



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

October 10, 2018

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Senior Distribution Engineer

Subject: Small Services Contract, Area #2
February 1, 2019 through January 31, 2020
ECWA Project No. 201900004

A handwritten signature in black ink, appearing to be "LFK", is written over the "From" and "Subject" lines.

The current Small Services Contract for Area #2 expires on January 31, 2019. It allows the Authority to connect new customer services 3/4-inch to 2-inch diameter in the Towns of Concord, West Seneca, Hamburg, Marilla, Orchard Park, Eden, Evans, Aurora, Boston and Villages of Hamburg, Orchard Park, and Blasdell, and the City of Lackawanna. Specifically, the Work is to be performed in the Erie County Water Authority's franchised area and all water districts that the Authority operates under a lease-managed contract in this area. The following documents are attached:

- Blue Authorization Form - this form provides the project name and project number, the action that is being requested of the Board, and it provides a list of approvals that are required prior to being acted on by the Board.
- One (1) set of Contract Documents.

The Project Manual needs to be reviewed by the Risk Manager and the Legal Department before the Board can provide the Authorization to Advertise.

LFK:jmf
Attachment
cc: R.Stoll
ECWA-799-1902-I-186

Set No:

Project Manual

Small Services Contract Area #2

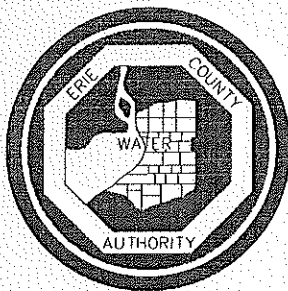
February 1, 2019 through January 31, 2021

Project No. 201900004

???????????? 2018

Erie County Water Authority

295 Main Street, Room 350
Buffalo, New York 14203



**ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK**

**SMALL SERVICES CONTRACT
AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021**

ECWA PROJECT NO: 201900004

???????????????????? 2018

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

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT No: 201900004

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ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT NO: 201900004

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ERIE COUNTY WATER AUTHORITY
295 MAIN STREET, ROOM 350
BUFFALO, NEW YORK 14203-2494

SMALL SERVICES CONTRACT
AREA #2

FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT NO: 201900004

NOTICE TO BIDDERS

The Erie County Water Authority will receive separate, sealed bids for the furnishing of all labor, plant, tools, equipment and specified materials, etc. for SMALL SERVICES CONTRACT, AREA #2, FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021. The Work consists of the installation or replacement of water service lines from the Authority's watermains to the customer's property line and other related work.

Bids will be received by the Erie County Water Authority until 10:00 a.m. prevailing time, on Tuesday, February 1, 2019 at the Cashier's Office of the Authority, 295 Main Street, Room 350, Buffalo, New York 14203, and then at that time and place will be publicly opened and read.

All bids being mailed (including FedEx, UPS, Priority Mail, etc.) or hand-delivered to the Erie County Water Authority shall be directed to the "CASHIER'S OFFICE" at the address listed above in a sealed envelope and be clearly marked on the outside of the mailing or hand-delivered envelope "BID ENCLOSED - SMALL SERVICES, AREA #2, FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021". Failure to follow the above instructions could result in rejection of the bid.

Beginning at 9:00 a.m. on Monday, February 1, 2019, the Instruction to Bidders, Form of Bid and form of Contract, Specifications, and Security Bonds may be examined at the above address and may be obtained by writing the Cashier's Office at the above address or calling (716) 849-8484, between the hours of 9:00 a.m. and 5:00 p.m. upon payment of a deposit of Fifty Dollars (\$50.00). Check for documents shall be made payable to Erie County Water Authority.

Contract Documents are also available by mail through the following procedure. The Erie County Water Authority will mail the Contract Documents to those wishing to obtain a set upon receipt of the document deposit described above plus a non-refundable mailing and handling charge of twenty five dollars (\$25.00) per set. The mailing date will be considered the bidder's date of receipt. Partial sets of documents will not be available. The \$50.00 deposit check for mailed documents shall be sent to the Erie County Water Authority with the \$25.00 mailing and handling check. The mailing and handling check (\$25.00) shall be made payable to the Erie County Water Authority.

Deposits for deposit checks will be refunded to Bidders who return the documents within seven (7) days after the Bid Opening. Checks for mailing costs will not be refunded.

Each bid shall be accompanied by a certified check or bid bond in the amount of five percent (5%) of the amount of the bid.

In accordance with State Finance Law §§139-j and 139-k, all questions about meaning or intent of the bidding documents shall be submitted to the designated contact person in writing. The designated contact is Leonard F. Kowalski, Senior Distribution Engineer, 3030 Union Road, Buffalo, New York 14227-1097, telephone 716-685-8220.

The Erie County Water Authority reserves the right to reject any and all bids or to accept any bid deemed to be for the best interest of the Water Authority even though the bid chosen may result in the award of the contract to a bidder whose bid is not mathematically lowest.

ERIE COUNTY WATER AUTHORITY

Terrence D. McCracken
Secretary to the Authority

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021

PROJECT NO: 201900004

SECTION 00200

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 - DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.
- 1.02 Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.
- A. Bidder: The individual or entity who submits a Bid directly to OWNER.
 - B. Issuing Office: The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
 - C. Successful Bidder: The Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER'S evaluation as hereinafter provided) makes an award. Also known as CONTRACTOR.
 - D. ENGINEER: As defined in the Agreement, Section 00500, under Article 2.

ARTICLE 2 - BIDS RECEIVED

- 2.01 Refer to Notice to Bidders for information on receipt of Bids.

ARTICLE 3 - LOCATION AND SCOPE OF WORK

- 3.01 Refer to Section 01100 of the General Requirements for the location and scope of the Work.

ARTICLE 4 - COPIES OF BIDDING DOCUMENTS

- 4.01 Refer to Notice to Bidders for information on examination and procurement of Bidding Documents.
- 4.02 The Issuing Office is the Cashier Office of the Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203.
- 4.03 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER, nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 4.04 OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant permission for any other use.

ARTICLE 5 - QUALIFICATIONS OF BIDDERS

- 5.01 Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefor, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show that Bidder has the necessary ability, plant and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the time specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution or completion of the Work.
- 5.02 To demonstrate qualifications to perform the Work, Bidder shall complete and submit with its Bid the Bidder Qualifications Statement which is bound in the Project Manual. Bidders may be asked to furnish additional data to demonstrate their qualifications.
- 5.03 Bidders shall be qualified to do business in the state where the Project is located or covenant to obtain such qualification prior to signing the Agreement.

