

# NIAGARA FALLS WATER BOARD



## REQUEST FOR PROPOSALS (“RFP”) NO. 2022-01

### Professional Engineering Services for LaSalle Area Sanitary Sewer Evaluation Survey SSES – Phase 1

**Deadline for Sealed Proposal Submissions:  
Monday, December 5, 2022 by 2:00 p.m.**

A mandatory pre-proposal information session will be conducted at the Wastewater Treatment Plant, 1201 Buffalo Avenue, Niagara Falls, NY 14304 **on Tuesday, November 29, 2022 at noon.**

The deadline for receipt of written questions submitted to the Water Board’s contact, Douglas Williamson, P.E., ([dwilliamson@nfwb.org](mailto:dwilliamson@nfwb.org)), is **Wednesday, November 30, 2022 at 3:00 p.m.**

#### **AUTHORIZED WATER BOARD CONTACT:**

The Water Board’s designated contact person for this Request for Proposals is:

Douglas S. Williamson, P.E.  
Director of Technical & Regulatory Services  
Niagara Falls Water Board  
5815 Buffalo Avenue  
Niagara Falls, New York 14304  
(716) 283-9770 x 2290  
[dwilliamson@NFWB.org](mailto:dwilliamson@NFWB.org)

**To receive updates regarding this RFP, email the authorized Water Board contact with a copy to [dwilliamson@nfwb.org](mailto:dwilliamson@nfwb.org) to ask to be placed on the distribution list for RFP No. 2022-01.**

## **1. Introduction**

The Niagara Falls Water Board (“NFWB”) is issuing this request for proposals (“RFP”) seeking a qualified engineering consultant to perform sanitary sewer evaluation survey (“SSES”) work, including a report identifying sources of inflow and infiltration (“I&I”) and a corrective action plan for reducing I&I sources in future years. This work is to be performed in connection with an Order on Consent between the NFWB and NYSDEC for the abatement of Sanitary Sewer Overflows (“SSO”). The planned scope of work will be in three phases. A contract for Phase 1 will be awarded as a result of this RFP, and proposers are requested to provide option prices for completing Phase 2 and Phase 3.

## **2. Project Description and Location**

In 2009, the Niagara Falls Water Board entered into Order on Consent R9020080528-32 with the NYSDEC. This Order on Consent is intended to address bypasses from the NFWB’s sanitary sewer collection system, referred to as sanitary sewer overflows “SSOs,” in the LaSalle section of the City of Niagara Falls. As part of the Order on Consent, the NFWB agreed to perform work to mitigate SSOs consistent with a detailed 18-year work plan with periodic evaluations of the effectiveness of the measures implemented. A Year 12 evaluation examined the planned activities in Years 13 through 18 of the work plan and recommended reprioritization of the future corrective measures to emphasize I&I mitigation and SSO abatement. Pursuant to NYSDEC comments, the methodology for evaluating flow monitoring data was changed from I&I normalized as gallons of I&I per mile of sewer to the R-value method. Based on this analysis and a desire to focus future remediation work on specific sewersheds rather than the LaSalle area in general in order to better understand the effectiveness of the measures taken, the sewersheds in the LaSalle area that is relevant to the Order on Consent were ranked and a revised proposed work schedule was approved by NYSDEC. NFWB anticipates receiving a proposed amendment to the existing Order on Consent to incorporate the revised work schedule into that Order in place of the current work plan, and the purpose of this RFP is to secure engineering services necessary to prepare sanitary sewer evaluation surveys (“SSES”) that identify corrective actions to be performed in the identified sewersheds, and then post-construction monitoring to determine the effectiveness of these actions (note that this RFP is for SSES and post-construction monitoring as detailed below, and not for construction design/bidding/inspection work).

The full scope of work for the SSO abatement is intended to take place over multiple years to allow for SSES, construction, and post-construction monitoring over time to identify the most effective corrective measures. The work for the Phase 1 SSES that is the subject of this RFP will be funded in part by a Wastewater Infrastructure Engineering Planning Grant (“EPG”), and the Water Board intends to seek additional grant funding for the remainder of the work required for the overall SSO abatement project, including but not limited to the Phase 2 and Phase 3 SSES. Consultant must comply with the terms and conditions applicable to the EPG and any NYSDEC requirements for the work performed, including the requirements of the Engineering Report Outline for New York State Wastewater Infrastructure Projects dated October 1, 2022, available here: <https://efc.ny.gov/system/files/documents/2022/10/er->

[outline-ffy2023.pdf](#). The award resulting from this RFP will be for the tasks described below for Phase 1 of the SSES work and proposers are requested to include options for the NFWB to exercise at its discretion for the remaining phases of the work.

Phase 1 work will be in two sewersheds, 91<sup>st</sup> & Luick, with 3.0 miles of pipe, and 81<sup>st</sup> & Frontier 1, with 1.8 miles of sanitary main pipe. A map of the Phase 1 sewersheds is attached as Appendix A. Phase 2 work also will be in two sewersheds, 81<sup>st</sup> & Frontier 2, with 2.6 miles of sanitary main pipe, and 80<sup>th</sup> & Lindbergh, with 2.4 miles of sanitary pipe. A map of the Phase 2 sewersheds is attached as Appendix B. Phase 3 work will be in the Mang & 88<sup>th</sup> sewershed, with 5.0 miles of sanitary main pipe. A map of the Phase 3 sewersheds is attached as Appendix C.

### **3. Required Tasks – Phase 1 SSES**

The following tasks will be performed within the Phase 1 sewersheds noted above. These tasks represent minimum requirements and consultant's proposal should describe how consultant plans to meet or exceed these requirements and the proposed sequence or schedule of work.

#### **Task 1: Project Management and Support**

- a. Consultant will identify a Project Manager to be the contact person for this project.
- b. Consultant shall review existing data, records, and reports, including the applicable Order on Consent and the record of correspondence with NYSDEC regarding the LaSalle SSO abatement. Some relevant documents are available for Consultant's review at the following link: [NFWB LaSalle SSES RFP](#)
- c. Consultant will gain familiarity with the Phase 1 sewershed and its context within the sanitary sewer system and will review the history of I&I reduction, sewer repair, maintenance, and flow management procedures (which include SCADA control on lift stations).
- d. Meet with Water Board staff to discuss the scope of work to be performed, obtain information on perceived dry and wet weather system response in the Phase 1 sewersheds, and input on locations for flow isolation and measurement.
- e. Consult with and provide NFWB staff with professional advice during the term of the engagement, and meet with NFWB staff and NYSDEC as necessary to reach consensus on work to be performed and to discuss results and recommendations for corrective actions.

#### **Task 2: Smoke Testing**

- a. Provide all staff, equipment, and materials needed.
- b. Notify residents 2-4 days ahead of the smoke testing work with hand-delivered door hangers, and assist NFWB in preparing a press release. Consultant shall work with NFWB staff to provide appropriate notice to police and fire officials.
- c. Conduct smoke testing during appropriate weather conditions.
- d. Document and photograph defects revealed through smoke testing.

**Task 3: Flow Isolation and Measurement (night-time weiring)**

- a. Review flow measurement and analysis performed to date for the relevant sewersheds. Selected documents are available at: [NFWB LaSalle SSES RFP](#)
- b. Select appropriate locations for flow isolation and measurement, after consultation with NFWB staff regarding field conditions. The number of weir locations and number of flow measurements must be adequate for a complete and accurate analysis of infiltration and sufficiently detailed to develop targeted I&I corrective action.
- c. Provide all staff, equipment, and materials needed (including traffic control as applicable). Staff must have appropriate training and equipment for confined space entry. NFWB crews will perform sewer jetting/cleaning if needed.
- d. Notify residents 2-4 days ahead of work which may be disruptive to them, with hand delivered door hangers, and assist NFWB in preparing a press release.
- e. Provide appropriate analysis of data, including calculations of infiltration in gallons per day per linear foot of sewer main for each weiring section.

**Task 4: Review of CCTV inspection reports and Manhole Inspection Reports Completed by NFWB Staff holding NASSCO PACP certification.**

- a. Copies of CCTV inspection reports are available at: [NFWB LaSalle SSES RFP](#)
- b. Copies of manhole inspection reports are available at: [NFWB LaSalle SSES RFP](#)
- c. Consultant shall analyze and summarize the available reports as necessary and perform any additional data collection required. Consultant shall meet with NFWB personnel to discuss repairs that have been made after CCTV and manhole inspection reports were prepared. NFWB will provide consultant with access to the recorded CCTV footage of mains and additional CCTV imaging of mains if required.

