

December 11, 2024

Gwen Webber-McLeod, Chair
Auburn Industrial Development Authority
2 State Street
Auburn, New York 13021

**RE: PROPOSAL FOR PROFESSIONAL SERVICES
AIDA MANAGEMENT SERVICES 2025**

Dear Ms. Webber-McLeod:

Below is our understanding of your needs, our scope, and proposed fee structure. Please sign where indicated and return to me, at which time we can begin work.

I. Project Overview

The Auburn Industrial Development Authority (AIDA) is seeking continued interim management and administrative services, which services will encompass the role of "Interim Executive Director" described in AIDA's bylaws and the New York Public Authorities Law (PAL). This engagement would entail responsibilities such as advancing economic development projects seeking AIDA assistance, meeting preparation and facilitation, record keeping, compliance support, and basic bookkeeping and financial tracking.

Subject to the limitations set forth in Section IV, below, a representative of Swiftwater may be designated as "Interim Executive Director" of AIDA during the duration of its engagement if provided by a duly adopted resolution of AIDA. Swiftwater will designate its representative, who may be replaced on 10 days' advance written notice to AIDA with another representative of Swiftwater reasonably acceptable to AIDA. The parties acknowledge that, although a specific individual may be designated as "Interim Executive Director" Swiftwater staff will collectively be performing the majority of the services described in this proposal.

II. Scope of Services and Compensation

Task 1: Management Services

Swiftwater staff will fulfill the following tasks as related to AIDA's management needs:

- A. **Project Support:** We will work with AIDA's legal team to support existing and prospective AIDA projects through the incentive application, evaluation, execution, and reporting process. This will include a basic cost benefit analysis that meets at least minimum NYS standards. As needed, our team will direct projects and prospects to our colleague, Kris Phillips, who is also providing interim economic development advisement services for CEDA. We will continue to support and implement existing AIDA programming.
- B. **Regulatory Compliance:** Swiftwater will ensure that all required reporting, transparency, notification, policy, and other regulatory matters are completed and addressed in order to maintain a positive relationship with the State of New York. This includes PARIS reporting and facilitation of the annual budget and audit process should we still be engaged at those times.
- C. **Meeting Facilitation Support & Economic Development Advisement:** A member of the Swiftwater staff will attend each AIDA monthly board meeting, as well as any committee or special meetings, in person or via Zoom. S/he will offer assistance as needed in facilitating conversation about operational, strategic, and project-related agenda items. We anticipate that there will be no more than 3 meetings per month. In addition, Swiftwater will provide expertise and insights on local, regional, and state economic development trends, programs, and incentives as requested and appropriate.

Task 2: Administrative Services

Swiftwater staff will fulfill the following tasks as related to AIDA's administrative needs:

- A. **Meeting Coordination & Communication:** Compiling meeting packets as directed by AIDA's Board Chair, sending packets to board/committee members in advance of meetings, tracking responses from board/committee members to ensure a quorum will be present at the meeting, distributing and posting meeting notices to the press and appropriate community calendar, and posting meeting materials to the AIDA website. As needed, Swiftwater staff will assist in coordinating the timing of committee and special meetings that are not regularly scheduled, and will attend these meetings either in person or virtually.

- B. Meeting Minutes: Swiftwater staff will attend meetings virtually and/or utilize recordings posted to the AIDA YouTube channel to draft meeting minutes. We anticipate that there will be no more than 3 meetings per month. Draft minutes will be sent to the Board Secretary for review no later than 7 business days after each meeting. Swiftwater staff will make any edits or adjustments to the minutes as directed. After approval by the board, Swiftwater staff will post meeting minutes to the AIDA website.

- C. Financial Tracking: Swiftwater staff will enter any invoices, payments, and deposits in AIDA's Quickbooks, as well as prepare disbursement paperwork for each invoice to be paid (disbursement request form and check set up to print in Quickbooks). Swiftwater will conduct monthly reconciliations, upon receipt of documentation, which will be emailed to the board Treasurer for review and approval. Swiftwater will also calculate payment amounts and generate invoices for PILOT payments, to be reviewed and approved by the board Treasurer prior to distribution. Monthly financial reports will be generated and included within the meeting packets. The Swiftwater staff member in attendance at the AIDA monthly board meetings (see Task 1C) will report on invoices that are due and/or provide a written report listing the invoices.

- D. Recordkeeping: Swiftwater staff will ensure that all project and organizational documents resulting from board meeting activities are appropriately filed within AIDA's electronic systems, and will post such documents to the website as necessary.

Task 1 & 2 Compensation..... \$52,000

*The cost figures shown above represent our **hourly not to exceed (NTE)** amount for the term of the contract. Swiftwater will not perform work once the NTE amount is reached, unless the NTE amount is increased by AIDA. Any additional work beyond this fee and outside the scope of this proposal would be reviewed with the Client.*

Task 3: General Economic Development Services

AIDA, from time to time, may desire on-call assistance from Swiftwater. If so directed by AIDA, Swiftwater will provide such on-call assistance including, but not limited to, any of the following: expanded cost benefit or test of reasonableness analysis, grant writing, or additional marketing support.

If directed by AIDA to complete on-call work, Swiftwater will provide such services on a time-and-expenses basis charged as follows:

- For Director time: \$275/hour
- For Deputy Director/Senior Analyst time: \$198/hour
- For Analyst time: \$157/hour
- Mileage at the then-current federal rate
- All other expenses, if any, charged at cost

Swiftwater shall submit monthly statements for services rendered during each invoicing period based on the efforts performed during that period. Swiftwater Standard Rates are subject to annual adjustment.

III. Commencement of Work

Work under this contract will begin January 1, 2025 and continue until December 31, 2025 unless otherwise terminated earlier. We understand that these services will only be needed on an interim basis, and as such will provide these services until written notice of at least 7 days is provided by AIDA to terminate the agreement. Upon notice of termination, the Swiftwater team will work to transfer all relevant materials and information to the contact of AIDA's choosing.

IV. Representations and Warranties.

Swiftwater represents and warrants as follows:

Neither Swiftwater nor any of affiliates, employees, or permitted contractors have been disqualified from contracting with a public authority pursuant to Section 2876 of the New York Public Authorities or any other applicable law, rule, or regulation.

By signing this agreement, Swiftwater certifies that, under penalties of perjury, that it is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.

Swiftwater acknowledges that if (x) Swiftwater or its representatives either (a) refuse to testify before a public investigation concerning a public transaction or contract, or (b) refuses to sign a waiver of immunity from criminal prosecution or to answer any relevant question concerning such transaction; then (y) this agreement will be cancelled and Swiftwater will, for a period of five (5) years following such refusal, be disqualified from submitting public bids, receiving awards of public contracts, and entering public contracts. Swiftwater will, however, be entitled to payment for any fees prior to cancellation of this agreement pursuant to this paragraph.

V. Exclusions

By way of this agreement, Swiftwater intends to support AIDA as advisors and execution partners. Any financial and/or fiduciary responsibility rests solely with the Board of Directors, and cannot be allocated to or assumed by Swiftwater.

As such, our team members will prepare reports, advance purchasing procedures, and conduct other business on behalf of the AIDA Board of Directors. However, we are unable to execute documents on your behalf, and cannot maintain responsibility for cash, cash equivalents, or other financial instruments on behalf of AIDA. However, we will support the Board and its designees via preparation of necessary documentation, to be executed by those designated representatives.


VI. Standard Terms and Conditions

Attached hereto and made part of this Agreement are Swiftwater Strategies *Standard Terms and Conditions*.

If this proposal is acceptable to you, please sign where indicated and return one copy to our office. Thank you for your consideration of our firm. We look forward to working with you on this project.

Sincerely,

R. Michael N'dolo
Director of Economic Development



AP
Vice President

https://mrbgroup365.sharepoint.com/sites/Proposals/Shared Documents/New York/Auburn Industrial Development Authority/0-24-0887 2025 Management Services/Swiftwater Letter Proposal_AIDA Management Services 2025.docx

PROPOSAL ACCEPTED FOR THE AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY BY:

Signature

Title

Date

**SWIFTWATER STRATEGIES, LLC
AGREEMENT FOR PROFESSIONAL SERVICES
STANDARD TERMS AND CONDITIONS
ECONOMIC DEVELOPMENT SERVICES**

A. TERMINATION

Either party may terminate this Agreement with seven days' written notice if the other party fails to materially perform in accordance with the terms hereof through no fault of the terminating party. If this Agreement is so terminated, the client shall promptly pay to Swiftwater Strategies ("Swiftwater") for (a) services performed prior to the date of such termination, based on Swiftwater's reasonable estimate for the portion of work completed, plus (b) all reasonable costs incurred by Swiftwater in connection with such termination. If, prior to termination of this Agreement, the client directs Swiftwater to suspend or abandon any work, the client shall promptly pay Swiftwater for services performed prior to receipt of such notice from the client.

B. INSURANCE

Swiftwater agrees to procure and maintain, at its sole expense, such insurance policies as are customary in the industry. Swiftwater will name AIDA as additional insured on all policies, which must be on a primary, non-contributing basis.

C. INDEPENDENT CONTRACTOR

The parties agree that Swiftwater is an independent contractor, and will conduct itself with such status, that it will neither hold itself out as nor claim to be an officer or employee of the client, by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the client, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits or Social Security coverage.

D. SUCCESSORS AND ASSIGNS

Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party and any purported assignment absent such consent shall be void. This Agreement shall be binding on each party's successors, executors, administrators and assigns.

E. INVOICES AND PAYMENT

The client will pay Swiftwater for services in accordance with the fee structure and work estimate set forth in the proposal. Invoices will be submitted on a periodic basis, or upon completion of Services, as indicated in the proposal or contract. All payments are due within 30 days after receipt of the applicable invoice. Any invoice remaining unpaid after 30 days will bear interest from such date at 1.5 percent per month or at the maximum lawful interest rate, if such lawful rate is less than 1.5 percent per month. If the client fails to pay any invoice when due, Swiftwater may, at any time, and without waiving any other rights or claims against the client and without thereby incurring any liability to the client, elect to terminate performance hereunder upon ten (10) days prior written notice to the client. Notwithstanding any termination of Services by Swiftwater for non-payment of Invoices, the client shall pay Swiftwater in full for all Services rendered by Swiftwater to the date of termination of Services plus all interest and termination costs and expenses incurred by Swiftwater that are related to such termination. The client shall be liable to reimburse Swiftwater for all costs and expenses of collection, including reasonable attorney's fees.

F. INDEMNITY

The client will require any contractor and subcontractors performing the work to hold the client and Swiftwater harmless and indemnify and defend the client and Swiftwater and their respective officers, employees and agents from all claims arising from client's use of the services, except to the extent arising from Swiftwater's negligence or willful misconduct.

G. LIMITATION OF LIABILITY

EXCEPT FOR MATTERS COVERED BY INSURANCE, IN NO EVENT WILL SWIFTWATER BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, OR ANY OTHER PECUNIARY LOSS), REGARDLESS OF WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED OR COULD HAVE BEEN REASONABLY FORESEEN BY Swiftwater, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. SWIFTWATER'S LIABILITY HEREUNDER SHALL NOT EXCEED THE FEES PAID TO Swiftwater BY CLIENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

H. MISCELLANEOUS

The Agreement may be amended or modified only with the written consent of both parties. The rights and remedies set forth herein shall be in addition to all other rights and remedies available at law or equity. The Agreement embodies the entire agreement and understanding between the parties pertaining to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to that subject matter. This Agreement shall be governed by the laws of the State of New York without regard to its principles of conflicts of law. Any litigation arising out of or in connection with this Agreement shall be brought and maintained exclusively in the federal courts or the courts of the State of New York, with a venue in Cayuga County, New York, and the parties hereby irrevocably waive all jurisdictional defenses and irrevocably consents to the personal jurisdiction of such courts.