

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

**Contract:** \_\_\_\_\_ **Project No.:** 201800179  
**Project Description:** Amendment to Professional Service Contract with E3 Communications  
\_\_\_\_\_

**Item Description:**

<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Professional Service Contract	<input checked="" 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 type="checkbox"/> Other _____			

**Action Requested:**

<input checked="" type="checkbox"/> Board Authorization to Execute	<input 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 type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<i>Russell Stott</i>	Date: 4/29/2020
<input type="checkbox"/> Executive Engineer	_____	Date: _____
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer	<i>Karen A. Prindigast</i>	Date: 04/20/2020
<input checked="" type="checkbox"/> Legal	<i>Margaret A. Murphy</i>	Date: 04/29/2020

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority	<i>[Signature]</i>	Date: 04/29/2020
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**Remarks:** \_\_\_\_\_  
\_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_



# Erie County Water Authority

## Staff Report to Board of Commissioners

Office of the Secretary

April 15, 2020

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

Cc: Russell J. Stoll, Chief Operating Officer  
Karen A. Prendergast, Chief Financial Officer  
Margaret A. Murphy, General Counsel  
Joyce Tomaka, Comptroller  
Lavonya Lester, Director of Administration

From: Terrence D. McCracken, Secretary

Subject: Amendment to Professional Service Contract with E3  
Communications, Inc.

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Following a meeting with Brian A. Gould, Senior Vice President for E3 Communications, Inc., I received the attached memorandum, dated April 2, 2020. Mr. Gould states E3 Communications originally started working with the Authority in September 2018. In reviewing our records, I would make only one correction to Mr. Gould's memo. E3 Communications first provided communications and public relations service under its current contract in August of 2018.

Otherwise, Mr. Gould concisely describes the invaluable and expansive services E3 Communications has provided to the Authority over the last twenty (20) months. It has expanded the Authority's outreach to its customers with not only the Authority's website, but also on Facebook and Twitter. Mr. Gould and his associates have also proven to be an indispensable partner with our current lobbying firm, Masiello, Martucci, Calabrese & Associates. Mr. Gould's institutional knowledge of the Authority's history and operations places him in a position to be an effective advocate and communicator. For these reasons, as well as those outlined in Mr. Gould's memorandum, I recommend amending the professional service contract with E3 Communications to increase its rate of compensation from \$6,000 per month to \$7,000 per month starting April 1, 2020 through July 31, 2021.

memo



Terry McCracken, Secretary to the Authority

**From:** Brian A. Gould, Senior Vice President

**Date:** April 2, 2020

**Re:** Scope of Services

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As you are aware from our previous discussions and recent meeting, e3communications' services have expanded since we originally commenced working with ECWA in September of 2018. Additional services include, but are not limited to: content management and updating of ECWA's web site; sole administration of ECWA's social media platforms; future development of an electronic employee communications system; as well as providing significant support for ECWA's lobbying initiatives, which was a major focus in late 2019 and early 2020 and will be again this summer and fall as a result of the funds allocated in the state budget for water infrastructure.

This supplemental scope of work has resulted in e3communications allocating a great deal of additional time and resources to effectively provide the services ECWA has come to rely on from our firm. As a result, we are requesting an increase in our monthly retainer to \$7,000 per month effective with our April 30, 2020, invoice.

Based on the scope of services we provide and the results we continue to achieve on behalf of ECWA in conjunction with the commissioners and senior management, we hope you agree this request is reasonable and justified.

It's a pleasure working with ECWA, and we look forward to continuing to meet the organizations public relations and communications objectives.

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

AMENDMENT, effective April 30, 2020, to the Professional Services Contract, entered on the 10<sup>th</sup> day of September 2018, by and between:

**ERIE COUNTY WATER AUTHORITY**

295 Main Street, Room 350  
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

**E3 COMMUNICATIONS, INC.**

551 Franklin Street  
Buffalo, New York 14202

hereinafter referred to as “Consultant.”

**WHEREAS**, on August 16, 2018, the Authority awarded the Consultant a professional service contract to provide communications and public relations services (the “Contract”) for a three-year term, beginning August 1, 2018; and

**WHEREAS**, the Contract was fully executed on September 10, 2018, with the Authority making its first payment for services for the month of August 2018;

**WHEREAS**, in accordance with paragraph 5 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 of Commissioners of the Authority (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 5 of the Contract is amended to remove and replace the first sentence with the following:

The Authority will retain the Consultant at a rate of \$6,000 per month for the period between August 1, 2018 and March 31, 2020, then at a rate of \$7,000 per month for the period between April 1, 2020 and July 31, 2021;

- (2) All other terms and conditions of the Contract shall remain unchanged and in effective;
- (3) 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

(4) The parties agree to accept electronic signature pages, signed in conformity with the Governor’s Executive Order No. 202.8, 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