**Task 5: Outfall/SSO Condition Assessment**

- a. There are two outfalls in the Phase 1 sewersheds, as indicated on the map of LaSalle Sewer Outfalls attached here at Appendix D. Review available information provided by NFWB, including structure dimensions, estimated SSO volumes, recent outfalls inspection reports, and discharge configuration.
- b. Conduct site visits of the SSO/outfall locations to document existing conditions and confirm record information. NFWB staff will assist in locating.
- c. Develop a recommended Work Plan for conducting an assessment of the Outfall/SSO locations, which may include:
  1. The installation of flow meters and rain gauges
  2. Confined space entry and/or dye water testing to establish flow directions and supporting field information.
  3. Coordination with NFWB to conduct CCTV inspections of the SSO's. Any required CCTV inspections at SSOs will be conducted by NFWB.
- d. Upon authorization from NFWB, complete actions identified in the Outfall/SSO assessment Work Plan.
- e. Document findings in a GIS-compatible format and prepare recommendations to reduce extraneous flows into the NFWB collection system

### **Task 6: Focused SSES**

Once areas have been identified as sources of I&I, the consultant will conduct focused SSES, including as appropriate:

- a. Dye Water Testing;
- b. House Inspections
- c. Additional CCTV – any required imaging of mains will be performed by NFWB crew at consultant's direction.

These additional SSES activities may be required to locate specific I&I sources or confirm findings from previous activities but may not be necessary. Consultant's proposal shall include a **\$10,000** contingency amount to cover this task or other unforeseen but necessary work, which shall be expended only if needed and upon NFWB approval.

### **Task 7: Report and Recommendations**

Based on the SSES completed – which must be performed in a manner satisfactory to NYSDEC – the consultant will prepare an SSES report for submission to the NYSDEC which identifies the sources of I&I in the Phase 1 sewershed and a corrective action plan for reducing I&I sources in future years, identifying those actions which will achieve the most-cost-effective reductions in flows and including budgetary cost and implementation timeline estimates for the alternatives presented. This report must be completed within a timeframe which will permit time for NYSDEC review early in 2023; depending on the nature of the recommended improvements the Water Board desires to complete construction of the recommended improvements in 2023 through early 2024 if possible, including any necessary design and/or bidding, to permit post-construction monitoring to be completed by the end of June 2024. The report must be prepared, stamped, and dated by a NYS licensed Professional Engineer and must conform to the requirements of the Engineering Report Outline for New York State Wastewater Infrastructure Projects dated October 1, 2022 (available at <https://efc.ny.gov/system/files/documents/2022/10/er-outline-ffy2023.pdf>).

### **Task 8: Post-Construction Monitoring and Assessment**

Conduct post-construction monitoring of sewer improvements in the Phase 1 sewersheds. Assume these improvements are completed in 2023 with monitoring in 2024. This post-construction monitoring will include an I&I assessment of pre-construction flow, post-construction flow, and rainfall monitoring. Consultant shall prepare a Post-Construction I&I Assessment and Cost Analysis Report for submission to NYSDEC documenting the I&I reduction and the most effective I&I reduction techniques.

#### **4. Proposal Requirements**

Proposals are to include, at a minimum, the following items:

- Situation understanding;
- Understanding of applicable regulations and standards;
- Project approach, scope, and project organization;
- Demonstrated experience on similar projects;
- Experience & qualifications of subconsultants/contractors;
- Specific experience of key project professionals;
- Schedule, effort and budget breakdown:
  - Schedules shall be in bar chart form.
  - Effort & budget shall be in a spreadsheet format using a task/hour estimate matrix with a not-to-exceed fee amount.
  - For Task 6, consultant shall include a \$10,000 contingency.

#### **5. Options for Phase 2 and Phase 3 SSES**

In addition to the scope of work defined above for Phase 1, consultants submitting proposals are requested to provide schedule and fees for the following two options which the NFWB may award at a later date:

**Option 1:** Perform all applicable tasks outlined above for the SSES in sewersheds identified as Phase 2. Task 5, Outfall/SSO Condition Assessment, should be omitted as there are no Outfall/SSO locations in the relevant sewersheds.

**Option 2:** Perform all applicable tasks outlined above for the SSES in the sewershed identified as Phase 3. There is one Outfall/SSO in this sewershed.

#### **6. Additional Requirements**

Except as otherwise may be agreed to in writing, the standard terms, conditions, and requirements set forth in Appendix E shall form a part of any contract between the Niagara Falls Water Board and a proposer that responds to this Request for Proposals (“RFP”). Complete all forms in Appendix E and return them with your proposal.

## 7. Timetable and Term

The timetable for proposal submission, a **mandatory** pre-proposal meeting, and for submission of written questions is set forth on the cover page for this RFP. A list of proposals received by the deadline will be posted to the NFWB's website at <https://nfwb.org/reports/procurements/>.

It is anticipated that evaluation of proposals will be completed early in December 2022, and that submission of a recommendation to award to the Board of Directors will be at the Water Board's December 19, 2022 meeting. Proposing firms should expect to be contacted by NFWB staff for informal interviews to discuss anticipated concepts and compare alternative methods for furnishing services. The NFWB reserves the right to change any dates and deadlines at its sole discretion.

## 8. Mandatory State Financial Assistance Terms and Conditions; MWBE and SDVOB Participation Goals

As noted above, the work to be performed under this RFP is funded in part through a Wastewater Infrastructure Engineering Planning Grant ("EPG"). The EPG requires compliance with Mandatory State Financial Assistance Terms and Conditions for Contracts Funded with New York State Financial Assistance Only. A copy of these terms and conditions, effective November 1, 2021, is attached to this RFP as Appendix F and made part hereof, and the contract type is "Non-Construction." The selected consultant must comply with these mandatory terms and conditions, including submission of the EEO Staffing Plan, WWO Workforce Employment Utilization Report, and meeting the contract goals for Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business participation set forth therein. As required by the mandatory terms and conditions, MWBE and SDVOB utilization plans must be submitted prior to contract execution, and the **NFWB further requires these utilization plans or properly completed waiver requests be submitted with proposals**. Consultants are directed to pay close attention to the requirements for monthly MWBE-SDVOB reporting. Forms for utilization plans and waiver requests are available at: <https://efc.ny.gov/mwbe>. As set forth in Appendix F, the MWBE Combined Goal, which may be any combination of MBE and/or WBE participation, is 30%, and the SDVOB participation goal is 6%.

## 9. RFP Updates

The NFWB may, in its sole discretion, withdraw or modify this RFP in whole or in part, and may issue addenda in writing. The NFWB will use its best efforts to post updates to: <https://nfwb.org/reports/procurements/>. However, **to be certain to receive timely updates regarding this RFP, you must email the authorized NFWB contact to ask to be placed on the distribution list for RFP No. 2022-01.**

## **10. Evaluation Criteria**

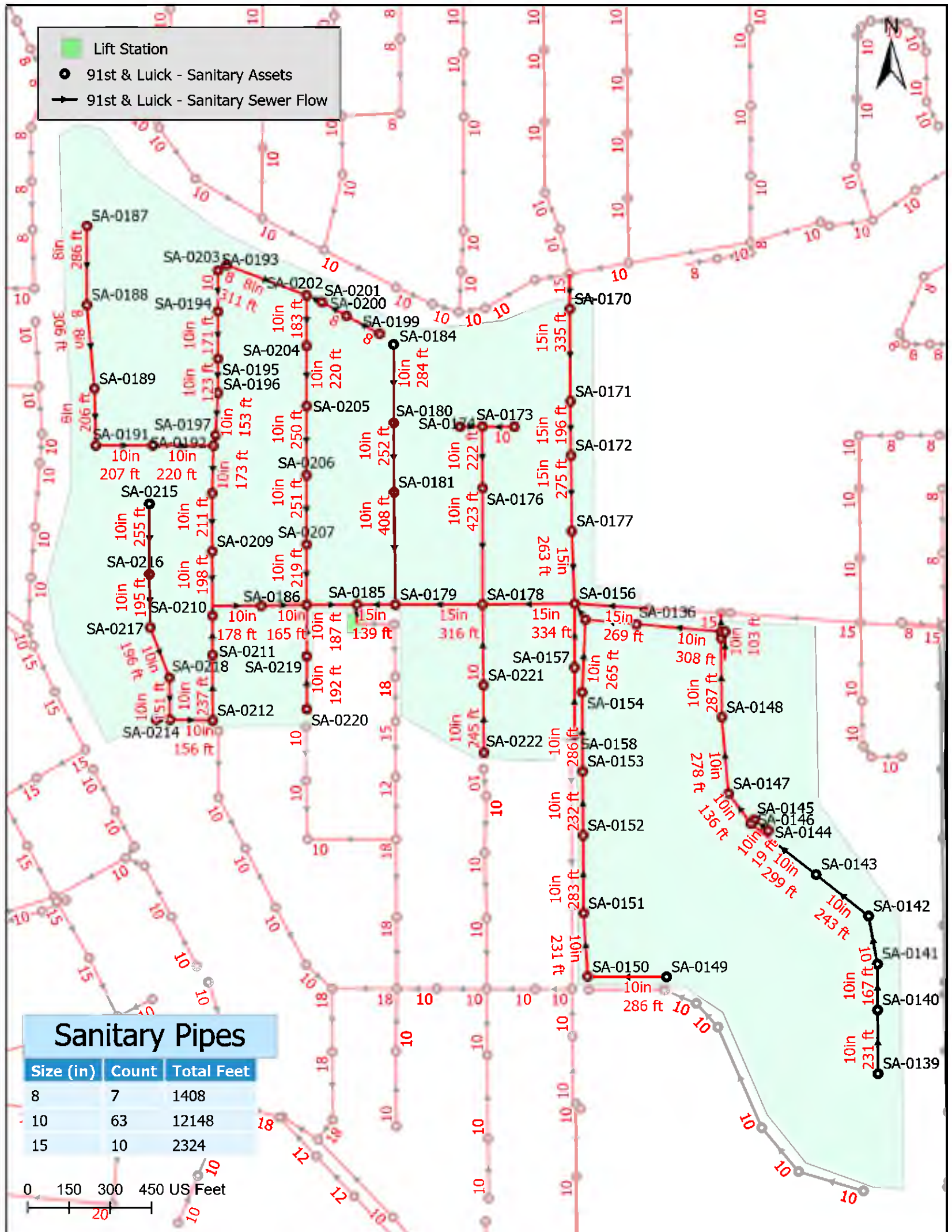
Proposals shall be examined and evaluated to determine whether the proposals meet the requirements of this RFP. The contract will be awarded based on the following criteria:

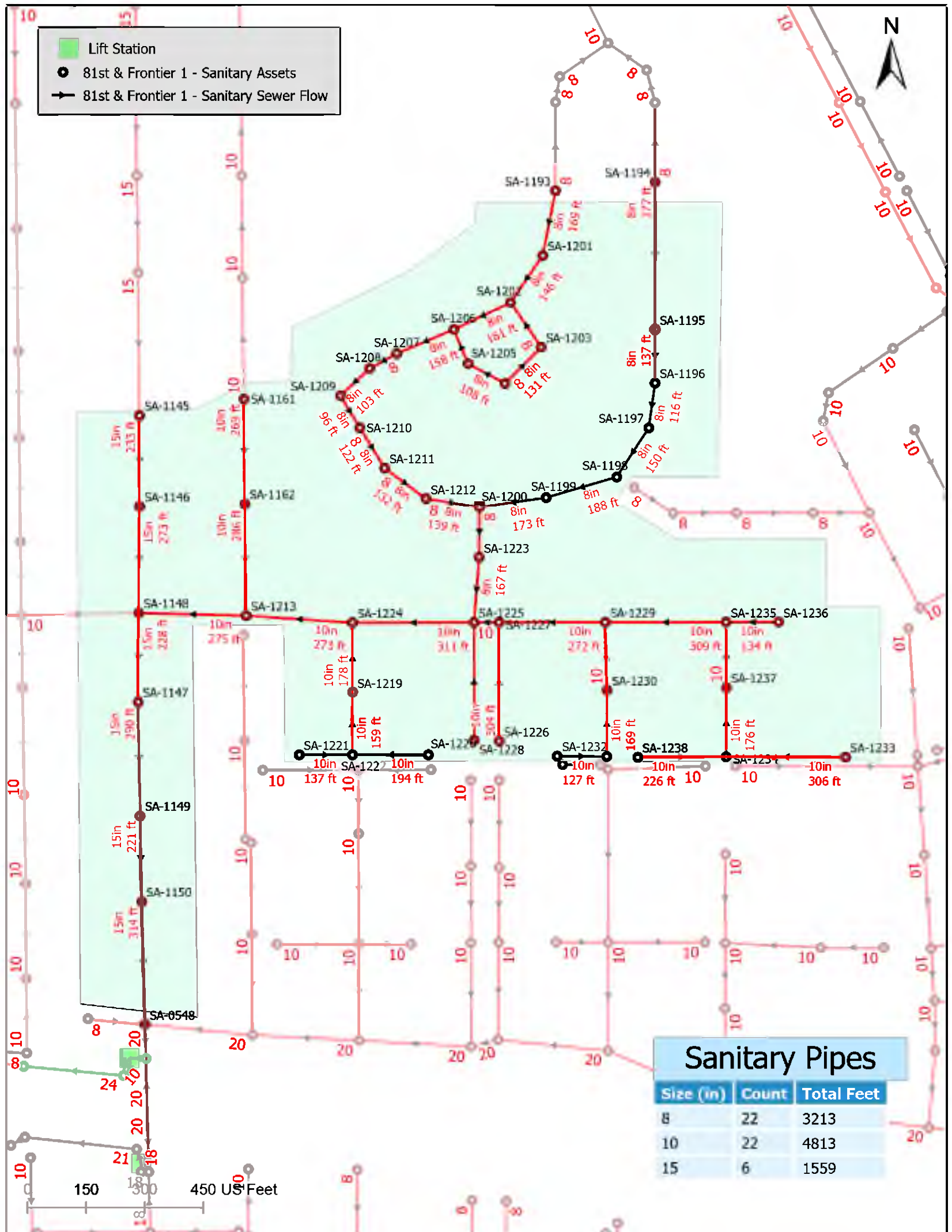
1. Situational understanding (20 points);
2. Demonstrated experience, capabilities, and qualifications (40 points);
3. Completeness of the proposal (20 points); and
4. Total proposed cost (20 points).

Proposing firms may be invited to present to the Water Board or to NFWB staff and will be expected to provide prompt responses to questions and inquiries submitted through the designated NFWB contact.

