

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

Contract: _____ **Project No.:** 201900184
Project Description: Professional Services Contract for independent accounting and auditing services – Drescher & Malecki

Item Description:

☐ Agreement ☒ Professional Service Contract ☐ Amendment ☐ Change Order
☐ BCD ☐ NYSDOT Agreement ☐ Contract Documents ☐ Addendum
☒ Recommendation for Award of Contract ☐ Recommendation to Reject Bids
☐ Request for Proposals
☐ Other _____

Action Requested:

☒ Board Authorization to Execute ☐ Legal Approval
☒ Board Authorization to Award ☒ Execution by the Chairman
☐ Board Authorization to Advertise for Bids ☐ Execution by the Secretary to the Authority
☐ Board Authorization to Solicit Request for Proposals
☐ Other _____

Approvals Needed:

APPROVED AS TO CONTENT:

☒ Department Head Lane A. Reddy Date: 9/24/19
☒ Risk Manager Margaret A. Murphy Date: 9/24/19
☒ Director of Administration Lynne Lesten Date: 9/24/19
☐ Executive Engineer _____ Date: _____

APPROVED AS TO FORM:

☒ Legal Margaret A. Murphy Date: 9/24/19

APPROVED FOR BOARD RESOLUTION:

☒ Secretary to the Authority [Signature] Date: 9/24/19

Remarks: _____

Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

September 24, 2019

To: Commissioners Schad, Carney, and Jones

From: Karen A. Prendergast, Chief Financial Officer *KAP*

Subject: Professional Services Contract for Independent Accounting & Audit Services

On August 8, 2019 the Audit Committee authorized the issuance of a request for proposal for Independent Accounting & Audit Services. Responses were reviewed at the Audit Committee meeting of September 19, 2019 and it was agreed that we should pursue a professional services contract with Drescher & Malecki, LLP.

Attached is a professional services contract for the years ended, December 31, 2019, 2020, and 2021 with optional extensions in 2022 and 2023. The 5-year value of the contract for auditing services is \$182,881, with all additional services billed upon request at quoted hourly rates.

Please consider approval of the contract at the October 3, 2019 Board Meeting.

cc T. McCracken
M. Murphy
J. Tomaka

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 3rd day of October 2019, by and between:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the "Authority," and

Drescher & Malecki, LLP
3083 William Street, Suite 5
Cheektowaga, New York 14227

hereinafter referred to as "Consultant."

WHEREAS, the Authority desires to contract with the Consultant to render professional independent certified public accounting audit services upon the terms and for the consideration hereinafter stated;

WHEREAS, the Consultant represents it is properly qualified to render such services; and

WHEREAS, 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:

a. The Erie County Water Authority requires the consultant to provide audit and accounting advisory services for each of its fiscal years ending December 31, 2019, 2020 and 2021 with extensions at the discretion of the Authority for fiscal years ending December 31, 2022 and 2023. Services will include, but are not limited to:

- 1) Audit of Authority financial statements in accordance with generally accepted auditing standards;
 - 2) Audit of Schedule of Cash & Investments and Income from Cash & Investments and expression of an opinion by account - Extension and Improvement Account, Operating and Maintenance Account, Debt Service Reserve Account, Debt Service Account, Long-Term Investment Account and any other required accounts.
 - 3) Audit of investment practices in compliance with §2925 of the Public Authorities Law including an internal control review, compliance with the Authority's own investment policies, and a statement of positive assurance of compliance on the items tested and a statement of any other material deficiency or finding;
 - 4) Examination of the Schedule of Overhead Percentage resulting in the expression of an opinion on the overhead methodology and components used to arrive at the overhead percentage.
 - 5) Meet with management of the Authority, prior to conducting the annual audit, to discuss issues, concerns, developments, matters, etc., regarding the issuance of the Financial Statements, Statement of Investments and/or the Schedule of Overhead Percentage. Also, discuss with and provide to the Authority's management a listing of the client-assistance schedules prepared for the annual audit by the Independent Certified Public Accountant, prior to commencing the annual audit.
 - 6) A presentation to the Audit Committee on the results of the annual audit, including procedures followed and comments on any material items noted during the examination;
 - 7) Assistance in compilation of the Authority's Comprehensive Annual Financial Report (CAFR) for submission to the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting; and
 - 8) Provide approximately 20 bound copies of the CAFR, Basic Financial Statements, Investment Audit, and Statement of Overhead Percentage.
- b. Additional services which could be requested by the Authority include:
- 1) Assistance in debt issuance as required by the underwriter;
 - 2) Agreed upon procedures requested by the Board upon the appointment of a new Authority Treasurer; and
 - 3) Implementation or assessment of new Governmental Accounting Standards Board statements.

c. All reports must be completed by March 25th of the following year to allow the Authority to comply with New York State Public Authorities Law reporting deadline which is March 31st each year. The Authority also requires all reports in a PDF format so that they can be posted on the Authority's website.

3. PAYMENT FOR SERVICES:

a. The Consultant shall be paid in an all-inclusive fee for the following years in accordance the following schedule:

For the following years:	2019 - \$35,142
	2020 - \$35,845
	2021 - \$36,562

If the Agreement is extended:	2022 - \$37,293
	2023 - \$38,039

b. The routine financial advice and consultation is embedded in Consultant's fee. Should additional services be requested, the Consultant's hourly rates are as follows:

Partner	\$200
Manager	\$175
Supervisory Staff	\$125
Professional Staff	\$100

The above rates reflect those proposed on page 15 of the Consultant's Response to the Request for Proposal (RFP).

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 tortious' 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, is considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information acquired 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:

The Consultant shall secure and maintain such insurance as will protect itself and the Authority in the amounts indicated in Appendix A of this Agreement. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.