ARTICLE 6 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA AND SITE

6.01 Subsurface and Physical Conditions

- A. The Supplementary Conditions identify:
1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site which have been utilized by ENGINEER in preparation of the Bidding Documents.
 2. Those drawings of physical conditions in or relating to existing surface and subsurface structures (except underground facilities) which are at or contiguous to the Site that have been utilized by ENGINEER in preparation of the Bidding Documents.
- B. Copies of the reports and drawings referenced in the Supplementary Conditions will be made available by ENGINEER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph SC-4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

6.02 Underground Facilities - Physical Conditions

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information

and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER, or others.

- 6.03 Hazardous Environmental Condition
- A. OWNER has no actual knowledge of a hazardous environmental condition at the Site.
- 6.04 Provisions concerning responsibilities for the adequacy of data, if any, furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unforeseen conditions appear in paragraphs 4.02, 4.03 and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Bidding Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the Scope of Work appear in paragraph 4.06 of the General Conditions.
- 6.05 On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former conditions upon completion of such explorations, investigations, tests and studies.
- 6.06 On request, OWNER will conduct a Site visit during OWNER'S normal business hours.
- 6.07 Reference is made to the Supplementary Conditions for identification of the general nature of other work that is to be performed at the Site by OWNER or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, and if available, OWNER will provide to Bidder, for examination, access to or copies of the contract documents for such other work.
- 6.08 It is the responsibility of Bidder, before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local and Site conditions that may affect cost, progress and performance of the Work;
- C. Become familiar with and satisfy Bidder as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work;
- D. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and to carefully study all reports and

drawings of a Hazardous Environmental Condition identified at the Site, if any, which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;

- E. Obtain and carefully study (or assume responsibility for having done so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for the performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
- G. Become aware of the general nature of work (if any) to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents;
- I. Promptly give ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to Bidder; and
- J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

6.09 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 6, that without exception the Bid is premised upon performing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences or procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by ENGINEER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing the Work.

ARTICLE 7 - PRE-BID CONFERENCE

- 7.01 A pre-bid conference will be held if so indicated in the Notice to Bidders, and will be as follows. Representatives of the OWNER and ENGINEER will be present to discuss the Project. Bidders are encouraged to attend and participate at the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions raised at the conference. Oral statements may not be relied upon and will not be binding or legally effective.
- 7.02 Bidders are encouraged to inspect the materials in storage at the Erie County Water Authority Service Center that will be incorporated into the Work. An opportunity will be presented at the Pre-Bid Conference or by appointment prior to the bid date. The CONTRACTOR shall be held responsible to be knowledgeable of these materials and include such cost as necessary in his bid.

ARTICLE 8 - SITE AND OTHER AREAS

- 8.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment, to be incorporated into the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

ARTICLE 9 - INTERPRETATIONS AND ADDENDA

- 9.01 All questions about the meaning or intent of the Bidding Documents shall be submitted to ENGINEER in writing. In order to receive consideration, questions must be received by ENGINEER at least ten (10) days prior to the date for the opening of Bids. Interpretations, clarifications, and/or supplemental instructions considered necessary by ENGINEER in response to such questions will be issued by Addenda, mailed either by Registered or Certified mail, with return receipt requested, to all parties recorded by ENGINEER as having received the Bidding Documents, for receipt not later than three (3) days prior to the date for the opening of Bids. Failure of any Bidder to receive such Addendum or interpretation shall not relieve any bidder from any obligation under his bid submitted. All Addenda so issued shall become part of the Contract Documents. All Addenda must be submitted with the bid proposal and be properly signed by the Bidder as part of the Bid Documents. Only questions answered by Addenda will be binding. The OWNER will not be responsible for any other explanations or interpretation of such documents which anyone presumes to make on behalf of the OWNER before expiration of the time set for the receipt of Bids. No interpretation of the meaning of the plans, specifications or other Contract Documents will be made to any bidder orally. Oral and other interpretations or clarifications will be without legal effect.

9.02 Addenda may also be issued to clarify, correct or change the Bidding Documents as deemed advisable by OWNER or ENGINEER. Such Addenda, if any, will be issued in the manner and within the time period stated in paragraph 9.01.

ARTICLE 10 - BID SECURITY

10.01 A Bid must be accompanied by Bid security made payable to the OWNER in the amount of five percent of Bidder's maximum Bid price and in the form of certified check or Bid Bond.

10.02 Bid Bond shall be on the form bound in the Project Manual. Bid Bond shall be issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions. The Bid Bond must contain original signatures in ink. Pencil, stamped, thermal faxed, Xeroxed, or any other copies of the signature shall be grounds for voiding the Bid.

10.03 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to sign and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited to the OWNER as liquidated damages for such failure.

10.04 The Bid security of the three lowest bidders may be retained by OWNER until the earlier of the seventh day after the Effective Date of the Agreement or the forty-first day after the Bid opening whereupon the Bid security furnished by such Bidders will be returned. The Bid security of Bidders whom OWNER believes do not have a reasonable chance of receiving an award will be returned within seven days of the Bid opening.

ARTICLE 11 - CONTRACT TIMES

11.01 The number of days within which the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Agreement.

ARTICLE 12 - LIQUIDATED AND SPECIAL DAMAGES

12.01 Provisions for liquidated and special damages, if any, are set forth in the Agreement.

ARTICLE 13 - SUBSTITUTE AND "OR EQUAL" ITEMS

13.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be

considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submittal of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the General Conditions which may be supplemented in the General Requirements.

- 13.02 Refer to Section 01630 of the General Requirements for the period of time after the Effective Date of the Agreement during which the ENGINEER will accept applications for substitute or "or-equal" items of material or equipment.

ARTICLE 14 - SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 14.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening submit to OWNER a list of all such Subcontractors, Suppliers, other individuals or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each such Subcontractor, Supplier, individual or entity if requested by OWNER. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual or entity, OWNER may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.
- 14.02 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06 of the General Conditions.
- 14.03 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual or entity against whom CONTRACTOR has reasonable objection.

ARTICLE 15 - PREPARATION OF BID

- 15.01 A Bid must be made on the Bid form bound in the Project Manual. The Bid form shall not be separated from the Project Manual nor shall it be altered in any way.
- 15.02 All blanks in the Bid Form shall be completed by printing in black ink or by typewriter. A Bid price shall be indicated in both words and numbers for each Bid item listed therein or the words "No Bid" or "Not Applicable" entered. In case of discrepancy between the words and

the numerals, the words shall govern. Ditto marks are not considered writing or printing and shall not be used.