RFP Dated: November 10, 2022





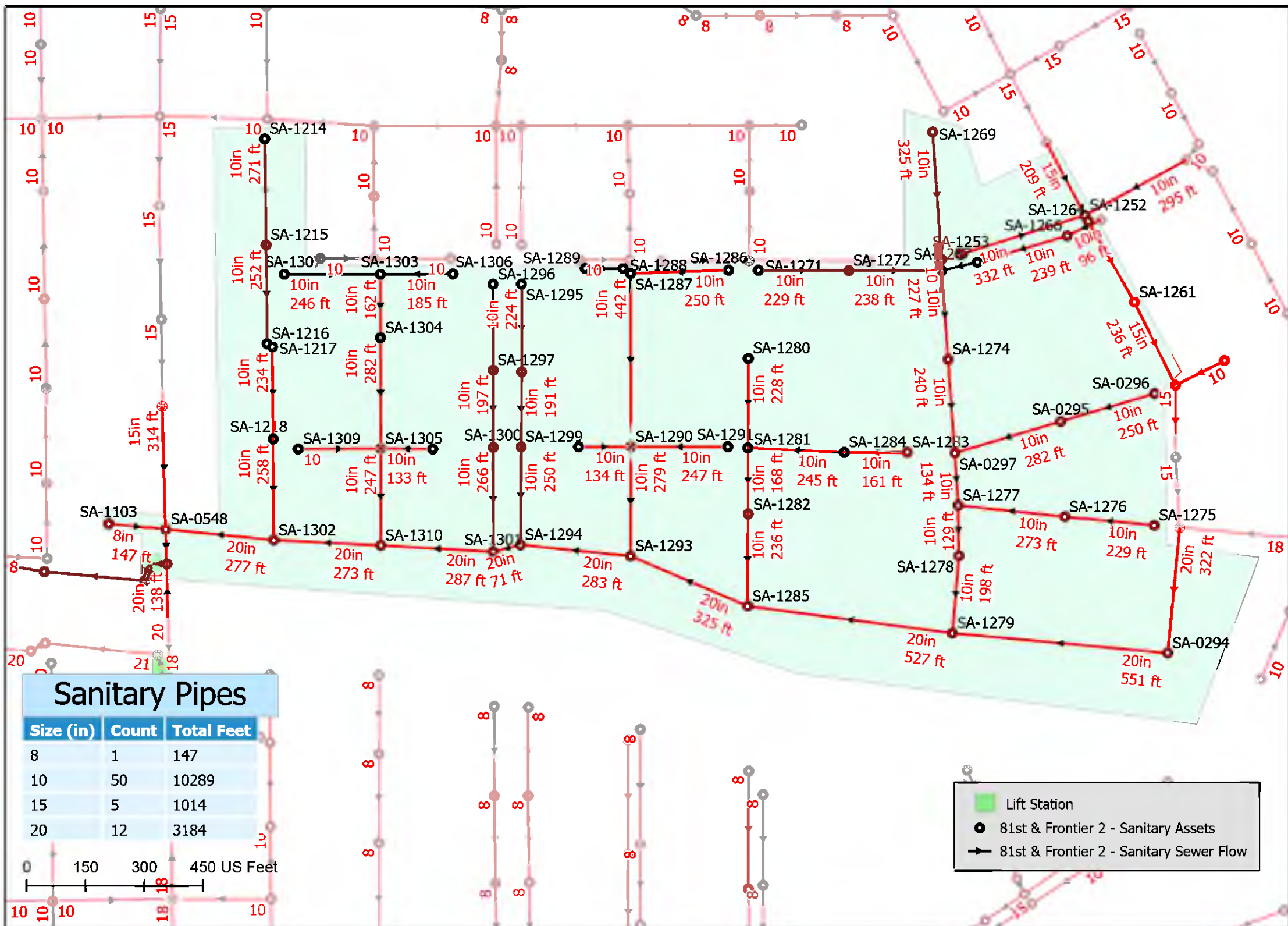


# Sub-Sewershed - 81st & Frontier 1

DISCLAIMER:  
FOR INFORMATION ONLY  
ACCURACY OF THIS PLAN  
SHALL BE CHECKED IN FIELD  
NIAGARA FALLS WATER BOARD







## Sub-Sewershed - 81st & Frontier 2

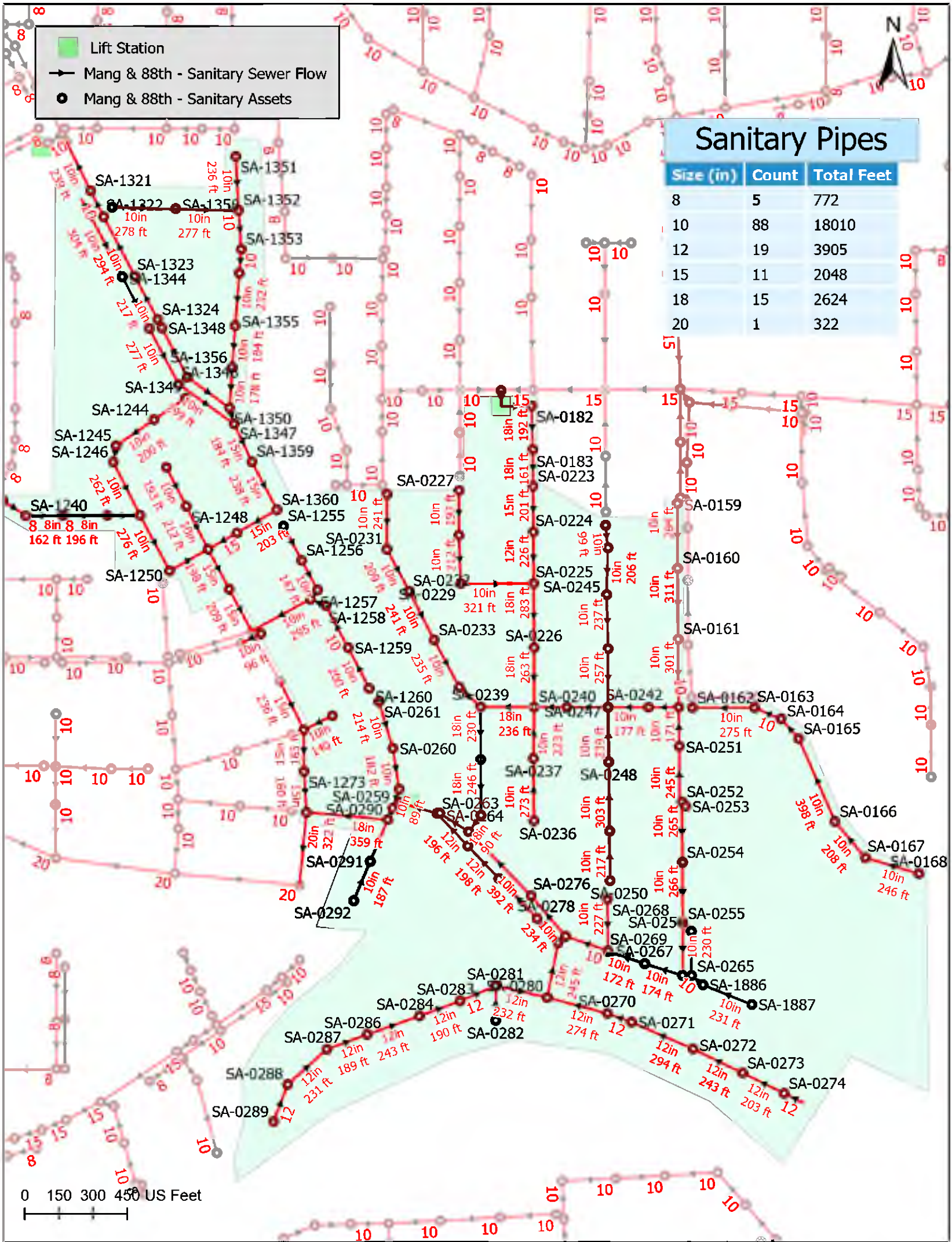
## Appendix B

DISCLAIMER:  
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NIAGARA FALLS WATER BOARD









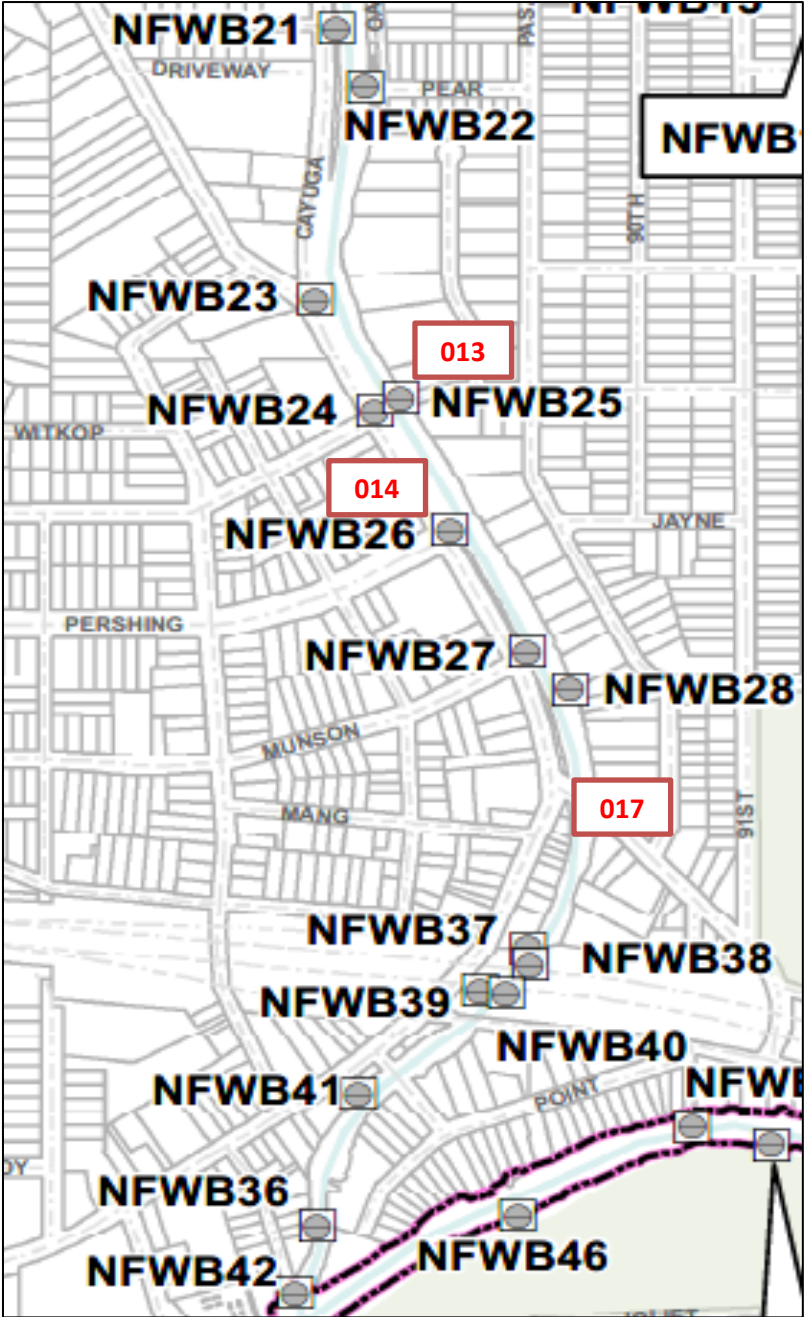
# Sub-Sewershed - Mang & 88th Appendix C