10. COPYRIGHTS, TRADEMARKS, AND LICENSING:

All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether 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 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 and venue shall be the County of Erie, 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 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, the RFP issued by the Authority and the Consultant's response to the RFP constitute the entire understanding of the parties and no representations or agreements, oral or written, 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 the scheduling of such hours as it shall see fit at its discretion within the limitations set forth hereinbefore in Paragraph 2.

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 if requested. 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 Sections 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 circumstances 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 Service 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.

20. 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 contract.

ERIE COUNTY WATER AUTHORITY

By: _____
Jerome D. Schad, Chairman

DRESCHER & MALECKI LLP

By: _____
Thomas P. Malecki, Partner

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

On the _____ day of _____, 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 Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners of said Authority.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2019, before me personally came Thomas P. Malecki, to me known, who, being by me duly sworn, did depose and say that he resides in _____ New York, that he is a Partner in the Limited Liability Partnership described in the above instrument; and that he signed his name thereto by order of said Partnership .

Notary Public

APPENDIX A

INS2013-PS
Revision date: 10/06/2014

Erie County Water Authority Insurance Requirements for Professional Services

Project Number: 201900184

Description: Audit the Authority's financial statements for years ending December 31, 2019, 2020 & 2021 in accordance with Generally Accepted Auditing Standards. Upon request, assist in bond issuance activities, and GASB implementation.

The following minimum insurance requirements shall apply to professional service providers under agreement with the Erie County Water Authority (ECWA). The professional service provider carries relevant insurance for the services covered. If at anytime, in the opinion of ECWA, there is an unusual or exceptional risk, ECWA may establish additional insurance requirements for the duration of the agreement. All insurance required herein shall be obtained at the sole cost and expense of the professional service provider, including deductibles and self-insured retentions. These requirements include but are not limited to the minimum insurance requirements.

An X indicates insurance coverage is required.

X **Commercial General Liability Insurance:** (including, but not limited to, Bodily (Personal) Injury, Premises Operations, Property Damage Liability (broad form), Contractual Liability, Advertising Injury, Independent Contractors, Product Liability, and Completed Operations Liability – in an amount not less than \$1,000,000 combined single limit and \$2,000,000 in the aggregate:

X **Per Policy**

___ **Per Project or Job**

___ **Per Location**

There should be no exclusions for any claims filed, actual or alleged, for violation of any applicable statute including, but not limited to, the New York State or federal labor laws, ordinances, administrative orders, executive orders, rules, regulations, or decrees of any court of competent jurisdiction.

X **Commercial Business Automobile Insurance** in an amount of not less than \$1,000,000 each accident and shall cover liability arising out of any automobile owned, leased, hired, borrowed and non-owned automobiles. Additionally, if vehicles are used for transporting hazardous materials, the contractor shall obtain and maintain the "broadened" coverage (endorsement CA 99 48 10 01 or CA 99 48 12 93), as well as proof of MCS 90 04 00.

Excess Umbrella Liability Insurance:

 \$1,000,000 in the aggregate

 \$2,000,000 in the aggregate

 \$3,000,000 in the aggregate

 \$4,000,000 in the aggregate

 \$5,000,000 in the aggregate

 Per Policy

 Per Project or Job

 Per Location

 X **Professional Liability Insurance:** Per each occurrence and in the aggregate. Continuous coverage shall be maintained, or on an extended discovery period ("tail coverage"), for a period of not less than two years from the time the agreement has been completed in an amount of not less than:

 \$1,000,000 in the aggregate

 \$2,000,000 in the aggregate

 \$3,000,000 in the aggregate

 \$4,000,000 in the aggregate

 X \$5,000,000 in the aggregate

 X **Cyber and Privacy & Security Coverage:**

All vendors with access to confidential records and/or access to any of ECWA's communication networks, servers, etc. must carry Cyber Liability coverage for damages arising from a failure of computer security, or wrongful release of private information including expenses for notification as required by local, state or federal guidelines. Limit of liability must be at least One Million and 00/100 Dollars (\$1,000,000.00) per claim and One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate. Any retroactive date or prior acts exclusion must predate both the date of this agreement and any earlier commencement of any services. If coverage is on a "claims made basis", a 2 to 5 year extended reporting provision must be included.

Fidelity Bond:

Any vendor with access to ECWA financial systems must provide a Fidelity Bond in the amount of at least Five Hundred Thousand and 00/100 Dollars (\$500,000.00) through a responsible Surety Company naming ECWA as third (3rd) party to the Bond, with respect to all of vendor's employees, as may be necessary to protect against losses, including, without limitation, those arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. Coverage must extend to any losses incurred by ECWA due to theft, embezzlement or fraud by vendor, vendor's employees or subcontractors. Vendor shall notify ECWA in writing within five (5) days of filing a claim under such coverage and to assign to the Authority, as the case may be, the proceeds of such coverage allocable to losses suffered with respect to the property of ECWA.

X Workers' Compensation and Employers' Liability and New York State Disability Benefits Insurances, as required by New York State statute.

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to ECWA prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than "A-" with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name ECWA, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies. Any liability coverage on a "claims made" basis should be designated as such on the Certificate of Insurance.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer's National Association of Insurance Commissioners (N.A.I.C.) identifying number or A. M. Best identifying number appears on the Certificate of Insurance.

Acceptance of a Certificate of Insurance and/or approval by ECWA shall not be construed to relieve the professional service provider of any obligations, responsibilities or liabilities.

Certificates of Insurance should be e-mailed to AALESSI@ECWA.ORG or mailed to Mr. Anthony Alessi, ECWA Claims Representative/Risk Manager, Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Mr. Alessi by e-mail or phone (716) 849-8477.

Please refer to the bid and the contract document(s) for additional information regarding insurance requirements.