15.03 A Bid shall be executed as stated below.

- A. A Bid by an individual shall show the Bidder's name and official address.
- B. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title shall appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.
- C. A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture shall be shown below the signature.
- D. A Bid by a corporation shall be executed in the corporate name by an officer of the corporation and shall be accompanied by a certified copy of a resolution of the board of directors authorizing the person signing the Bid to do so on behalf of the corporation. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The state of incorporation and the official corporate address shall be shown below the signature.
- E. A Bid by a limited liability company shall be executed in the name of the firm and signed by a member accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.
- F. All names shall be typed or printed in black ink below the signature.
- G. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided, if applicable.

15.04 The Bid shall contain an acknowledgment of the receipt of all Addenda in the space provided on the Bid form.

15.05 The address and telephone number for communications regarding the Bid shall be shown.

15.06 In addition to the Bid Form, the following listed documents, which are bound in the Project Manual in Section 00430 - Bid Form Supplements and Section 00450 – Bidder's Qualification Statement, shall be submitted with the Bid. Each document shall be executed in the manner described in paragraph 15.03 unless another manner is indicated.

- A. Bid Security Form.
- B. Section 2875 of the Public Authorities Law.

- C. Section 2876 of the Public Authorities Law.
- D. Section 2878 of the Public Authorities Law, Non-collusive Bidding Certification.
- E. Section 139 of State Finance Law.
- F. Bidder's Qualification Statement, including Attachments A, B, C, and D and Bidder's "Experience in The Installation of Tapping Sleeves & Valves on Prestressed Concrete Cylinder Pipe", if applicable.
- G. All Addenda.

ARTICLE 16 - BASIS OF BIDS; COMPARISON OF BIDS

16.01 Lump Sum and Unit Price

- A. Bidder shall submit its Bid on the basis of each lump sum item and unit price item as set forth in the Bid Form. For each unit price item on the Bid form, Bidder shall enter the unit price Bid, and shall enter the computation of the respective quantity times the Bidder's unit price for that item. Bidder shall compute and enter in the space provided on the Bid form, the total of all lump sum items and the total of the products of quantity and unit price Bid for each unit price item.
- B. For determination of the apparent low Bidder, Bids will be evaluated on the basis of the total of all lump sum items and the total of the products of the estimated quantity of each item and unit price Bid for that item.
- C. The quantities for the unit price items are unpredictable and the ENGINEER has inserted certain quantities in the proposal to be used solely for purpose of comparison of bids. The Bidder will not be entitled to any adjustment in the unit price bid as a result of changes in any of these items ranging from zero to any quantity. The Bidder shall make no claims for anticipated profits, for loss of profits, or for other damages as the result of changes in the quantities purchased.
- D. Fixed minimum unit prices may have been established for some of the items in the Bid. The prices represent the minimum amounts which will be paid the CONTRACTOR for these items. If in the opinion of the Bidder these prices do not reflect the actual value of the work involved, the Bidder may void the given fixed minimum unit price for that specific item and enter a higher unit price in the spaces provided in the Bid Sheets.

16.02 Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 17 - SUBMITTAL OF BID

- 17.01 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Notice to Bidders. The entire Project Manual must be submitted with all proper forms completed and signed as required.
- 17.02 Bid shall be enclosed in an opaque sealed envelope plainly marked on the outside with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) the name and address of the Bidder and its license or registration number, if applicable. Bid shall be accompanied by Bid security and other required documents.
- 17.03 All bids being mailed (including FedEx, UPS, Priority Mail, etc.) or hand-delivered to the Erie county Water Authority shall follow the procedure as defined in Section 00100, Notice To Bidders.

ARTICLE 18 - MODIFICATION OR WITHDRAWAL OF BID

- 18.01 Withdrawal Prior to Bid Opening:
- A. A Bid may be withdrawn by an appropriate document duly executed, in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time fixed for the opening of Bids. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.
- 18.02 Modification Prior to Bid Opening:
- A. If a Bidder wishes to modify its Bid, Bidder must withdraw its initial Bid in the manner specified in paragraph 18.01.A and submit a new Bid.
- 18.03 No Bids may be withdrawn after the time set for the Bid Opening.

ARTICLE 19 - OPENING OF BIDS

- 19.01 Bids will be opened at the time and place where Bids are to be submitted and, unless obviously non-responsive, read aloud publicly. An abstract of the Bids will be made available to Bidders after the opening.
- 19.02 Bids received by mail or otherwise after the date and time specified for the opening of Bids will not be accepted and will be returned to the Bidder unopened.
- 19.03 Bid results are available on the Erie County Water Authority website, www.ecwa.org (under Doing Business tab, select option Business Opportunities). No bid results will be given over the telephone.

ARTICLE 20 - DISQUALIFICATION OF BIDDERS

20.01 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

ARTICLE 21 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

21.01 All Bids shall remain subject to acceptance for forty five days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

21.02 In the event that the OWNER requires more than 45 calendar days after the actual date of the Bid Opening to award the contract, Bidders shall, when requested, provide to ENGINEER a written extension of time for OWNER to award the contract. Bidders shall also provide, to ENGINEER, written Consent of Surety for extension of the bid bond.

21.03 In the event that the OWNER requires more than 45 calendar days after the actual date of the Bid Opening to award the contract, and the lowest qualified bidder does not grant an extension of time for the OWNER to award the contract, the OWNER reserves the right to award to the second lowest qualified bidder.

ARTICLE 22 - AWARD OF CONTRACT

22.01 OWNER reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, nonresponsive or conditional Bids. Bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional or alternate bids other than are provided for in the Bid Form, bids containing escalation clauses or irregularities of any kind. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. OWNER also reserves the right to waive any informality not involving price, time or changes in the Work, if it is deemed to be in the best interest of the OWNER. The Bidder will not be allowed to take advantage of any error or omission.

22.02 OWNER reserves the right to reject any Bid not accompanied by specified documentation and Bid security. In the event that OWNER requires more than 45 calendar days after the actual Bid opening date to award the contract, Bidders shall provide to ENGINEER written Consent of Surety of the Bid Bond.

22.03 OWNER reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any lump sum or unit price item.

- 22.04 In evaluating Bidders, OWNER will consider their qualifications whether or not their Bids comply with the prescribed requirements, the alternatives, if any, the lump sum and unit prices, and other data as may be requested in the Bid Form or prior to the Notice of Award.
- 22.05 OWNER may consider the qualifications and experience of Subcontractors, Suppliers and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 22.06 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to perform the Work in accordance with the Contract Documents. OWNER reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to OWNER'S satisfaction.
- 22.07 OWNER reserves the right to accept any Bid deemed to be in its best interests even though the Bid chosen may result in the award of the Contract to a Bidder whose Bid is not, on a mathematical basis alone, the low Bid.
- 22.08 The OWNER may elect not to award a contract at this time due to budgetary or other considerations. OWNER reserves the right to reject any or all proposals and to re-bid the contract if the OWNER deems it in the public interest to do so.
- 22.09 Contracts shall be awarded only pursuant to resolution.
- 22.10 OWNER reserves the right to reject any bids from Bidders who are in arrears to, or in litigation with, the Erie County Water Authority or the County of Erie upon any debt or contract, or in default as surety or otherwise upon any obligation of the Erie County Water Authority or the County of Erie.