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ACCURACY OF THIS PLAN  
SHALL BE CHECKED IN FIELD  
NIAGARA FALLS WATER BOARD



**LIST OF DISCHARGE OUTFALLS**

NUMBER	DESCRIPTION	SHORE	LOCATION	SIZE	NFWB NUMBER	RECEIVING WATER	PHASE
013	LIFT STATION BYPASS 91ST & LUICK	East	Lindbergh	27"	25	CAYUGA CREEK	PHASE 1 - 91ST & LUICK
014	LIFT STATION BYPASS 81ST & FRONTIER	West	Pershing	54"	26	CAYUGA CREEK	PHASE 1 - 81ST & FRONTIER1
017	PUMP STATION BYPASS MANG & CAYUGA	East	Mang	27"		CAYUGA CREEK	PHASE 3 - MANG & 88TH



**Appendix D**

## **APPENDIX E**

### **NFWB REQUEST FOR PROPOSALS (“RFP”) STANDARD TERMS, CONDITIONS, AND REQUIREMENTS**

Except as otherwise may be agreed to in writing, the following standard terms, conditions, and requirements shall form a part of any contract between the Niagara Falls Water Board and a proposer that responds to the Request for Proposals (“RFP”):

#### **A. Statement of Qualifications**

Proposers must submit a statement of qualifications that provides a description of proposer’s business structure, licensing, years in business, any experience with providing similar services along with the project description (including contact information for references), locations, description of key personnel for this project, and any other pertinent information that will help to demonstrate proposer’s qualifications to perform. The statement of qualifications must also include the following:

1. Any other names under which proposer has done business in the past 10 years;
2. List all subsidiary and parent companies;
3. State whether proposer ever has been:
  - Debarred or suspended by any government entity from entering contracts with it;
  - Found not responsible by any government entity;
  - Declared in default or terminated for cause from any contract, or had any contract cancelled for cause; or
  - Required to pay liquidated damages on a contract.
4. State whether proposer has filed for bankruptcy or been the subject of an involuntary bankruptcy proceeding; and
5. State whether proposer has been a party to any legal action or government investigation related to proposer’s business practices, or alleging that any of proposer’s agents or employees committed any act of fraud, collusion, bid rigging, price fixing, or bribery. If proposer, any of proposer’s principals, or any of proposer’s agents has pleaded guilty or entered into a consent order in connection with respect to any of these, provide details.
6. Disclose any potential conflicts of interest your firm may have or encounter if selected, and your firm’s plan for resolving the conflict.
7. If proposer intends to use subcontractors or sub-consultants to perform more than 10% of the work that is the subject of this RFP, proposer must include details regarding the sub-consultant or subcontractor’s identity and qualifications. At a minimum, the proposal must include information regarding the sub-consultant or subcontractor’s business structure, experience, and resumes or other materials detailing the qualifications and contact information for key personnel and demonstrating prior experience with the scope work to be performed.

#### **B. General Conditions of RFP**

The issuance of this RFP does not commit the Water Board to award a contract or to pay any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith. In addition, the Water Board reserves the following rights:

1. To postpone or cancel this RFP;
2. Reject any or all proposals received in response to this RFP;

3. Award a contract without any discussion with proposers;
4. Retain a successful proposer for only a portion of the scope of services;
5. Accept a proposal other than the proposal offering the lowest price;
6. Waive or modify any irregularities in proposals received;
7. Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the Board;
8. Request clarification and/or additional information from the proposers during the evaluation process; and
9. Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights and the patent or proprietary rights are clearly and specifically set forth in the proposal.

### **C. Proposal Firm and Irrevocable for 90 Days**

A signed proposal shall be considered a firm offer on the part of the proposer, and the Water Board may insist on the strict performance of all elements of the proposal, unless the Water Board specifically waives a proposal element in writing during negotiations. By submitting a proposal, proposer agrees that its offer is firm for a period of 90 days from the deadline for proposal submissions, as may be amended or extended by way of an addendum to this RFP.

### **D. Oral Presentations or Interviews**

Prior to award, one or more proposers may, in the sole discretion of the Niagara Falls Water Board, be invited to offer a presentation to Water Board staff and/or to the Board of Directors. The authorized Water Board contact will schedule the time and location of these presentations. Proposer shall bear all of its own costs for any such presentations or interviews.

### **E. Contract Negotiations**

Upon selection, the successful proposer may be invited to negotiate a contract with the Water Board, though the Water Board reserves the right to award a contract on the basis of the initial offers received, without discussions. Therefore, each initial offer should contain the proposer's best terms from a technical and cost standpoint.

The Water Board reserves the right to enter into discussions/negotiations with one or more proposers and to request the submission of best and final offers from those proposers, who after the conclusion of such discussions/negotiations, still are under consideration for award. No proposer shall have any rights against the Water Board arising from an invitation to enter into discussions/negotiations or to submit a best and final offer.

Unless otherwise agreed, the contents of the selected proposal and any modifications agreed upon in writing during negotiations, together with the RFP, will be incorporated into and made part of the final contract. Should negotiations fail to result in a signed contract within a reasonable period of time as defined by the Water Board, the Water Board reserves the right to terminate negotiations and select another proposer, issue a new RFP, or take any other action consistent with the best interests of the Water Board.



## **F. Exceptions to RFP**

The contract to be entered into shall include the requirements of this RFP among its terms and conditions, with such changes to which the Water Board may agree. Submission of a proposal constitutes consent to these terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in a separate attachment to the body of the proposal entitled "Exceptions." Failure to list exceptions separately in the "Exceptions" attachment shall be deemed to constitute consent to all such terms and conditions herein and shall constitute a binding waiver by the proposer of all exceptions not listed. A general exception or reservation to the legal or technical terms and conditions shall be deemed a nullity and may also result in the Water Board rejecting the proposal as non-responsive.

## **G. Rely Only Upon Formal Information**

1. The Water Board shall not be bound by any oral or written information released prior to the issuance of the RFP.
2. The Water Board shall not be bound by any oral or written representations, statements, or explanations other than those made herein, in Water Board written responses to proposer inquiries, or in formal written addenda to this RFP.

## **H. Questions Regarding the RFP**

1. All inquiries regarding this RFP shall be emailed to the authorized Water Board contact by the date and time indicated on the cover page of this RFP. The subject line for such inquiries should indicate the RFP name and number.
2. Compiled questions and responses usually will be posted on the Water Board's website at <https://nfwb.org/reports/procurements/> on or after the date indicated on the cover page of the RFP, but to receive these responses as early as possible, you must email the authorized Water Board contact to ask to be placed on the distribution list for this RFP.

## **I. Addenda to the RFP**

3. The Water Board shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. Such addenda usually will be posted on the Board's website: <https://nfwb.org/reports/procurements/>, and the Water Board will use its best efforts to send copies to those who have asked to be placed on the distribution list for this RFP.
4. It is the proposer's responsibility to assure receipt of all addenda. The proposer should verify with the authorized Water Board contact prior to submitting a proposal that all addenda have been received. Proposers shall acknowledge the number of addenda received as part of their proposals using this Appendix's Form No. 1.

## **J. Proposal Package Submission Requirements**

1. Proposal packages are due on or before the proposal due date and time at the location set forth on the cover page of this RFP.
2. Proposers shall deliver one (1) clearly marked original and six (6) copies of the proposal package. To prevent waste, proposers are encouraged to print and/or copy responses on both sides of the page.
3. One (1) electronic copy of the complete proposal package also is required, on CD or USB drive. The preferred method is PDF conversion from the proposer's source files rather than simply scanning the proposal documents (to minimize file size and maximize quality), though scanned documents are acceptable. The electronic copy of the proposal should be provided as one document with the pages in the same order as the paper original. If this is not possible, the electronic copy files should be named in a way so that they can be read in the same order as the paper original (e.g., naming the files "Proposal Part 1," "Proposal Part 2," etc.).
4. Only one original copy of each of the appendices requiring a signature is required, which may be submitted only as part of the paper original proposal and need not be included in the electronic copy of the proposal.
5. The sealed outer envelope enclosing any materials submitted in response to this RFP shall be addressed to the Water Board contact set forth on the cover page of this RFP. The outer envelope containing the proposal materials must clearly indicate the proposer's name and address, and must clearly be marked with the RFP number and title from the cover page of the RFP.
6. Proposals may be hand delivered. Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item "5" above, appears on the outer envelope used by such service.

## **K. Personnel**

If awarded a contract, proposer agrees to provide adequate and competent personnel to fulfil its contractual obligations, with said personnel having the necessary licensing, education, training, and experience in the specialties that are necessary to perform proposer's obligations. Proposer agrees that its personnel, including sub-contractors, shall comply with any credentialing, security, badge, orientation, safety, or other requirements, procedures, or protocols as the Water Board may from time-to-time establish.

