by this Agreement.

2.02 Costs for the services provided under this Agreement shall be billed at the following rates:

Senior Programmer Analyst	\$96.00 per hour
Business Analysis and Network Specialist	\$86.00 per hour
Web Design and Development	\$80.00 per hour
Web Maintenance	\$52.00 per hour

2.03 The Consultant shall keep accurate records and books of all disbursements, or expenses

made or incurred by the Consultant pursuant to the services provided under this Agreement.

- A. Payments for services will be based on detailed actual hours worked with a total cost not to exceed \$420,000.
- B. The Consultant shall seek pre-approval from the Secretary and the Chief Financial Officers for disbursements or expenses expected to exceed \$500.00. Expenses will be reimbursed upon presentation of paid receipts with a total cost not to exceed \$10,000.00.

2.04 The Authority shall have the right, upon notice given at least ten (10) business days in advance, to audit any invoice, including invoices submitted by Hi-Tech Services, before or after payment of such invoice is made.

- A. The period of audit shall be limited to three (3) years following the payment of such invoice.
- B. During such an audit, the Authority will review the direct costs, disbursements and expenses made or incurred in connection to the services provided to the Authority pursuant to this Agreement or pursuant to the prior agreement (Contract No. HT-06; Project No. 201600166) with Hi-Tech Services.
- C. During such an audit, the Consultant will provide the Authority with the books and records relating to direct costs, disbursements and expenses listed on such invoice(s).

2.05 Upon receipt of a properly submitted invoice, the Authority will remit payment within 45 calendar days.

ARTICLE 3 – GENERAL PROVISIONS

3.01 **Subcontract and Assignments:** 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.

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

3.03 **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.

3.04 **Indemnification:**

- A. To the fullest extent permitted by law, the Consultant 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 Consultant's performance of professional services provided under this Agreement or anyone for whom the Consultant is legally liable.
- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Consultant 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 employees, contractors, consultants or anyone for whom the Authority is legally liable.

3.05 **Confidential Information:**

- A. 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.
- B. 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.
- C. All data and information in any format submitted or made available to the Consultant by the Authority or any other person on behalf of the Authority, unless otherwise publicly available, and all data and information, and other work developed by the Consultant under this Agreement, shall be utilized by the Consultant solely in connection with the performance of services under this Agreement only and shall not be made available by the Consultant to any other person.
- D. In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. Consultant may provide such

information to its Authority-approved 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. The terms of this paragraph shall be binding during and subsequent to the termination of this Agreement.

3.06 **Reliance on Data:** In performance of the services, it is understood that the Authority and/or others may supply the Consultant with certain information and/or data, and that the Consultant will rely on such information. It is agreed that the accuracy of such information is not within the Consultant's control and they shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly part of the Scope of Services.

3.07 **Insurance:**

- A. 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 Appendix A.
- B. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant shall provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee's phone number and email addresses.

3.08 **Copyrights, Trademarks and Licensing:**

- A. All materials produced under this Agreement, whether produced by the Consultant 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 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 registered or not.
- B. 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, a copy of which is attached and made a part of this Agreement as Appendix B.

3.09 **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.

3.10 **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 rendered.

3.11 **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.

3.12 **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.

3.13 **Independent Status:**

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant, 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 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.
- B. The Consultant 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 1.

- C. 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.
- D. 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.

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

3.15 **Gratuities:** The Consultant shall prohibit its agents, employees and consultants 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.

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

ARTICLE IV – HI-TECH SERVICES LIMITATION

4.01 Prior to August 1, 2020, Ralph L. Giambra doing business as Hi-Tech Services (“Hi-Tech Services”) provided, under contract, information technology consulting services to the Authority.

4.02 Hi-Tech Services will continue to perform services to the Authority pursuant to Contract No. HT-06 (Project No. 201600166) until July 31, 2020 and will continue to be subject to the terms and conditions paragraph 3.1 of Contract No. HT-06 for a three-year period upon the expiration of Contract No. HT-6.

4.03 Except as provided in Article 2, § 2.04, Ralph L. Giambra d/b/a Hi-Tech Services has no obligation to perform work under this Agreement.

ARTICLE V – SEVERABILITY

5.01 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 VI – DURATION

6.01 All services to be provided under this Agreement shall be for a one-year period starting August 1, 2020 through July 31, 2021.