ARTICLE 23 - CONTRACT SECURITIES

- 23.01 Performance Bond shall be in the form of Engineers Joint Contract Documents Committee (EJCDC) "Construction Performance Bond", 1910-28-A. Payment Bond shall be in the form of EJCDC "Construction Payment Bond", 1910-28-B. The amounts of and other requirements for Performance and Payment Bonds are stated in paragraph 5.01 of the General Conditions. The requirements for delivery of Bonds are stated in paragraph 2.01 of the General Conditions. Additional requirements may be stated in the Supplementary Conditions.
- 23.02 Successful Bidder shall within five days from the date of the Notice of Award deliver to OWNER, for OWNER'S review and approval, the Performance Bond and the Payment Bond CONTRACTOR proposes to furnish at the time of the execution of the Agreement.

ARTICLE 24 – CONTRACTOR’S INSURANCE

24.01 The requirements for CONTRACTOR’S insurance and the delivery of the insurance certificate are stated in Article 5 of the General Conditions and in the Supplementary Conditions.

ARTICLE 25 - SIGNING OF AGREEMENT

25.01 When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within five days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER.

ARTICLE 26 - NOTICE TO PROCEED

26.01 Issuance of the Notice to Proceed shall be as stated in Article 2 of the General Conditions.

ARTICLE 27 - PARTNERING (NOT USED)

ARTICLE 28 - SALES AND USE TAXES

28.01 Refer to Supplementary Conditions paragraph SC-6.10 for information on OWNER’S exemption from sales and use taxes on materials and equipment to be incorporated into the Work. Do not include said taxes in Bid.

ARTICLE 29 - ADDITIONAL REQUIREMENTS

29.01 Refer to Supplementary Conditions Paragraph SC-18.03 for information on OWNER’S Women and Minority Business Enterprise requirements.

END OF SECTION

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021

PROJECT NO: 201900004

PERMIT APPLICATIONS

ARTICLE 1 - GENERAL

- 1.01 OWNER shall apply for and CONTRACTOR is responsible for complying with all requirements of the following permits.
- A. New York State Department of Transportation.
 - B. Erie County Highway Department.
 - C. New York State Thruway Authority.
 - D. Town of Amherst and Town of Clarence Highway Departments or any Highway Permit required.
- 1.02 CONTRACTOR shall apply for and is responsible for complying with all requirements of the following.
- A. Applicable local highway departments.
- 1.03 CONTRACTOR shall include all costs for all permit requirements and conditions including preparation of maintenance and protection of traffic plans; implementing said maintenance and protection of traffic; notifications; off hours work; lights; special signage; etc. in his unit bid prices for the project and will not receive separate payment for any permit conditions.
- 1.04 Although OWNER obtains some of the permits, CONTRACTOR remains responsible to abide by all permit requirements and pay all costs associated with permits conditions. All such costs shall be included in unit bid prices for the project and shall not result in additional cost to OWNER.

END OF SECTION

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
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(This Bid Form shall not be detached from the Project Manual. The entire Project Manual shall be returned with the executed Bid.)

SECTION 00410

BID FORMS

BID FOR:

Erie County Water Authority
SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
Project No: 201900004

BID TO:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

BID FROM: _____

(Print or Type Name of Bidder)

(/A Corporation/A Partnership/A Limited Liability Company/An
Individual/A Joint Venture/[Bidder to strike out inapplicable terms.]

Gentlemen:

- 1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the price(s) and within the times indicated in this Bid and in accordance with the Bidding Documents.
- 2.01 Bidder accepts all of the terms and conditions of the Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain open subject to acceptance for the time period set forth in the Instruction to

SMALL SERVICES CONTRACT, AREA #2
 FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
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Bidders. Bidder will sign the Agreement and will furnish the required contract security, and other required documents within the time periods set forth in the Bidding Documents.

3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, if any, and the following Addenda receipt of all of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Date Received</u>	<u>Addendum No.</u>	<u>Date Received</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance for the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental Condition identified at the Site, if any, which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may effect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance of the Work at

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
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the price(s) and within the times and in accordance with the other terms and conditions of the Bidding Documents.

- G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.
- I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. The quantities for the unit price items are unpredictable and the ENGINEER has inserted certain quantities in the proposal to be used solely for purpose of comparison of bids. The Bidder shall make no claims for anticipated profits, for loss of profits, or for other damages as the result of changes in the quantities purchased.
- L. Fixed minimum unit prices may have been established for some of the items in the Bid. The prices represent the minimum amounts which will be paid the CONTRACTOR for these items. The Bidder shall include a price not less than the stated minimum. If in the opinion of the Bidder these prices do not reflect the actual value of the work involved, the Bidder may void the given fixed minimum unit price for that specific item and enter a higher unit price in the spaces provided in the Bid Form sheets. Bidder's Proposals received which include a unit price less than the stated minimum shall be adjusted to meet the fixed minimum unit price.

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 FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
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<u>Description</u>	<u>Estimated Quantities</u>	<u>Computed Totals</u>
Item 1B - New Service Installation on Prestressed Concrete Cylinder Pipe		
Item 1B1 - For furnishing and installing ¾-inch or 1-inch New Service Installation, the Unit Price of		
_____ Dollars		
and _____ Cents		
(\$ _____) per each	5 Ea.	\$ _____
Item 1B2 - For furnishing and installing 1½-inch or 2-inch New Service Installation, the Unit Price of		
_____ Dollars		
and _____ Cents		
(\$ _____) per each	5 Ea.	\$ _____
Item 1C - New Service Installation on Polyvinyl Chloride Pipe		
Item 1C1 - For furnishing and installing ¾-inch or 1-inch New Service Installation, the Unit Price of		
_____ Dollars		
and _____ Cents		
(\$ _____) per each	400 Ea.	\$ _____
Item 1C2 - For furnishing and installing 1½-inch or 2-inch New Service Installation, the Unit Price of		
_____ Dollars		
and _____ Cents		
(\$ _____) per each	10 Ea.	\$ _____

