

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

Contract: _____ **Project No.:** PN 201900047
Project Description: One-year extension on professional services agreement with Lawley Service, Inc. and authorization for CFO to bind insurance coverage

Item Description:

<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> Request for Proposals			
<input checked="" type="checkbox"/> Other <u>Authorization for CFO to bind insurance coverage</u>			

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 checked="" type="checkbox"/> Other <u>Authorization to bind Authority</u>	

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>Russell J. Stets</i></u>	Date: <u>5/13/2020</u>
<input type="checkbox"/> Executive Engineer	_____	Date: _____
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input checked="" type="checkbox"/> Risk Manager	<u><i>Molly Jo Musarra</i></u>	Date: <u>05/13/2020</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>Karen A. Prudenquest</i></u>	Date: <u>05/13/2020</u>
<input checked="" type="checkbox"/> Legal	<u><i>Margaret A. Murphy</i></u>	Date: <u>05/13/2020</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<u><i>[Signature]</i></u>	Date: <u>05/13/2020</u>
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Remarks: _____

Resolution Date: _____ **Item No:** _____



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

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

Cc: Terrence D. McCracken, Secretary
Russell J. Stoll, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer
Mary J. Musarra, Claims Representative/Risk Manager

From: Margaret A. Murphy, General Counsel
Karen A. Prendergast, Chief Financial Officer

Date: May 12, 2020

Subject: Annual Insurance Renewal and Extension of Professional Service Agreement with Lawley Services, Inc.

Prior to 2019, the Claims and Risk Management Unit was part of the Finance and Administration Department and supervised by the Comptroller and Deputy Director. Traditionally, this Unit has always had a close working relationship with the Legal Department with regards to claim investigations and other matters leading to litigation. The General Counsel and the Legal Department have always reviewed and approved any denial or settlement of a claim, with the General Counsel having the authority to settle any claim for \$5000 or less without Board approval.

In the 2019 Restructuring, the Authority placed the Unit under the direct supervision of the General Counsel as part of the Legal Department. Under the Division Head structure, the General Counsel and the Chief Financial Officer work closely on issues relating to insurance coverage, limits, and premiums. In the General Counsel's view, the Chief Financial Officer should have primary responsibility to work with the Authority's insurance broker and its Claims/Risk Manager to review and recommend changes relating to insurance renewal and premiums.

All brokered insurance policies¹ renew on or before the first day of July. Prior to

¹ Brokered insurance policies, as used in this staff memorandum, mean insurance policies procured through a

the renewal period, the Authority's insurance broker provides a plan summary and report (the "Report") and then will appear before the Board to present the Report, and to answer questions, relating to carriers, the type and the extent of coverage, and the estimated cost for such coverage.

This year, Lawley Service, Inc. ("Lawley") will be presenting its preliminary Report at the regular board meeting on June 4, 2020. This preliminary Report will not be posted on the Authority's website so Lawley may continue to solicit and negotiate rates with potential carriers. Placing Lawley's preliminary Report could affect its ability to broker such services for the Authority.

Prior to the June 4, 2020, the CFO, General Counsel, the Claims/Risk Manager, and other Authority personnel will have an informal phone conference with Lawley to discuss its preliminary findings and brokerage plan.

Over the years, Lawley and the Authority have continued to negotiate rates up until the expiration date of the prior policy. Lawley and the General Counsel are recommending that Karen A. Prendergast, as the Authority's CFO, be given the authority to sign all insurance documents to bind coverage for the Authority.

Finally, both the General Counsel and the CFO are recommending a one-year extension of the professional service agreement with Lawley. Last year, the Authority's Board and management staff had planned to solicit request for proposals and qualifications from insurance brokers, including Lawley. For this reason, the Board entered into only a one-year brokerage agreement with Lawley.

However, at the time this agreement was executed, the Board was unaware that Anthony Alessi, the Authority's long serving Claims Representative and Risk Manager, would be retiring in August. Following the retirement, Lawley agreed to provide additional services to assist the Authority through the transition. The Authority's new Claims/Risk Manager, Molly J. Musarra, only started working with the Authority in mid-November. Given the state of emergency and the emergency workforce plan, it is not a good time to introduce more changes to the Claim/Risk Management Unit. We recommend extending the professional service agreement with Lawley for one-year.

We have provided you with a proposed amendment to the agreement. Lawley has reviewed the amendment and has agreed to provide services until June 30, 2021, under the same terms and conditions of the original agreement and without requesting any additional compensation.

Re: Insurance Renewal and Extension of Professional Service Agreement with Lawley Services, Inc.
May 12, 2020
Page 3

The Office of the Secretary has prepared a resolution authorizing the execution of the amendment and authorizing the CFO to sign all insurance documents to bind coverage for the Authority. At the regular meeting scheduled for June 18, 2020, the CFO will prepare and request the adoption of a resolution setting forth the types of coverage and the carriers with whom the Authority will seek to bind such coverage.

Ms. Prendergast will be present at the May 21st Board meeting to answer any questions.

**AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES CONTRACT**

AMENDMENT, effective May 21, 2020, to the Professional Services Contract, entered on the 10th day of June 2019, by and between:

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

LAWLEY SERVICE, INC.

361 Delaware Avenue
Buffalo, New York 14202

hereinafter referred to as “Consultant.”

WHEREAS, on May 16, 2019, the Authority’s Board of Commissioners (the “Board”) adopted a resolution authorizing the Board Chair to execute a professional service contract with the Consultant to render risk management and insurance broker services (the “Contract”) for a term commencing on July 1, 2019 and terminating on June 30, 2020; and

WHEREAS, the Board Chair signed the Contract on May 16, 2019; the Managing Partner of the Consultant signed the Contract on June 10, 2019; and

WHEREAS, in accordance with paragraph 6 of the Contract, no modification or variation from the terms of the Contract shall be effective unless it is in writing and authorized by a resolution of the Board and signed by all parties; and

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties agree to the following:

- (1) Paragraph 3, subparagraph A of the Contract is amended to read as follows:

The Consultant services as described herein, shall commence July 1, 2019 and terminate on June 30, 2021 (“Term”) unless terminated earlier pursuant to the provisions of this Agreement;

- (2) Risk management services, described in Schedule A of the Contract (Section II, paragraph G), include services on an “as-requested basis” for the assessment of “coverage alignment in relationship to contractual requirements.” During the term of this Contract, the Consultant has agreed to conduct risk assessments and to recommend

bond and insurance coverage requirements on proposed contracts between the Authority and third-party vendors and service providers, and will continue to perform such services until the termination of the Contract.

- (3) All other terms and conditions of the Contract shall remain unchanged and in effect.
- (4) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement; and
- (5) The parties agree to accept electronic signature pages, signed in conformity with the Governor's Executive Order No. 202.7, allowing any notarial act to be performed utilizing audio-video technology.

IN WITNESS WHERETO, the parties hereto have caused this Amendment No. 1 to be signed by their respective duly constituted officers, attested and sealed pursuant to proper authority.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

LAWLEY SERVICE, INC.

By _____
Michael R. Lawley, Principal

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ___ day of May, in the year 2020, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument, and he signed his name thereto by the authorization of the Board of Commissioners for the Erie County Water Authority.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ___ day of _____, in the year 2020, before me personally came Michael R. Lawley to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Principal of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of saCorporation.

Notary Public

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this ____ day of May 2019, by and between

ERIE COUNTY WATER AUTHORITY
295 Main Street, Rm. 350
Buffalo, New York 14203

hereinafter referred to as the "Authority", and

LAWLEY SERVICE, INC.,
361 Delaware Ave.
Buffalo, NY 14202

hereinafter referred to as the "Consultant"

WHEREAS, the Authority desires to contract with the Consultant to render risk management and insurance broker services upon the terms and for the consideration set forth in this Agreement; and

WHEREAS, the Consultant represents it is properly qualified to render such services, and the parties desire to set forth herein the terms and conditions under which the said risk management and insurance broker services will be furnished,

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

1. **QUALIFICATION OF CONSULTANT:** The Consultant shall perform its services under this Agreement in a skillful and competent manner in accordance with the prevailing standards of the consulting profession. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and failure to perform thereof.
2. **SCOPE OF SERVICES:** The Consultant shall provide risk management and insurance broker services (the "Work"), as more fully described in Schedule "A." The Work shall be carried out by the Consultant in accordance with current industry standards and trade practices.

3. TERM AND PAYMENT FOR SERVICES:

A. TERM:

The Consultant services, as described herein, shall commence on July 1, 2019 and terminate on June 30, 2020 ("Term") unless terminated earlier pursuant to the provisions of this Agreement.

B. PAYMENT FOR SERVICES:

The Consultant shall be paid for the Work to be performed pursuant to Paragraph 2 of this Agreement in the manner and at the rates set forth in Schedule "A." Unless otherwise expressly stated in this Agreement, no payment shall be made by the Authority to the Consultant for out-of-pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder. Any and all requests for payment to be made, including any request for partial payment if such is permitted hereunder, shall be submitted by the Consultant to the Authority and paid only after approval by the Authority.

C. AUDIT:

Prior to the making of any payments hereunder, the Authority reserves the right to audit the Consultant's records to verify bills submitted and representations made. For this purpose, the Consultant agrees to make company records available for inspection upon written notice by the Authority. The Authority shall have two (2) years from the date of the Consultant's final bill to complete its audit. If the audit establishes an overcharge, Consultant agrees to refund the excess.

- 4. SUBCONTRACT AND ASSIGNMENT:** The Consultant may not subcontract or delegate any of the Work, services, and/or other obligations of the Consultant without the prior express written consent of the Authority. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the Authority is void. All subcontracts that have received such prior written consent shall provide that sub consultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Consultant that for the purposes of this Agreement, all work performed by an Authority approved subcontractor shall be deemed work performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.
- 5. THIRD PARTY RIGHTS:** Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third-party rights are expressly granted herein.

6. **AMENDMENTS:** No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.
7. **RIGHT TO TERMINATE:** The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days' written notice. Upon receipt of notice that the Authority is terminating this Agreement, the Consultant shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Authority, and the Consultant shall direct any approved sub-consultants to do the same. The Consultant and any sub-consultants shall not be entitled to lost profit.
8. **CONFIDENTIAL INFORMATION:** In order to assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this Agreement, is considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performing of services including but not limited to information relative to the services to be performed, except such information as required under applicable laws and regulations of New York State. The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Consultant's benefit or for the benefit of others shall be permitted. In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. The terms of this paragraph shall be binding during and subsequent to the termination of this Agreement.
9. **INSURANCE:** The Consultant agrees to procure and maintain insurance naming the Authority as additional insured, where applicable, as provided and described in exhibit "A", entitled "Standard Insurance Provisions," with the exception of professional liability insurance coverage in which the Consultant shall be required to provide proof of coverage in an amount no less than five million (\$5,000,000) dollars per occurrence and aggregate.

10. INDEMNIFICATION: In addition to, and not in limitation of the insurance provisions contained in Schedule "B," the Consultant shall indemnify the Authority, its officers, employees and agents from and against any and all claims arising directly or indirectly out of the performance or failure to perform hereunder by the Consultant or third parties under the direction or control of the Consultant and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees based upon or arising out of damage to property or injury to persons or other tortuous conduct caused or contributed to it by the Consultant or anyone under its direction or control or on its behalf in the course of its performance under this Agreement.

11. COPYRIGHTS, TRADEMARKS, AND LICENSING: All records or recorded data of any kind compiled by the Consultant in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the Authority. The Consultant may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Authority. The Authority shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the Authority.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Consultant are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Consultant hereby assigns to the Authority all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the Authority to obtain in its name copyrights, registrations and similar protections which may be available. The Consultant agrees to assist the Authority, if required, in perfecting these rights. The Consultant shall provide the Authority with at least one copy of each deliverable.

The Consultant agrees to defend, indemnify and hold harmless the Authority for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Consultant agrees to enable the Authority's continued use of the deliverable, or to modify or replace it. If the Authority determines that none of these alternatives is reasonably available, the deliverable may be returned.

12. NEW YORK LAW AND JURISDICTION: Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

13. **CONFLICTS OF INTEREST:** The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Consultant, except to pay for services actually rendered.
14. **ADDITIONAL CONDITIONS:** The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.
15. **ENTIRE AGREEMENT:** This Agreement and its attachments constitute the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby.
16. **INDEPENDENT STATUS:** Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant a partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
17. **APPLICABLE LAWS:** The Consultant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Consultant shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, sub consultants and others employed to render the Work hereunder.
18. **COMPLIANCE:** The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York. The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to the Authority which forms the basis of the within Agreement.

19. **GRATUITIES**: The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

20. **NOTICE**: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the ERIE COUNTY WATER AUTHORITY:

Chair, Board of Commissioners
Erie County Water Authority
295 Main Street, Suite 350
Buffalo, NY 14203

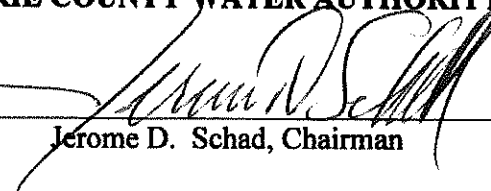
To the Consultant:

Michael R. Lawley
Lawley Service, Inc.
361 Delaware Ave.
Buffalo, NY 14202

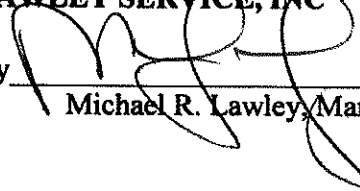
21. **TERMINATION**: The Authority reserves the right to terminate this contract in the event it is found that the certification filed by the Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise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

22. **SEVERABILITY**: If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.

ERIE COUNTY WATER AUTHORITY

By 
Jerome D. Schad, Chairman

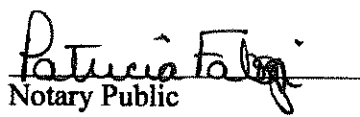
LAWLEY SERVICE, INC

By 
Michael R. Lawley, Managing Partner

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 16th day of May, 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.

PATRICIA FAROZZI #4957526
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2021


Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 10th day of June, in the year 2019, before me personally came Michael R. Lawley, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Managing Partner 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.

JOSETTE A DELMONT
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01DE4882682
Qualified In Erie County
My Commission Expires 1/20/23


Notary Public