

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

Contract: _____ **Project No.:** _____
Project Description: Professional Services Contract for Cybersecurity Consultant

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 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 checked="" type="checkbox"/> Security Officer	<u>Matthew Banetty</u>	Date: <u>1/9/20</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u>Russell J. Tol</u>	Date: <u>1/9/2020</u>
<input checked="" type="checkbox"/> Executive Engineer	<u>Paul F. Kramlich</u>	Date: <u>1-9-2020</u>
<input checked="" type="checkbox"/> Director of Administration	<u>Lananya Lester</u>	Date: <u>1/9/2020</u>
<input checked="" type="checkbox"/> Claims Rep/Risk Manager	<u>Molly P. Musarra</u>	Date: <u>1/9/2020</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u>Karen A. Brundage</u>	Date: <u>1/9/20</u>
<input checked="" type="checkbox"/> Legal	<u>Margaret A. Murphy</u>	Date: <u>1/9/2020</u>
APPROVED FOR BOARD RESOLUTION:		
<input checked="" type="checkbox"/> Secretary to the Authority	<u>[Signature]</u>	Date: <u>1/9/20</u>

Remarks: _____

Resolution Date: _____

Item No: _____

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 16th day of January 2020, by and between:

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the "Authority", and

JOHN H. RING, IV

7 Hildred Drive
Burlington, Vermont 05401

hereinafter referred to as "Consultant."

WHEREAS, the Authority seeks to review, upgrade, and enhance its current data/information creation, retrieval and storage systems in conformity with the highest standards within the information technology and security fields and in accordance with applicable laws and regulations relating to public or private entities;

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

WHEREAS, the Authority is aware of the Consultant's qualifications and experience and has determined his qualifications and experience makes him uniquely qualified to render professional consulting services relating to information technology solutions and cybersecurity;

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. QUALIFICATIONS OF CONSULTANT:

The recital paragraphs are incorporated as substantive terms and conditions of the Agreement and as representing the parties' intent.

The Consultant shall perform his services under this Agreement in a skillful and competent manner in accordance with the prevailing standards of the consulting profession. The Consultant's role will be in an advisory capacity to provide information and guidance to the Authority and its Executive Management Team, who are responsible for

recommending, establishing, and carrying out policies and procedures, and making decisions relating to the financing, staffing and prioritizing of projects associated with information technology and security.

2. SCOPE OF SERVICES:

The Consultants agrees and represents he will perform services in a manner consistent with the level of care and skill customarily exercised by other consultants with the same degree of knowledge and experience under similar circumstances. The Consultant agrees to provide the following consulting services to the Authority and its Executive Management Team:

- a. Analyzing the Authority's vulnerabilities, threats, and possible consequences from potential internal or external cyberattacks;
- b. Ranking of the priority and timeframe to address vulnerability and security issues;
- c. Advising the Authority on matters relating to employee training and education, and preventative measures to be taken to secure Authority assets;
- d. Recommending additional staffing for the Authority's IT Department;
- e. Requesting and reviewing information and proposals from outside cybersecurity vendors; and
- f. Such other work as may be directed by the Authority's Executive Management Team.

3. COMPENSATION:

The Authority agrees to compensate the Consultant on an hourly basis at the rate of One Hundred Dollars (\$100.00), with a total compensation for consulting services in an amount not to exceed Twenty-Thousand Dollars (\$20,000.00). The Authority further agrees to compensate the Consultant for consulting services rendered prior to the execution of this Agreement in the amount of Three Hundred Dollars (\$300.00), with such compensation to be paid upon the execution of the Agreement by the Consultant and without being deducted from the Twenty-Thousand Dollars, not-to-exceed value of this Agreement.

The Consultant agrees to provide the Authority with periodic invoices, detailing the hours and description of the services rendered to the Authority, in a form acceptable to the Authority's Chief Financial Officer and/or Comptroller.

4. INDEPENDENT CONTRACTOR:

In the performance of the consulting services pursuant to the terms set forth in this Agreement, the Consultant shall be an independent contractor and not an employee of the

Authority. The Consultant is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of Authority unless expressly authorized in writing by the Authority's Board of Commissioners.

The Authority will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of the Consultant. The Authority will provide the Consultant with a 1099 Form for each calendar year for which Consultant rendered services.

The Consultant is not eligible for, not entitled to, and shall not participate in any of the Authority's pension, health, or other benefit plans.

The Consultant is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law.

The Consultant indemnifies the Authority and holds it harmless against any fines, damages, assessments, or attorney fees in the event a court or administrative agency shall find that the Consultant is an employee of the Authority.

5. 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.

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. The Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

8. INSURANCE WAIVER:

The Consultant works as a sole proprietor with no employee or staff assisting him in the work to be provided under this Agreement. The Consultant represents to the Authority he

is not required by law to have worker's compensation and disability insurance to perform the work set forth in this Agreement.

The Consultant will be serving only in an advisory capacity with all decisions relating to the Authority's operation being made solely by Authority personnel. The Consultant will not be required to visit the facilities and property of the Authority for the purposes of rendering services under this Agreement.

The Consultant will be granted no special privileges to have access to the Authority's buildings and property, except as a member of the general public, under the same terms and conditions applicable to the general public.

For these reasons, the Authority has determined the Consultant is not required to obtain or provide proof of insurance for general or professional liability.

9. CONFIDENTIALITY:

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 performance of services including but not limited to information relative to the services to be performed.

All data and information in any format submitted or made available to the Consultant by the Authority or any other person on behalf of the Authority, unless otherwise publicly available, and all data and information, and other work developed by the Consultant under this Agreement, shall be utilized by the Consultant solely in connection with the performance of services under this Agreement only and shall not be made available by the Consultant to any other person.

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.

10. RIGHTS AND LICENSE IN AND TO AUTHORITY DATA:

The Authority shall own all data, information, and other work product developed or obtained by the Consultant pursuant to this Agreement. The Authority shall at all times have access to review the ongoing work of the Consultant for purposes of inspecting same and determining that work is being performed in accordance with the terms of this Agreement. Immediately upon termination of this Agreement for any reason, all such data, information, and other work, in whatever form, shall be turned over to the Authority.

The parties agree that as between them, all rights including all intellectual property rights in and to data and information provided by the Authority or on behalf of the Authority or created by the Consultant in the performance of services hereunder shall remain the exclusive property of the Authority. The Consultant has a limited, nonexclusive license to use such data and information solely for the purpose of performing its obligations under this Agreement. This Agreement does not give the Consultant any rights, implied or otherwise, to data, information, or intellectual property, except as expressly stated in this Agreement.

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 within the State of New York in accordance with the laws of the State of New York.

12. CONFLICTS OF INTEREST:

The Consultant represents that he 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, arising during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without being subject to liability by the Consultant, except for the payment of services rendered by the Consultant prior to termination.

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. Such additional terms shall be placed in writing.

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 its terms.

15. COMPLIANCE:

The Consultant agrees the Agreement is subject to, and be governed by, the provisions of New York Public Authorities Law §§ Section 2875, 2876 and 2878.

16. GRATUITIES:

The Consultant 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.

17. NOTICE:

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

18. 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.

19. DURATION:

This Agreement shall be in effect until January 15, 2021.

IN WITNESS WHEREOF, the parties do hereby enter and execute this Agreement effective **16th** day of **January 2020**, the date of the Authority's adopting resolution authorizing its execution.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chairman

JOHN H. RING, IV

John H. Ring, IV

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, 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 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

STATE OF _____)
COUNTY OF _____) ss:

On the _____ day of _____, in the year 2020, before me personally came John H. Ring, IV, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public