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<u>Description</u>	<u>Estimated Quantities</u>	<u>Computed Totals</u>
<p>Item 1D - Service Replacement on Cast Iron, Ductile Iron, Asbestos Cement, Prestressed Concrete Cylinder Pipe, or Polyvinyl Chloride Pipe</p>		
<p>Item 1D1 - For furnishing and installing ¾-inch or 1-inch Service Replacement, when watermain is in pavement, driveway, or parking lot, the Unit Price of</p> <p>_____ Dollars and _____ Cents (\$ _____) per each</p>	50 Ea.	\$ _____
<p>Item 1D2 - For furnishing and installing 1½-inch or 2-inch Service Replacement, when watermain is in pavement, driveway, or parking lot, the Unit Price of</p> <p>_____ Dollars and _____ Cents (\$ _____) per each</p>	5 Ea.	\$ _____
<p>Item 1D3 - For furnishing and installing ¾-inch or 1-inch Service Replacement, when watermain is in grass, the Unit Price of</p> <p>_____ Dollars and _____ Cents (\$ _____) per each</p>	50 Ea.	\$ _____
<p>Item 1D4 - For furnishing and installing 1½-inch or 2-inch Service Replacement, when watermain is in grass, the Unit Price of</p> <p>_____ Dollars and _____ Cents (\$ _____) per each</p>	5 Ea.	\$ _____

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<u>Description</u>	<u>Estimated Quantities</u>	<u>Computed Totals</u>
Item 2- Tubing Installation for New Service or Replacement (Beyond 10 feet from Water Main by Pushing, Open Cut or Boring Method)		
Item 2A1 - For furnishing and installing :-inch or 1-inch Copper Tubing, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	10,000 LF	\$ _____
Item 2A2 - For furnishing and installing 12-inch or 2-inch Copper Tubing, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	200 LF	\$ _____
Item 2A3 - For furnishing and installing :-inch or 1-inch Polyethylene Tubing, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	1,000 LF	\$ _____
Item 2A4 - For furnishing and installing 1½-inch or 2-inch Polyethylene Tubing, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	500 LF	\$ _____
Item 3- Meter Box Settings (Not Used)		
Item 4- Rock Excavation and Rock Drilling		
Item 4A1 - For Rock Excavation, (Fixed Minimum Unit Price of \$50 per Cubic Yard), the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Cubic Yard	150 CY	\$ _____

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<u>Description</u>	<u>Estimated Quantities</u>	<u>Computed Totals</u>
Item 4B1 - For Rock Drilling for ¾-inch through 2-inch Services up to 10 feet, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	300 LF	\$ _____
Item 4B2 - For Rock Drilling for ¾-inch or 1-inch Services beyond 10 feet, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	750 LF	\$ _____
Item 4B3 - For Rock Drilling for 1½-inch or 2-inch Services beyond 10 feet, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Linear Foot	750 LF	\$ _____
 Item 5- Test Pit Excavation and Backfill		
Item 5A1 - For Test Pit Excavation and Backfill, (Fixed Minimum Unit Price of \$10 per Cubic Yard), the Unit Price of _____ Dollars and _____ Cents (\$ _____) per Cubic Yard	50 CY	\$ _____
 Item 6- Restoration (Not Used)		
 Item 7- Repair Crew Labor and Equipment		
Item 7A1 - For furnishing Repair Crew Labor and Equipment, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per hour	1,500 Hours	\$ _____

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<u>Description</u>	<u>Estimated Quantities</u>	<u>Computed Totals</u>
Item 7A2 - For furnishing 5-yard Dump Truck, with Operator, the Unit Price of _____ Dollars and _____ Cents (\$ _____) per hour	500 Hours	\$ _____
Item 8- Contingency Allowance _____ Dollars and _____ Cents	Lump Sum	\$ _____ 20,000.00

TOTAL BID AMOUNT (This total is for convenience in comparing Bids and is not an official part of this Bid.) \$ _____
(Figures)

_____ Dollars
 and _____ Cents
 (Written Amount)

Unit prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities of items of Unit Price Work are not guaranteed and final payment will be based on actual quantities of Unit Price Work performed as provided in the Contract Documents.

7.01 Bidder agrees that the Work will be substantially complete and completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

7.02 Bidder accepts the provisions of the Agreement as to liquidated and special damages in the event of failure to complete the Work within the times specified above.

8.01 The following documents are attached to and made a condition of this Bid:

- A. Required Bid security in the amount of _____ Dollars (\$ _____).
- B. Section 2875 of the Public Authorities Law, Ground for Cancellation by Public Authority
- C. Section 2876 of the Public Authorities Law, Disqualification to Contract with Public Authority.
- D. Section 2878 of the Public Authorities Law, Non-Collusive Bidding Certification.
- E. Section 139 of State Finance Law, Lobbying.
- F. Required Bidder Qualifications Statement with supporting data.
- G. All Addenda.

9.01 The terms used in this Bid will have the meanings indicated in the Instructions to Bidders and the General Conditions and Supplementary Conditions.

Respectfully submitted on _____, 20__.

If Bidder is:

An Individual

By _____
(Individual's Signature)

(Printed or Typed Name of Individual)

Doing business as _____

License or Registration Number: _____

Business Address: _____

Phone No.: _____ FAX No.: _____

A Partnership

By _____
(Firm Name)

(General Partner's Signature)

(Printed or Typed Name of General Partner)
(Attach evidence of authority to sign.)

License or Registration Number: _____

Business Address: _____

Phone No.: _____ FAX No. _____

A Corporation

By _____
(Corporation Name)

(State of Incorporation)

By _____
(Signature of Officer Authorized to Sign)

(Printed or Typed Name and Title of Officer Authorized to Sign)
(Attach evidence of authority to sign.)

(CORPORATE

SEAL)

Attest _____
(Secretary)

License or Registration Number: _____

Business Address: _____

Phone No.: _____ FAX No. _____

Limited Liability Company

By _____
(Firm Name)

(State of Formation)

By _____
(Signature of Member/Authorized to Sign)

(Printed or Typed Name and Title of Member Authorized to Sign)
(Attach evidence of authority to sign.)

License or Registration Number: _____

Business Address: _____

Phone No.: _____ FAX No. _____

A Joint Venture

Joint Venture Name: _____

By _____

(Signature)

(Printed or Typed Name)

(Title)

(Address)

By _____

(Signature)

(Printed or Typed Name)

(Title)

(Address)

Phone and FAX number and address for receipt of communications to joint venture:

(Each joint venturer must sign. The manner of signing for each individual, partnership, corporation or limited liability company that is a party to the joint venture shall be in the manner indicated above).