## **L. Insurance**

Proposer shall be required to procure and maintain at its own expense and without expense to the Niagara Falls Water Board, insurance for liability for damages imposed by law, of the kinds and amounts hereinafter provided, from insurance companies authorized to do business in the State of New York covering all operations under any contract that results from this RFP, whether performed by the proposer or its subcontractors. Before proceeding with any work under the contract that may result from this proposal, the successful proposer shall furnish to the Niagara Falls Water Board Certificate of Insurance form(s) and relevant insurance policy declarations and endorsements satisfactory to the Water Board exhibiting compliance with this paragraph and providing that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the Niagara Falls Water Board. The types and limits of insurance shall be as follows:

1. Workers Compensation as required by Law (submit Form C-105.2);
2. Disability Benefits as required by Law (submit Form DB-120.1);
3. Employer's Liability with a minimum limit of \$100,000;
4. Commercial General Liability insurance: Bodily, Personal Injury, and Property Damage Liability limits each of at least \$1,000,000 per occurrence/\$2,000,000 aggregate, which shall include the following coverages:
  - a. Owner's Protective Liability
  - b. Premises – Operations
  - c. Broad Form Contractual
  - d. Independent Contractor and Sub-Contractor
  - e. Products and Completed Operations
5. Automobile Liability: \$1,000,000 single limit; and
6. Umbrella/Excess Liability: A minimum of \$5,000,000 on a per occurrence and aggregate basis; this shall be in excess of primary general, automobile and employer's liability limits.
7. Professional Liability/Errors and Omissions: \$2,000,000 (identified as a claim made or an occurrence policy) (required only if professional services are to be performed pursuant to the contract).

Certificates, declarations, and endorsements should be made to the Niagara Falls Water Board, 5815 Buffalo Avenue, Niagara Falls, NY 14304.

The Niagara Falls Water Board, the Niagara Falls Public Water Authority, and the City of Niagara Falls, New York shall be named as an Additional Insureds, for both Ongoing and Completed Operations on a primary and non-contributory basis, on the Liability (General Liability, Auto Liability and Excess Liability ) Policies (except for professional liability) with the following provision: The insurance company or companies issuing the policies shall have no recourse against the Niagara Falls Water Board or the Niagara Falls Public Water Authority for payment of any premiums or for assessments under any form of policy.

In the event that the proposer requires any subcontractor to procure insurance with regard to any of the operations under the contract resulting from this RFP and requires such subcontractor to name the proposer as an additional insured under such insurance, the proposer shall ensure that such policy names the Water Board, Niagara Falls Public Water Authority, and their officers and employees as additional insureds.

#### **M. Indemnification and Waiver of Subrogation**

The successful proposer, to the full extent permissible by New York law, must agree to indemnify and hold the Niagara Falls Water Board, its Directors, Officers, and Employees harmless against all loss, cost, or damage, on account of injury to person or damage to property as a result of any action or inaction of the proposer or its representatives or agents or subcontractors in performance of the contract resulting from this RFP and against all fines, penalties any other losses which the Niagara Falls Water Board shall be obliged to pay or incur in connection with the performance of the work under the contract.

The successful proposer also must agree to waive all rights against the Water Board, including its officials and employees, for any damages or losses that are covered under any insurance required by this appendix or in the resulting contract, or any other insurance applicable to the operations of the proposer and/or its subcontractors in the performance of the contract.

#### **N. Coordination and Cooperation with Third Parties**

Proposer agrees and acknowledges that if the contract calls for work on Water Board property, there may be other ongoing projects on site for all or part of proposer's performance. The Water Board or its representative will take reasonable steps to avoid any conflicts between work performed by proposer and any third party, but proposer shall be responsible for actively communicating and cooperating with the Water Board's representative and any third party, including but not limited to other contractors or subcontractors of the Water Board, as necessary to ensure coordination of performance of services.

#### **O. Safety and Site-Specific Safety Plan**

Proposer shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work to be performed by proposer, and shall take all necessary precautions for the safety and protection of all persons who may be affected by the work of proposer or its subcontractors. If requested by the Water Board, prior to the commencement of work, proposer agrees that it shall submit to the Water Board or its representative copies of a Safety Program and Site-Specific Health & Safety Plan. The Safety Program shall describe proposer's overall safety policy, regulatory compliance plan, and applicable safety standards. The Site-Specific Health & Safety Plan shall identify the project work scope, contain a safety hazard analysis for the associated contract tasks, and include the following:

- specific safety procedures appropriate and necessary to complete the work;
- personal protective equipment to be used by proposer or its subcontractors for associated project tasks;
- documentation that proposer and its subcontractors are in compliance and current with required OSHA training; and
- a description of the frequency and types of air monitoring, personnel monitoring and instrumentation to be used, if any.

The proposer's equipment and method of operation shall be in full compliance with OSHA Standards and satisfy all Federal, State and Local Health & Safety regulations. The Water Board may but is not obligated to provide proposer with comments on the Safety Program and Site-Specific Health & Safety Plan, but in no event does the Water Board assume responsibility for the adequacy or completeness of these plans or for adherence by proposer or proposer's subcontractors to the same.

#### **P. Independent Contractor and Identification of Subcontractors**

The successful proposer and its employees will operate as an independent contractor and are not considered Water Board employees. Proposer must identify its subcontractors, if any, in its proposal, but award of a contract shall not create any relationship between the subcontractors and Water Board, and proposer shall be responsible for the entire contract. The Water Board shall have the right to reject any proposed subcontractors.

## **Q. Successors and Assigns**

Any contract resulting from this RFP shall inure to the benefit of and be binding upon the legal representatives and successors of the parties, respectively, but the successful proposer may not assign the contract without the Water Board's written permission.

## **R. Freedom of Information Law – Claim of Confidential, Proprietary, or Trade Secret Information**

The Water Board is subject to the provisions of the Freedom of Information Law ("FOIL"), N.Y. Public Officers Law, Sections 84 through 90, relating to public access to agency records. The proposer shall specifically identify any portions of the documents submitted with the proposal deemed to be confidential, proprietary information, or trade secrets and provide any justification why such material, upon request, should not be disclosed by the Water Board. The top of each page containing such information must be clearly marked in bold type **"PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW."** Such information deemed by the proposer to be confidential/proprietary shall be easily separable from the non-confidential/non-proprietary sections of the proposal.

The Water Board accepts no responsibility for disclosure of information designated as exempt from disclosure, but the Board does intend to evaluate, on a case-by-case basis, whether exemption from disclosure applies when a FOIL request is made to the Water Board for examination of such a document. Proposers should be aware that any and all terms of their respective proposals may be the subject of discussion at Board of Directors meetings that are open to the public.

## **S. Records**

If awarded a contract, proposer shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under the contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the Water Board and its representatives, shall have access to the Records during normal business hours at an office of the proposer within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Water Board shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the proposer shall timely inform an appropriate Water Board official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Water Board's right to discovery in any pending or future litigation.

## **T. Compliance with Breach Notification and Data Security Laws**

Proposer agrees that if awarded a contract to perform work for the Water Board it shall comply with the provisions of the New York State Information Security Breach and Notification laws, General Business Law §§ 899-aa and 899-bb and State Technology Law § 208.

## **U. Prevailing Wage and Workforce Reporting**

Proposer shall pay prevailing wages as required by law for any work performed for the Water Board in connection with this proposal, and per New York Executive Law and Executive Order Number 162, proposer and any of its subcontractors may be required to submit a quarterly Workforce Employment Utilization Report in the format provided by the Water Board reflecting the entirety of proposer and its subcontractors' workforces performing work on the contract and located within New York State, as well as the salaries of any such employees.

## **V. Payment Terms and Requirements**

If awarded an agreement, proposer agrees to provide complete and accurate billing invoices to the Water Board on a monthly basis, and will comply with cover sheet requirements or other invoice submission procedures as the Water Board may from time to time require. Invoices submitted must contain sufficient information and documentation to support the charges submitted. Documentation may include time sheets, expense vouchers and any other supportive documentation requested by the Water Board or its representative. If proposer is in compliance with applicable prevailing wage laws and has satisfactorily completed all required Minority, Women, and Disadvantaged Business Enterprise and Service-Disabled Veteran-Owned Business utilization and reporting requirements, payment shall be made monthly on the basis of invoices submitted by proposer, each payment to be due sixty (60) days after receipt of the invoice, unless the Water Board reasonably disputes some or all of the invoice.

## **W. Exemption from Sales Tax**

The Water Board is exempt from state and local fees, taxes, franchise taxes, sales taxes or other excise taxes. Proposals shall not include any such taxes or fees.