5.02 The Authority reserves the right to terminate this Agreement 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 Agreement.

ERIE COUNTY WATER AUTHORITY

By: _____
Jerome D. Schad, Chairman

HI-TECH COMPUTER SYSTEMS, INC.

By: _____
Ralph L. Giambra, President

**RALPH L. GIAMBRA d/b/a
HI-TECH SERVICES**

By: _____
Ralph L. Giambra

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

On the __ day of July, in the year 2020, before me personally came Jerome D. Schad to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he

is the Chairman of the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners of said Authority.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _day of _____, in the year 2020, before me personally came Ralph L. Giambra, to me known, who, being by me duly sworn, did depose and say that he resides in **Angola**, New York , that he is a President of the corporation described in the above instrument; and that he signed his name thereto by order of said corporation.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _day of _____, in the year 2020, before me personally came Ralph L. Giambra, to me known, who, being by me duly sworn, did depose and say that he resides in **Angola**, New York , that he is individual described in the above instrument as formerly doing business as Hi-Tech Services; and that he signed his name to this instrument.

Notary Public

APPENDIX A

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR INFORMATION TECHNOLOGY SERVICES

CONTRACT NO. HT-07; ECWA PROJECT No. 202000180

Insurance Specs:

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

Insurance Requirements:

a. Workers Compensation:

Part 1: Workers Compensation: Statutory

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

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

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

c. Commercial General Liability:

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

d. Automobile Liability:

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

e. Technology Professional Liability (Including Cyber/Privacy Liability):

- \$5,000,000. Per Claim
- \$5,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured

APPENDIX A

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

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

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

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

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

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

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, 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 B

ERIE COUNTY WATER AUTHORITY CONFIDENTIALITY AND COPYRIGHT LICENSING AGREEMENT

LICENSE:

Upon execution of this Agreement, the Consultant acquires from the Authority a license to use the proprietary and intellectual property of the Authority for the purpose of completing the work under this Agreement.

The Authority reserves the right to incorporate any Consultant-created data into the Authority's database.

OWNERSHIP:

This License Agreement does not constitute a transfer of title or interest in the data. Any portion of the data that is modified or merged into another computer file or program by the Consultant or is integrated with other programs or data to form derivative products, shall continue to be subject to the provisions of this License Agreement. The Authority retains ownership of the data and all such portions.

CONFIDENTIALITY CLAUSE:

The Consultant agrees that all digital data and hard copy from the ECWA GIS Basemap Features provided to the Consultant are copyrighted by the Authority, are protected by the copyright laws of the United States and are furnished to the Consultant with all rights reserved. Therefore, the Consultant is hereby permitted to use the digital data and hard copies thereof only for the purposes allowed under this Agreement. The Consultant agrees not to otherwise copy, reproduce or use the digital data, hard copy, or the information contained therein for any other purpose whatsoever.

COPYRIGHT NOTICE:

The copyright notice included in each of the files is not only to be retained in those files but is also to be included in any copies made of those files. No part of the files may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photographing and recording, or by any information storage or retrieval system, except as expressly permitted in writing by the Erie County Water Authority.

Upon notification by the Authority of any changes in copyright requirements, the Consultant will make said changes to all subsequent maps or reports, as required.

APPENDIX B

TERMINATION:

The License to use data terminates upon completion of the work under this Agreement.

LIQUIDATION OF DAMAGES FOR BREACH OF AGREEMENT:

The parties agree that if Consultant breaches the Agreement and uses or discloses any of the copyrighted information in any way other than that allowed, during or subsequent to the terms of this Agreement for any purpose whatsoever, the damages of the Authority shall be deemed liquidated at three times the amount of the total value of the data as determined by the Erie County Water Authority.

In addition to treble damages for breach of Agreement, Consultant will additionally forfeit the license acquired to use copyrighted property of the Authority.

SPECIFIC TERMS OF ACCEPTANCE:

This Agreement should be read in conjunction with the Professional Service Agreement for Information Technology Services, effective as of July 16, 2020, between the Authority and the Consultant Services. The Professional Service Agreement and this Agreement constitute the entire understanding of the parties and no representations or agreements, oral or written, made prior to their execution shall vary or modify the terms of either agreement.

APPENDIX C

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

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

SEXUAL HARASSMENT BIDDING CERTIFICATION

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

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)