END OF BID FORM

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021

PROJECT NO: 201900004

SECTION 00430

BID FORM SUPPLEMENTS

Bid Security Form

Section 2875 of the Public Authorities Law

Section 2876 of the Public Authorities Law

Section 2878 of the Public Authorities Law

Section 139 of State Finance Law

BID SECURITY FORM

BIDDER (Name and Address):

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

OWNER:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

BID

BID DUE DATE: _____

PROJECT:

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
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BOND

BOND NUMBER: _____

DATE: (Not later than Bid due date): _____

PENAL SUM: _____ (Words) _____ (Figures)

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

BIDDER

SURETY

(Seal)
Bidder's Name and Corporate Seal

(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____

1.01 Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.

2.01 Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.

3.01 This obligation shall be null and void if:

- A. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or
- B. All Bids are rejected by OWNER, or
- C. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5.01 hereof).

4.01 Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5.01 Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6.01 No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4.01 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7.01 Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8.01 Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9.01 Surety shall cause to be attached to this Bond a current and effective Power or Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10.01 This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11.01 The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

END OF BID BOND

SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

§2875. GROUND FOR CANCELLATION OF CONTRACT BY PUBLIC AUTHORITY.

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation termination shall be paid.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

§2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this article.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

SECTION 2878 OF THE PUBLIC AUTHORITIES LAW

§2878. STATEMENT OF NON-COLLUSION IN BIDS OR PROPOSALS TO PUBLIC AUTHORITY.

(1) Every bid or proposal hereafter made to a public authority or to any official of any public authority created by the state or any political subdivision, where competitive bidding is required by statute, rule, regulation or local law, 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 the penalties of perjury:

NON-COLLUSIVE BIDDING CERTIFICATION

(a) By submission of this bid, 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 to the best of his knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; 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 a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items to be procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

The undersigned CERTIFIES, under penalty of perjury, that he is authorized to make this bid and execute this statement of non-collusion; that each of the statements contained in (1), (2) and (3) of paragraph (a) are true; that he is familiar with the statements and restrictions contained in paragraph (b) and the paragraph regarding the publication of price lists, etc. and such statements and restrictions are true and have been complied with by the bidder.

(Name of Individual, Partnership, or Corporation)

By _____

(SEAL)

FORMS A, B, and C

SECTION 139 OF STATE FINANCE LAW

Pursuant to State Finance Law §§139-j and 139-k, this Invitation to Bid includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers, through final award and approval of the Procurement Contract by the Governmental Entity. The designated contact is identified in the Notice to Bidders. Governmental Entity employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in §§139-j and 139-k of the New York State Finance Law and the Erie County Water Authority's Procurement Disclosure Policy.

Form A - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law.

Form B - Offerer's Certification of Compliance with State Finance Law.

Form C - Offerer's Disclosure of Prior Non-Responsibility Determinations.

Contract Termination Provision.

FORM A

**Offerer's Affirmation of Understanding of and Agreement Pursuant to State
Finance Law §139-j(3) and §139-j(6)(b)**

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

FORM B

**Offerer's Certification of Compliance
With State Finance Law §139-k(5)**

Instructions:

A Governmental Entity must obtain the required Certification that the information is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the Certification and provide it to the procuring Governmental Entity. It is required that the Certification be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

Offerer Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true, and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

FORM C**Offerer's Disclosure of Prior
Non-Responsibility Determinations****Background:**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement no later than when the Offerer submits its proposal.

Contract Termination Provision

Instructions:

A Contract Termination Provision will be included in each Procurement Contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the Governmental Entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. "Government Entity" and "procurement contract" are defined in State Finance Law §139-k(l).

This required clause will be included in a covered procurement contract.

A sample of the Termination Provision is included below. If a contract is terminated in accordance with State Finance Law §139-k(5), the Governmental Entity is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

Sample Contract Termination Provision

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

END OF BID FORM SUPPLEMENTS

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT NO: 201900004

SECTION 00450

BIDDER'S QUALIFICATION STATEMENT

(Completion of this statement is required in advance of
consideration for award of Contract.)

SUBMITTED TO:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

SUBMITTED FOR:

Erie County Water Authority
Small Services Contract, Area #2
February 1, 2019 through January 31, 2021
ECWA Project No. 201900004

SUBMITTED BY:

Name of Organization: _____
(Print or Type Name of Bidder)

Name of Individual: _____

Title: _____

Business Address: _____

Telephone No.: _____

Fax No.: _____

Gentlemen:

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

(Note: Attach additional sheets as required.)

1.0 Bidder's General Business Information

1.1 Check if:

Corporation Partnership Joint Venture Sole Proprietorship

If Corporation:

A. Date and State of Incorporation:

B. List of Executive Officers:

Name

Title

If Partnership:

A. Date and State of Organization:

B. Names of Current General Partners:

C. Type of Partnership

General Publicly Traded

Limited Other (described): _____

- 6.0 Has any officer or partner of your organization ever been an officer or partner of another organization that had any construction contract terminated by the owner; terminated work on a project prior to its completion for any reason; had any surety which issued a performance bond complete the work in its own name or financed such completion; or had any surety expend any monies in connection with a contract for which they furnished a bond? If the answer to any portion of this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.
- 7.0 In the last five years, has your organization, or any predecessor organization, failed to substantially complete a project in a timely manner? If the answer to this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.
- 8.0 On Schedule A, attached, list name, location and description of project, owner, architect or engineer, contract price, percent complete and scheduled completion of the major construction projects your organization has in progress on this date. Provide name, address and telephone number of a reference for each project listed.
- 9.0 On Schedule B, attached, list name, location and description of project, owner, architect or engineer, contract price, date of completion and percent of work with your own forces of major projects of the same general nature as this project which your organization has completed in the past five years. Provide name, address and telephone number of a reference for each project listed.
- 10.0 On Schedule C, attached, list name and construction experience of the principal individuals of your organization directly involved in construction operations.
- 10.1 On Schedule D, attached, list OSHA Information requested.
- 11.0 List the states and categories of construction in which your organization is legally qualified to do business.
- 12.0 Provide the following for your surety:
- 12.1 Surety Company: _____
- 12.2 Agent: _____
- A. Address: _____
- B. Telephone No.: _____

12.3 What is your approximate total bonding capacity?

- \$500,000 to \$2,000,000
- \$2,000,000 to \$5,000,000
- \$5,000,000 to \$10,000,000
- \$10,000,000 or more

13.0 Provide the following with respect to an accredited banking institution familiar with your organization.

13.1 Name of Bank: _____

13.2 Address: _____

13.3 Account Manager: _____

13.4 Telephone No.: _____

14.0 Provide the name, address and telephone number of an individual who represents a major equipment/material supplier whom the Owner may contact for a financial reference:

15.0 Attach a financial statement, prepared on an accrual basis, in a form which clearly indicates Bidder's assets, liabilities and net worth.