## **X. Non-Discrimination and Prohibition Against Sexual Harassment**

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the proposer will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, or marital status. By submitting a proposal, proposer agrees that it shall submit an Equal Employment Opportunity ("EEO") Policy Statement to the Water Board containing at a minimum the terms therefore as set forth in this Appendix's Form No. 4.

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the proposer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law. The proposal must include the Statement on Sexual Harassment form at this Appendix's Form No. 5.

## **Y. Iran Divestment Act**

By submitting a proposal in connection with this RFP or by assuming the responsibility of a contract awarded hereunder, proposer certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive

Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Proposer further certifies that it will not utilize in connection this contract any subcontractor that is identified on the Prohibited Entities List.

## **Z. International Boycott Prohibition**

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, that by submitting a proposal or by assuming the responsibility of a contract awarded hereunder, proposer agrees, as a material condition, that neither the proposer nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If proposer, or any of the aforesaid affiliates of proposer, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the proposer’s execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The proposer shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

## **AA. MacBride Fair Employment Principles**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), by submitting a proposal or by assuming the responsibility of a contract awarded hereunder the proposer hereby stipulates that the proposer either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

## **BB. Prohibition on Purchase of Tropical Hardwoods**

The proposer certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State, otherwise, the proposal may not be considered responsive. Proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**CC. Conflicts of Interest and Prohibition on Political and Religious Activity**

By submitting a proposal or by assuming the responsibility of a contract awarded hereunder, proposer stipulates that, upon information and belief, no member of the governing body of the Water Board, or officer or employee of the Water Board, forbidden by Law, is interested in, will derive benefit from, or will be a party to, the contract between proposer and the Water Board. Proposer warrants that no payment, gift, or thing of value has been or will be made, given, or promised any Director, Officer, or Employee of the Water Board, or any member of the immediate family of any Director, Officer, or Employee of the Water Board (spouse, parent, sister, brother, or child) to obtain this or any other agreement between the parties. Proposer agrees that its provision of services under any contract that may result from this RFP shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under any contract that may result from this RFP be used for such purposes. The proposer further agrees that if awarded an agreement as a result of this RFP, there shall be no religious worship, instruction, or proselytizing as part of or in connection with the proposer's provision of services under that contract, nor shall any of the funds provided under this agreement be used for such purposes.

**DD. Non-Collusion**

Proposer must submit a signed statement of non-collusion on the form that is this Appendix's Form No. 2.

**EE. Communication with Water Board and Lobbying Law.**

Proposers are advised that, from the date this RFP is issued until the award of the contract, no contact by proposers or their agents with the Water Board or Water Board personnel related to this RFP is permitted, except as shall be authorized by the authorized Water Board contact indicated on the cover page of this RFP.

Pursuant to State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communication between respondents and the Water Board during the procurement process. A respondent is restricted from making contacts from the date the RFP is issued through the final contract award by Water Board (the "Restricted Period"). During the Restricted Period, respondents may only contact the designated contact regarding this RFP. The designated contact is identified on the cover page of this RFP. Respondents are responsible for complying with State Finance Law Sections 139-j and 139-k. Directors, officers and employees of the Water Board are required to record certain information when contacted during the Restricted Period. A review of whether such contacts were permissible contacts will be considered in connection with any determination of responsibility of the respondent. Failure of any respondent to timely certify or to disclose accurate and complete information or the submission of any intentionally false or intentionally incomplete certification may result in the rejection of the contract award or if such contract has been executed, then the immediate termination of the contract. Violations may result in debarment of the respondent from proposing on or obtaining governmental procurement contracts in the State of New York.

Proposers are required to complete and return with their proposal this Appendix's Form No. 3, New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement.



## **FF. Waiver of Immunity**

As a condition of any contract award, the proposer agrees, acknowledges, and accepts that pursuant to Public Authorities Law § 2875, upon the refusal by 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, a public authority or with any public department, agency or official of the state or of 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 (b) any and all contracts made with any public authority or official thereof, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled 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 or termination shall be paid.

## **GG. Termination**

The following terms shall apply to any contract entered into as a result of this request for proposals:

1. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the contractor, the contract may be terminated by the Water Board at the contractor's expense where contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the contract, or for nonperformance, or upon a determination that contractor is nonresponsible. Such termination shall be upon written notice to the contractor. In such event, the Water Board may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
2. For Convenience: By written notice, this contract may be terminated at any time by the Water Board for convenience upon thirty (30) days written notice and without penalty or other early termination charges due. Such termination of the contract shall not affect contractor's right to recover for any work performed or materials acquired under the contract prior to the date of such termination, provided that contractor cancels, prior to the effective date of the termination, as many outstanding obligations as possible and agrees not to incur any new obligations after receipt of the notice of termination without approval by the Water Board. If the contract is terminated pursuant to this subdivision, the Water Board shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.
3. For Violation of the Sections 139-j and 139-k of the State Finance Law: The Water Board reserves the right to terminate the contract in the event it is found that the certification filed by the contractor in accordance with Section 139-k of the State Finance Law was

intentionally false or intentionally incomplete. Upon such finding, the Water Board may exercise its termination right by providing written notification to the contractor.

#### **HH. Governing Law and Venue**

These terms and conditions and the contract shall be governed by the laws of the State of New York. Each of the parties to these terms and conditions and the contract submits to the exclusive jurisdiction and venue of the State and Federal courts located in Niagara County, New York, or if the required Federal courts are not located in Niagara County, to the Federal courts located in Erie County, New York.

#### **II. Service of Process and Notices**

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), proposer agrees that if awarded a contract it consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon proposer's actual receipt of process or upon the Water Board's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Proposer must promptly notify the Water Board, in writing, of each and every change of address to which service of process can be made. Service by the Water Board to the last known address shall be sufficient. Proposer will have thirty (30) calendar days after service hereunder is complete in which to respond. A copy of all notices to the Water Board shall be provided to: Legal Department, Niagara Fall Water Board, 5815 Buffalo Avenue, Niagara Falls, NY 14304.

#### **JJ. No Waiver of Rights**

No failure or delay (in whole or in part) on the part of either the Water Board or proposer to exercise any right or remedy pursuant to the terms and conditions herein shall impair its ability to later exercise any such right or remedy, operate as a waiver thereof, or affect any other rights or remedies that may be available under the law or in equity, except to the extent it causes actual prejudice to the other party. No waiver by either party of any covenant, condition, term or provision of the contract shall be deemed to have been made by that party unless such waiver is in writing and signed by an authorized representative of the party.

**APPENDIX E, FORM No. 1**

**ACKNOWLEDGEMENT OF ADDENDA**

RFP TITLE: \_\_\_\_\_  
(Write the RFP No. and Title on the Line Above)

DIRECTIONS: Complete Part I or Part II, whichever is applicable.

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH  
ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP:

ADDENDUM # 1: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 2: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 3: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 4: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 5: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 6: DATED \_\_\_\_\_ , 20\_\_

PART II: \_\_\_\_\_ INITIAL HERE IF NO ADDENDUM WAS RECEIVED  
IN CONNECTION WITH THIS RFP INITIAL HERE

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

**APPENDIX E, FORM No. 2**

## CERTIFICATE OF NON-COLLUSION

Pursuant to New York State Public Authorities Law, Article 9, Title 4, Section 2878, the undersigned proposer hereby subscribes and affirms as true, under the penalties of perjury, the following statement of non-collusion:

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

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

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME):

PROPOSER (FIRM):

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

Notary Public

## **APPENDIX E, FORM No. 3**

### **NEW YORK STATE FINANCE LAW SECTIONS 139-j AND 139-k ("LOBBYING LAW") – DISCLOSURE STATEMENT**

#### **General Information**

All procurements by the Niagara Falls Water Board ("NFWB") in excess of \$15,000 annually, are subject to New York State's State Finance Law Sections 139-j and 139-k, effective January 1, 2006 ("Lobbying Law").

Pursuant to the Lobbying Law, all "contacts" (defined as oral, written or electronic communications with the NFWB intended to influence a procurement) during a procurement - from the earliest notice of intent to solicit bids/proposals through final award and approval - must be made with one or more designated Point(s) of Contact only. Exceptions to this rule include written questions during the bid/proposal process, communications with regard to protests, contract negotiations, and RFP conference participation. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest, or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the appropriate NFWB officer and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The NFWB will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or debarments due to violations of the Lobbying Law. Violations found to be "knowing and willful" must be reported to the NFWB Executive Director and OGS.

Moreover, the statutes require the NFWB to obtain certain affirmations and certifications from bidders and proposers. This Disclosure Statement contains the forms with which offerors are required to comply, together with additional information and instructions.

#### **Instructions**

New York State Finance Law §139-k(2) obligates the NFWB to obtain specific information regarding prior non-responsibility determinations. In accordance with New York 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 New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity.

As part of its responsibility determination, New York 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 the factual elements of the limited waiver provision can be satisfied on the written record.

**Disclosure of Prior Non-Responsibility Determinations**

**Name of Bidder/Proposer:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Name and Title of Person**

**Submitting this Form:** \_\_\_\_\_

**Has any governmental entity<sup>1</sup> made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

**If yes: Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

**Was the basis for the finding of Bidder's/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

**If yes to any of the above questions, provide details regarding the finding of non-responsibility below:**

Governmental Entity: \_\_\_\_\_

Year of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility (attach additional pages if necessary): \_\_\_\_\_

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**Has any governmental entity terminated or withheld a procurement contract with the Bidder/ Proposer due to the intentional provision of false or incomplete information?**

\_\_\_\_\_ **Yes**    \_\_\_\_\_ **No**

If yes, provide details regarding the termination/withholding below:

Governmental Entity: \_\_\_\_\_

Year of Termination/Withholding:\_\_\_\_\_

Basis for Termination/Withholding (attach additional pages if necessary):

[illegible]

## NOTICE OF NFWB'S RIGHT TO TERMINATE

**The NFWB reserves the right to terminate a Contract (including any lease, license, entry permit, or sale documents) in the event it is found that the certification filed by the Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, the NFWB may exercise its termination right by providing written notification to the Bidder/Proposer in accordance with the written notification terms of the Contract.**

### Proposer's Affirmation and Certification

By signing below, the Proposer:

- a) Affirms that the Proposer understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k.
- b) Certifies that all information provided to the NFWB with respect to New York State Finance Law §139-j and §139-k is complete, true and accurate.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

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



## APPENDIX E, FORM No. 4

### **EQUAL EMPLOYMENT OPPORTUNITY (“EEO”) POLICY STATEMENT AND AGREEMENT**

Proposer hereby agrees to the following EEO policy with respect to its work on any contract awarded in connection with this RFP:

- a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Niagara Falls Water Board (“Water Board”) contracts.
- b) This organization shall state in all solicitations or advertisements for employees that in the performance of the Water Board contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability or marital status.
- c) At the request of the Water Board, this organization shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.
- d) This organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Proposer and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, pregnancy or pregnancy-related conditions, gender identity, familial status, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- e) This organization will include the provisions of section (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Water Board contract.

#### **ACCEPTED AND AGREED:**

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

**STATEMENT ON SEXUAL HARASSMENT  
PURSUANT TO STATE FINANCE LAW § 139-l**

DATE:     /     /

PROPOSER (FIRM):

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

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Notary Public

**APPENDIX E, FORM No. 6**

**REQUEST FOR PROPOSALS  
ACKNOWLEDGEMENT AND CERTIFICATION**

As a duly-authorized representative of the proposer indicated below, I hereby acknowledge that by submitting a proposal in connection with

\_\_\_\_\_,  
(write RFP Number and Title)

proposer has made a firm offer and agrees to be bound by its terms. Proposer has carefully read the RFP and all addenda, and in submitting this proposal acknowledges proposer understands and agrees to be bound by the requirements set forth in the RFP, except as explicitly stated on a separate sheet attached to this proposal and entitled "Exceptions." Proposer agrees and understands that the terms and conditions set forth in the RFP addenda shall be incorporated into any contract or agreement awarded in connection with this RFP, and agrees to be bound by those terms and conditions.

I recognize that all information submitted is for the express purpose of inducing the Water Board to enter a contract with the submitting business entity. I affirm, under the penalties of perjury, that to the best of my knowledge the information contained in the proposal is full, complete, and truthful.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

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



**Environmental  
Facilities Corporation**

**KATHY HOCHUL**  
Governor

**MAUREEN A. COLEMAN**  
President and CEO

# **Mandatory State Financial Assistance Terms and Conditions**

**for Contracts Funded with New York State Financial  
Assistance Only**

Effective November 1, 2021

New York State Environmental Facilities Corporation  
625 Broadway, Albany, NY 12207-2997  
P: (518) 402-6924 F: (518) 402-7456  
[www.efc.ny.gov](http://www.efc.ny.gov)

**Appendix F**

# REQUIRED CONTRACT LANGUAGE

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## Recipient to Identify Contract Type:

☐ Construction

☒ Non-Construction

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## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**"Contract"** means an agreement between a Recipient and a Contractor.

**"Contractor"** means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**"Service Provider"** means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

**"Subcontract"** means an agreement between a Contractor and a Subcontractor.

**"Subcontractor"** means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

**"Recipient"** means the party, other than EFC, to a financial assistance agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part.

**"State"** means the State of New York.

# **SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

For purposes of this section:

**“Non-Construction”** shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

The Minority- and Women- Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities requirements of this section apply to the Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction Contracts, that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- (c) Construction Contracts greater than \$100,000; and,
- (d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

## **I. General Provisions**

- A. Contractors and Subcontractors are required to comply with New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
- B. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.
- C. If any terms or provisions herein conflict with Executive Law Article 15-A or the MWBE Regulations, such law and regulations shall supersede these requirements.
- D. Upon request from the Recipient’s Minority Business Officer (“MBO”) and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the State financial assistance Recipient for MWBE and EEO purposes.

## **II. Equal Employment Opportunities (EEO)**

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.
- C. Contractor represents that it’s EEO policy statement includes the following language:
  - 1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to State financial assistance projects.

2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this State financial assistance project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  3. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- F. Required EEO Forms
1. EEO Staffing Plan  
*Non-Construction Contracts and Subcontracts only*  
 To ensure compliance with this section, the Contractor represents that it has submitted prior to execution of this Contract an EEO Staffing Plan to the Recipient's MBO to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
  2. EEO Workforce Employment Utilization Report ("Workforce Report")
    - a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC during the term of the Contract. For construction Contracts, Workforce Reports must be submitted on a monthly basis; for non-construction Contracts, Workforce Reports must be submitted on a quarterly basis.
    - b. Separate forms shall be completed by Contractor and any Subcontractor.
    - c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

### III. Business Participation Opportunities for MWBEs

#### A. Contract Goals

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation ("MWBE Combined Goals") based on the current availability of qualified MBEs and WBEs.

Program	MWBE Combined Goal*
NYS financial assistance only	30%
Engineering Planning Grant	30%

\*May be any combination of MBE and/or WBE participation

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.
  - a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
  - b. For non-construction Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract
4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract.
5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

#### B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.
3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE-SDVOB Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE-SDVOB Contractor Compliance Report or revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

#### C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.



2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.
- D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE-SDVOB Report")  
The Contractor agrees to submit a report to the Recipient by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE-SDVOB Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE-SDVOB Report must reflect all Utilization Plan revisions and change orders.
- E. Liquidated Damages - MWBE Participation  
In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

## **SECTION 2 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

For purposes of this section:

**"Non-Construction"** shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

The requirements of this section apply to Contracts or Subcontracts meeting the thresholds under New York State Executive Law, Article 17-B as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction Contracts, that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- (c) Construction Contracts greater than \$100,000; and,
- (d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

## **I. General Provisions**

Contractors and Subcontractors are required to comply with New York State Executive Law Article 17-B and 9 NYCRR Part 252 for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.

## **II. Contract Goals**

- A. EFC hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>.
- B. Pursuant to 9 NYCRR § 252.2(n), Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

## **III. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Contractor represents and warrants that it has submitted a completed SDVOB Utilization Plan to Recipient prior to the execution of this Contract.
- B. Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goal set forth above.
- C. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.
- D. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE-SDVOB Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated SDVOB Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.
- E. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the SDVOB Utilization Plan to the MBO within 30 days of their execution.

## **IV. Request for Waiver**

- A. If Contractor, after making good faith efforts, is unable to comply with the SDVOB Contract goal, Contractor may submit a request for a partial or total waiver to the Recipient, documenting good faith efforts by Contractor to meet such goal. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Recipient, but must be made no later than prior to the submission of a request for final payment on the Contract.  
If the Recipient, upon review of the SDVOB Utilization Plan and Monthly SDVOB Contractor Compliance Report determines that Contractor is failing or refusing to comply with the SDVOB Contract goal and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.

## **V. Monthly SDVOB Contractor Compliance Report (“Monthly MWBE-SDVOB Report”)**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report monthly SDVOB contractor compliance to the Recipient during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. The Contractor agrees to submit a report on to the Recipient by the third business day following the end of each month over the term of this Contract. The Monthly MWBE-SDVOB Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check). The final Monthly MWBE-SDVOB Report must reflect all Utilization Plan revisions and change orders.

## **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

## **SECTION 3 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

The requirements of this section apply to all Contracts and Subcontracts.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.