

**ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM**
For Approval/Execution of Documents
(check which apply)

Contract:	Project No.: 201900131
Project	Professional Services Agreement relative to Providing the Erie County
Description:	Agricultural Society with Testing of Water Samples

Item Description:	
<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Professional Service Contract
<input type="checkbox"/> BCD	<input type="checkbox"/> Amendment
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Change Order
<input type="checkbox"/> Request for Proposals	<input type="checkbox"/> Contract Documents
<input type="checkbox"/> Other	<input type="checkbox"/> Addendum
	<input type="checkbox"/> Recommendation to Reject Bids

Action Requested:	
<input checked="" type="checkbox"/> Board Authorization to Execute	<input checked="" type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input checked="" type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other	

Approvals Needed:	
APPROVED AS TO CONTENT:	
<input checked="" type="checkbox"/> Department Head	<i>James A. Hight</i> Date: 6/6/19
<input type="checkbox"/> Risk Manager	_____ Date: _____
<input type="checkbox"/> Director of Administration	_____ Date: _____
<input checked="" type="checkbox"/> Executive Engineer	<i>Russell Stolt</i> Date: 6/6/19
APPROVED AS TO FORM:	
<input checked="" type="checkbox"/> Legal	<i>Margaret A. Murphy</i> Date: _____
APPROVED FOR BOARD RESOLUTION:	
<input checked="" type="checkbox"/> Secretary to the Authority	<i>[Signature]</i> Date: 6/6/19

Remarks:

Resolution	Item No:
Date:	

Check appropriate box(es) for type of document being approved: Agreement, Amendment, Change Order, etc.

PROFESSIONAL SERVICES AGREEMENT

This **AGREEMENT** made this ____ day of June 2019, by and between

ERIE COUNTY AGRICULTURAL SOCIETY

The Fairgrounds
5600 McKinley Parkway
Hamburg, New York 14075

hereinafter referred to as the "Society", and

ERIE COUNTY WATER AUTHORITY

295 Main Street, Rm. 350
Buffalo, New York 14203

hereinafter referred to as the "Authority"

WHEREAS, the Society is responsible for the operation and maintenance of the Erie County Fairgrounds (the "Fairgrounds"), including its water system; and

WHEREAS, the Society has requested the assistance of the Authority's Water Quality Department to test water samples drawn from various sites on the Fairgrounds and has agreed to pay the Authority for such testing services; and

WHEREAS, at its June 13, 2019 meeting, the Authority's Board of Commissioners adopted a resolution to enter into an agreement with the Society to provide such testing services, upon the terms and conditions set forth in this Agreement;

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

1. The property that is the subject of this Agreement is the Fairgrounds, whose address is 5600 McKinley Parkway, Hamburg, New York. The Society will collect and mark water samples from various sources from which water may be drawn on the Fairgrounds. The Society will be solely responsible for marking and recording from which source these samples are drawn. The Society will also be responsible for recording the chain of custody from the time the samples are drawn to the time the samples are delivered for testing at the Authority.

2. The Authority agrees to test each sample submitted by the Society and will provide the Society with a copy of the laboratory's results. The Society agrees to pay the Authority the sum of Fifteen Dollars (\$15.00) for each sample submitted for testing.

3. Unless otherwise inconsistent with this Agreement or not possible, the Authority agrees to have the laboratory analyze each sample for the following: Total Coliform per 100 mL and E. coli per 100 mL. The Society understands that water samples may contain thousands of different biological and chemical contaminants, and that the laboratory will only test for those

contaminants specifically identified in this Agreement. The Society further understands that the results represent a “snapshot” of the presence of the specified contaminants in the water sample(s) at the time the sample(s) is collected, and that laboratory results do not necessarily reflect the amount of contaminants that may be present in the future. The Society understands that results may vary from one sample to another.

4. The Society understands that the Authority will not be performing any tests, except those specifically set forth herein.

5. The sampling and laboratory analysis are performed, and the report is prepared for the use of the Society, who gives the Authority permission to discuss observations and results with governmental agencies and other interested parties. The Authority accepts no responsibility for use or misinterpretation by third parties. The Authority accepts no responsibility for laboratory errors or delays. The laboratory report prepared by the Authority is in no way intended to be guarantees or warranties, express or implied, regarding the water quality at the Fairgrounds and does not constitute a guaranty of suitability of the water for any purpose now or in the future. Any and all warranties, express or implied, including warranties of merchantability and fitness for a particular purpose, are expressly excluded by this Agreement to the fullest extent allowed by law.

6. The Society acknowledges that the liability of the Authority, its agents, employees, for claims or damages, costs of defense or suit, attorney’s fees and expenses and payments arising out of or relating to the Authority’s negligence or breach of any obligation under this Agreement, including errors and omissions in the analysis, and report shall be limited to liquidated damages in an amount equal to the fee paid to the Authority, and this liability shall be exclusive. The Society voluntarily waives any claim for consequential, exemplary, special or incidental damages or for the loss of the use of the property, even if the Society has been advised of the possibility of such damages. The parties acknowledge that the liquidated damages are not intended as a penalty but are intended (i) to reflect the fact that actual damages may be difficult and impractical to ascertain; (ii) to allocate risk among the Authority and the Society; and (iii) to enable the Authority to perform the testing at the stated fee rather than at a higher fee that takes into account potential liability.

7. In the event of a claim against the Authority, the Society agrees to supply the Authority with written notification of the claim within 14 days of discovery. Failure to comply with the above conditions will release the Authority and its agents from any and all obligations or liability of any kind.

8. The parties agree that any litigation arising out of this Agreement shall be filed only in the Court having jurisdiction in the County in which the Authority has its principal place of business. In the event the Society fails to prove any adverse claims against the Authority in a court of law, the Society agrees to pay all legal costs, expenses and fees of the Authority in defending said claims.

9. If any court declares any provision of this Agreement invalid or unenforceable, the remaining provisions will remain in effect. This Agreement represents the entire agreement

between the parties. All prior communications are merged into this Agreement, and there are no terms or conditions other than those set forth herein. No statement or promise of the Authority or its agents shall be binding unless reduced to writing and signed by the Authority. No change or modification shall be enforceable against any party unless such change or modification is in writing and signed by the parties. This Agreement shall be binding upon and enforceable by the parties and their heirs, executors, administrators, successors and assignees. The Society shall have no cause of action against the Authority after one year from the date of the testing.

10. Payment of the fee to the Authority is due upon completion of the testing and submission of the report to the Society. The Society agrees to pay all legal and time expenses incurred in collecting due payments, including attorney's fees, if any. If the Society is a not-for-profit corporation, the person signing this Agreement on behalf of such entity represents to the Authority she has the authority to sign this Agreement on the Society's behalf, pursuant to the Society's By-Laws.

11. This Agreement is not transferable or assignable.

ERIE COUNTY AGRICULTURAL SOCIETY

By _____
Jessica Underberg, Chief Executive Officer

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chairman

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of June, in the year 2019, before me personally came Jessica Underberg, to me known, who, being by me duly sworn, did depose and say that she resides in _____, New York, that he is the Chief Executive Officer of the Corporation described in the above instrument; and that she signed her name to this instrument pursuant to the authority given to her position pursuant to the Corporation's by-laws.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of June, in the year 2019, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chairman of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Notary Public