15.1 Date of financial statement: _____

15.2 Name of firm preparing statement: _____

16.0 Dated at _____, this _____ day of _____, 20_____.

Bidder: _____
(Print or Type Name of Bidder)

By: _____

Title: _____

Attachments A, B, C, and D

(Seal, if corporation)

------(Affidavit for Individual)-----

_____ being duly sworn, deposes and says that:
a) the financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; and b) all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Partnership)-----

_____ being duly sworn, deposes and says that:
a) he/she is a member of the partnership of _____;
b) he/she is familiar with the books of said partnership showing its financial condition; c) the financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Corporation)-----

_____ being duly sworn, deposes and says that:
a) he/she is _____ of _____;
(Full name of Corporation)
b) he/she is familiar with the books of said corporation showing its financial condition; c) the financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete, and accurate.

------(Acknowledgment)-----

_____ being duly sworn, deposes and says
that he/she is _____ of _____;
(Name of Bidder)
that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf
of
() himself/herself; () said partnership; () said corporation.

Sworn to before me this _____ day of _____, 20____, in the
County of _____, State of _____.

(Notary Public)

My commission expires _____

(Seal)

END OF BIDDER QUALIFICATIONS STATEMENT

ATTACHMENT B

**SCHEDULE B
PROJECTS COMPLETED**

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Architect or Engineer</u>	<u>Date Completed</u>	<u>Contract Price</u>	<u>Percent with Own Forces</u>	<u>Reference/Contract Include Address and Phone</u>
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ATTACHMENT C

**SCHEDULE C
PERSONNEL**

<u>Name</u>	<u>Position</u>	<u>Date Started With This Organization</u>	<u>Date Started In Construction</u>	<u>Prior Positions and Experience In Construction</u>
-------------	-----------------	--	---	---

ATTACHMENT D
SCHEDULE D
OSHA INFORMATION

List all Occupational Safety and Health Administration Citations for the last three years, including date, subject matter, and penalty.

Attach copies of all determined Citations and Notification of Penalty, Form OSHA 2.

Describe all pending cases, giving pertinent information such as apparent violations, location of project, type of project, and present status. _____

List any additional information on the back or attach a separate sheet if necessary.

EXPERIENCE IN THE INSTALLATION OF
TAPPING SADDLES & VALVES
ON
PRESTRESSED CONCRETE CYLINDER PIPE

When this Contract includes the Installation of Tapping Saddles and Valves on Prestressed Concrete Cylinder Pipe, the Bidder is required to complete one of the following to the satisfaction of the ENGINEER:

A. I have had experience* in the above as follows:

1. _____
2. _____
3. _____

B. The above noted work will be done by a subcontractor

Who has the following experience*:

1. _____
2. _____
3. _____

1. I will have a representative of a manufacturer of prestressed concrete cylinder pipe

_____ do the above noted work.

(Insert manufacturer's name)

* List size and type (SP-5 or SP-12) of main tapped along with location, year and who the work was done for.

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT NO: 201900004

SECTION 00500

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year _____, by and between the ERIE COUNTY WATER AUTHORITY (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

WITNESSETH: OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall at its own cost and expense furnish all labor, services, tools, materials, equipment and incidentals necessary to complete all Work as specified or indicated in the Contract Documents to perform all specified work required for Small Services Contract Area #2, February 1, 2019 through January 31, 2021, and all related work as shown on the drawings and described in the specifications. The Work is generally described in Section 01100 of the General Requirements.

ARTICLE 2 - ENGINEER

2.01 The Project has been designed by the OWNER, who is hereinafter called ENGINEER. The ENGINEER will assume all duties and responsibilities and have the rights and authority assigned to ENGINEER by OWNER in connection with completion of the work and in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, Final Completion and readiness for final payment as stated in the Contract Documents are of the essence.

- B. Substantial completion.
 - 1. Each new Service, with the exception of Work assigned under paragraph 3.01.F, shall be substantially complete within nineteen (19) calendar days of notification by OWNER that the Work is required.
 - 2. Each service repair and service replacement, with the exception of Work assigned under paragraph 3.01.E, shall be substantially complete within nineteen (19) calendar days of notification by OWNER that the Work is required.
- C. The CONTRACTOR is required to complete all new service installations, replacements, and repairs authorized by OWNER.
- D. The CONTRACTOR is required to complete the restoration for new service installations, required as a result of the Work, as follows:
 - 1. The CONTRACTOR shall perform compaction of backfill material to avoid settlement.
 - 2. Lawn restorations shall be performed between May 1 and October 31, or at other such times as weather permits or as directed by ENGINEER.
 - 3. Asphalt, concrete, and other restorations shall be performed between April 15 and November 30, or at other such times as weather permits or as directed by ENGINEER.
 - 4. All restorations are to be completed within six weeks of installation of the new service within the seasonal period outlined above.
 - 5. All restoration for the various types required, where services were performed out of season, shall be completed by May 15 for lawns and May 1 for others.
 - 6. Restoration warranty repairs are to be completed within 12 days of release.
- E. The CONTRACTOR is to be prepared to provide at any time 24 hours per day, including weekends and holidays, a crew or crews, laborers, and equipment to make repairs to customer service lines, to replace a service and the maintenance of work areas.
 - 1. The crew or crews, laborers, and equipment supplied shall be delivered to the location of the Work promptly, which shall be defined as no longer than two hours after notification by the ENGINEER of the need for such crews or equipment. Failure to provide crews or equipment within this time period shall result in Liquidated Damages as specified below.
- F. The CONTRACTOR is to be prepared to provide at any time 24 hours per day, including weekends and holidays, a crew, laborers, and equipment to install a new Service that the ENGINEER deems an emergency. The ENGINEER has the sole discretion as to what is deemed an emergency.
 - 1. The crew, laborers, and equipment supplied shall be delivered to the location of the Work promptly, which shall be defined as no longer than eight hours after notification by the ENGINEER of the need for the service installation. Failure to

provide a crew or equipment within this time period shall result in Liquidated Damages as specified in paragraph 4.01.C.

2. The ENGINEER reserves the right, for emergency situations, to modify the CONTRACTOR'S schedule to accommodate the installation of a new service that is deemed an emergency. A new service that has previously been released can be deemed an emergency by the Engineer at any time, therefore invoking the response time listed under paragraph 3.01.F.1. Declaring a service an emergency shall not affect the completion dates of other services and they shall be completed within the time limits defined under paragraph 3.01.B.1.