**E3 COMMUNICATIONS, INC.**

By \_\_\_\_\_  
Earl V. Wells, President

**STATE OF NEW YORK )**  
**COUNTY OF ERIE ) ss:**

On the \_\_\_\_ day of April, 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 the 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 Earl V. Wells to me known, who, being by me duly sworn, did depose and say that he resides in Clarence, New York, that he is the President 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

## PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 10<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2018, by and between the **ERIE COUNTY WATER AUTHORITY**, with an office at 295 Main Street, Rm. 350, Buffalo, New York 14203 (hereinafter referred to as the "Authority"), and **E3 COMMUNICATIONS**, with an office at 551 Franklin Street, Buffalo, New York 14202 (hereinafter referred to as the "Consultant").

The Authority desires to contract with the Consultant to render professional services upon the terms and for the consideration hereinafter stated.

The Consultant represents that it is properly qualified to render such services, and the parties desire to set forth herein the terms and conditions under which the said professional 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 selected firm would be responsible for:

1. Developing and implementing proactive public relations programs on behalf of the Authority. Potential program areas would include, but not be limited to: media relations, customer communications/education; public affairs/advocacy; issues/crisis management; water quality initiatives; public awareness and community events programming; and web site/social media content management.
2. Providing strategic consultation and planning on Authority public relations programs and matters.
3. Providing strategic consultation and planning on Authority public relations matters.

4. Providing strategic consultation and planning to assist the Authority in managing crises and issues as they arise.
5. Writing and/or editing of public relations materials, such as press releases, media alerts and statements, opinion pieces and letters to the editor, issue and advocacy advertisements, annual report and annual water quality report, customer communications, and additional communications materials as requested.
6. Consult and advise on ECWA website content and design.
7. Monitoring, tracking, researching and distributing media reports related to the Authority, drinking water issues/regulations, etc.
8. Providing the Authority with routine graphic design services for placement of issues advertisements in print publications as well as assist in the design and layout of Authority's annual report, annual water quality report and additional publications and materials as needed.
9. Attend meetings with Commissioners to discuss ongoing public relations opportunities and challenges, as requested by the Secretary to the Authority.
10. Other public relations activities as requested by ECWA.
11. Develop communication with ECWA employees.

**3. DURATION AND PAYMENT FOR SERVICES:**

The Authority will retain the Consultant at a rate of \$6,000 per month for a period of three (3) years. This Agreement may be renewed at the option of both parties hereto for two (2) additional one (1) year terms at the option of the Authority on 30 days written notice to the firm on the same terms and conditions provided for herein at a cost mutually agreed upon by both parties and in accordance with industry standards. The first month's retainer will be due and payable upon an officer or agent of the Authority entering into this agreement. A monthly statement shall be furnished to the Authority for the retainer fee as well as any expenses incurred in the course of representation. Note there will be no cap on the number of hours rendered on a monthly basis. The fee does not include out of pocket costs for expenses that might be incurred by the agency. These costs could include media tracking services, production of collateral, delivery services and mileage to name just a few. Out of pocket expenses are billed at cost with no agency mark-up.

**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 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.

**5. 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.

**6. RIGHT TO TERMINATE:**

The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on thirty (30) days' written notice. Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

**7. INDEMNIFICATION:**

The Consultant shall indemnify the Authority against any and all claims arising from the services performed by the Consultant herein and shall defend 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. The Consultant further agrees to indemnify, defend and hold harmless the Authority from any and all claims in reference to the services performed by the Consultant hereunder which may infringe on a patent, copyright, trade secret or other proprietary right of any third party.



**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, are 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.

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: As set forth in Exhibit "A".**

**10. COPYRIGHTS, TRADEMARKS, AND LICENSING:**

All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether or not registered.

**11. 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.

**12. 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.

**13. 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.

**14. ENTIRE AGREEMENT:**

This Agreement constitutes 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.

**15. 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.

The Consultant is free to choose the aggregate number of hours worked and substantially all of the scheduling of such hours as it shall see fit at its discretion within the limitations set forth hereinbefore in Paragraph 3.

Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.

In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

**16. 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 ECWA which forms the basis of the within Agreement.

**17. 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.

**18. NOTICE:**

Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

**19. 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 [Signature]  
Jerome D. Schad, Chair

**E3 COMMUNICATIONS**

By [Signature]

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss:

On the 6<sup>th</sup> day of September, in the year 2018, 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.

**SHARON L. ZAJDEL**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 2022

[Signature]  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss:

On the 10 day of September, in the year 2018, before me personally came Earl Wells, to me known, who, being by me duly sworn, did depose and say that he resides in Clarence, New York, that he is the President 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.

**BARBARA JEAN MALEY**  
No. 01MAG001796  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires July 23, 21

[Signature]  
Notary Public