G. The Contract expires on January 31, 2021.

3.02 Substantial Completion and Final Payment

- A. Each new service installation, replacement or repair shall be deemed substantially complete at such time as the work is completed, operational, backfilled, and temporarily restored.
- B. Final Payment shall be made after all work of the Contract is completed and in accordance with Paragraph 14.07 of the General Conditions. Any service or replacement not installed by the last day of the contract term shall be turned back to the Authority, and the CONTRACTOR shall receive no compensation nor have any claim with respect to such service.

ARTICLE 4 - LIQUIDATED AND SPECIAL DAMAGES

4.01 Liquidated Damages

- A. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and OWNER will suffer financial loss, apart from the costs described in paragraph 4.02.A, if the Work is not substantially completed within the time specified in Article 3 for Substantial Completion, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. OWNER and CONTRACTOR also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$50.00 for each day that expires after the time specified in paragraph 3.01.B for Substantial Completion (adjusted for any changes thereof made in accordance with Article 12 of the General Conditions) until the Work is substantially complete; and \$50.00 for each day that restoration at each Work location is not completed as outlined in paragraph 3.01.D.

- B. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement. OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER (\$50.00) for each hour that elapses for failure to provide all service repair crews and equipment within the allowable time frame as specified in paragraph 3.01.E herein.
- C. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement. OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER (\$250.00) for each hour that elapses for failure to provide a new service crew and equipment within the allowable time frame as specified in paragraph 3.01.F herein.
- D. Failure to provide a Daily Report per Section 01321, Construction Schedules, shall result in a \$100.00 Liquidated Damage charge for each day the Daily Report is not submitted per the requirements of Section 01321.

4.02 Special Damages:

- A. In addition to the amount provided for liquidated damages, CONTRACTOR shall pay OWNER the actual costs reasonably incurred by OWNER for engineering and inspection forces employed for the Work for each day that expires after the days specified in Article 3 for Substantial Completion (adjusted for any changes thereof made in accordance with Article 12 of the General Conditions) until the Work is substantially complete.
- B. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER the actual costs reasonably incurred by OWNER for engineering and inspection forces employed for the Work for each day that expires after the time specified in Article 3 for Work to be completed and ready for final payment (adjusted for any extensions thereof made in accordance with Article 12 of the General Conditions) until the Work is completed and ready for final payment.

4.03 OWNER may deduct liquidated damages and special damages as determined by the provisions of this Article 4 from progress payments due CONTRACTOR under this Agreement.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR, in current funds, for completion of the Work in accordance with the Contract Documents the prices stated in CONTRACTOR'S Bid, which Bid is attached hereto and identified as Exhibit 1 of this Agreement. As provided in

paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. OWNER shall make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER. CONTRACTOR'S Applications for Payment will be due on the last day of the month. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work, based on the number of units completed and accepted) or, in the event there is no schedule of values, as provided in the General Requirements. A progress payment will not be made whenever the value of the Work completed since the last previous progress payment is less than ten thousand dollars (\$10,000).

1. Prior to Contract Completion

- a. Progress payments will be made in the amount of 95 percent of the Work completed, (with the balance being retainage), less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions; and
- b. 95 percent of the cost of materials and equipment not incorporated in the Work but suitably stored (with the balance being retainage).
- c. After one year of Contract duration has elapsed, OWNER may elect to return a portion of retainage held to date to the CONTRACTOR.

- 2. Upon Contract Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 percent of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 200 percent of ENGINEER'S

estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment:

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

- 7.01 All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 As part of the inducement for OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance for the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental Condition identified at the Site, if any, which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may effect cost, progress or performance of the Work or

which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

- F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 The Contract Documents consist of the following:

- A. This Agreement (10 pages).
- B. Performance Bond (2 pages).
- C. Payment Bond (2 pages).
- D. General Conditions (42 pages).
- E. Supplementary Conditions (8 pages).
- F. Specifications, as listed in the table of contents of the Project Manual.
- G. Appendix A - Women and Minority Business Enterprise Policy.

- H. Appendix B - Insurance Requirements.
- I. Appendix C - Prevailing Wage Rate Schedule.
- J. Appendix D - Drawings.
- K. Addenda consisting of Numbers ____ to ____, inclusive.
- L. Exhibits to the Agreement enumerated as follows:
 - 1. Exhibit 1, Bid Form 14 pages.
- M. The following, which may be delivered or issued on or after the Effective Date of the Agreement, and are not attached hereto:
 - 1. Notice to Proceed
 - 2. Written Amendments
 - 3. Work Change Directives
 - 4. Change Order(s)

9.02 The documents listed in paragraph 9.01 above are attached to this Agreement (except as expressly noted otherwise above). Documents not attached are incorporated by reference. There are no Contract Documents other than those listed in this Article 9.

9.03 The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Document, held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Waiver

- A. The waiver by the OWNER of any breach or violation of any term, covenant, or condition of this Agreement or of any Law or Regulation shall not be deemed to be a waiver of any other term, covenant, condition, or Law or Regulation or of any subsequent breach or violation of the same or of any other term, covenant, condition, or Law or Regulation. The subsequent payment of any monies or fee by the OWNER which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by CONTRACTOR of any term, covenant, condition of this Agreement or of any applicable Law or Regulation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

This Agreement will be effective on _____, 20_____.

OWNER: Erie County Water Authority

CONTRACTOR: _____

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest Erie County Water Authority

Attest _____

Address for giving notices

Address for giving notices

(If OWNER is a corporation, partnership, or limited liability company, attach evidence of authority to sign) (If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No. _____
(where applicable)

Agent for service of process: _____

(If CONTRACTOR is a corporation, partnership, or limited liability company, attach evidence of authority to sign.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone No.: _____

Fax No.: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone No.: _____

Fax No.: _____

END OF AGREEMENT

Performance Bond

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

CONTRACT

Date:

Amount:

Description: ERIE COUNTY WATER AUTHORITY
SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT NO: 201900004

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:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

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 pfiability, 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 CONTRACTOR ceased working 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.

(FOR INFORMATION ONLY - Name, Address and Telephone)
AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer):

Payment Bond

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

CONTRACT

Date:

Amount:

Description: ERIE COUNTY WATER AUTHORITY
SMALL SERVICES CONTRACT, AREA #2
FEBRUARY 1, 2019 THROUGH JANUARY 31, 2021
PROJECT NO: 201900004

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:

EJCDC No. 1910-28-B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

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:

4.2.1 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

4.2.2 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

4.2.3 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, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. 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.

(FOR INFORMATION ONLY - Name, Address and Telephone)
AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer):