

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

AP PROFESSIONALS OF WNY, LLC

5110 Main Street
Williamsville, New York 14221

hereinafter referred to as "Contractor."

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 has determined there is not enough staff within its IT Department to accomplish the task within the timeframe set by the Board of Commissioners and therefore, the Authority needs to hire additional staff on a temporary basis to complete this task;

WHEREAS, the Contractor is a full-service search staffing agency specializing in Accounting, Finance, Human Resources, Administrative, Engineering, CAD Design, Operational Excellence, IT, Legal and Sales backgrounds, both on a permanent and contract basis;

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

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. CONTRACTOR'S OBLIGATION:

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

1.2 The Contractor shall perform the services under this Agreement in a skillful and competent manner in accordance with the prevailing standards of other employment agencies. The Contractor will retain a project manager and two qualified information technology specialists, who will be responsible for upgrading, updating, and/or replacing the Authority's 250 or more computers and laptops. The Contractor and its project manager will work with the Authority to determine the priority and timeframe for upgrading, updating, and/or replacing these systems.

1.3 The Contractor will be responsible for checking references and doing background checks for all those hired by the Contractor to perform the services under this Agreement.

1.4 The Contractor will provide the Authority's Security Officer with any documentation, including but not limited to, names, home addresses, social security numbers and criminal history, necessary for the Security Officer to allow access to the Authority's property and facilities to the Contractor's temporary employees.

1.5 Once the Contractor's temporary employees have been cleared by the Authority's Security Officer, site access badges will be issued to such employees for the Authority Service Center. These temporary employees agree to wear these badges at all time while in the Authority's Service Center.

1.6 The Contractor and its employees agree not to solicit or recruit any Authority personnel for positions outside of the Authority without the Authority's consent.

2. SCOPE OF SERVICES:

2.1 The Contractor agrees and represents it will perform services in a manner consistent with the level of care and skill customarily exercised by other professionals with the same degree of knowledge and experience under similar circumstances.

2.2 The Contractor agrees to provide the following services to the Authority:

2.2.1 Install an image deployment platform to prep machines in bulk with a Windows 10 image that includes all of the base requirements for each user. These requirements can and should include a patched Win10 Professional or Enterprise operating system, desktop security platform, and base utility applications such as Adobe Reader, and Office 365.

2.2.2 Install required software for specific users in a post-image process before delivery of the system to the individual user.

2.2.3 Backup all user data to the network resource prior to the migrating such data to any new device and restore any required data to the new device.

2.2.4 Assist in replacing computers or laptops at Service Center and Ellicott Square Building.

2.3 The Authority will obtain the licenses for the subscription-based software recommended by the Contractor, which would allow the Authority to manage every aspect of desktop and laptop management using a deployment platform.

2.3.1 The Authority will obtain the licenses and software from a sole source provider.

2.3.2 The Authority estimates the annual subscription cost for such software to be less than Seven Thousand Dollars (\$7,000.00) depending upon the number of computers and laptops in use at any given time.

2.3.3 The Board of Commissioners in approving this Agreement authorizes and directs the Chief Financial Officer, the Comptroller and the Director of Administration to procure this recommended platform software without any future Board approval.

2.4 The Contractor's Project Manager will work closely with Authority personnel.

2.4.1 Authority personnel will remain in control of Active Directory updates.

2.4.2 After initial setup is completed, the Authority will be responsible for the transporting of computers to the Ellicott Square Building.

2.4.3 After the initial setup, the Authority will be responsible for installing and replacing computers and laptops at locations other than the Service Center or the Ellicott Square Building.

2.5 The Contractor and its employees will be granted limited access to a temporary domain administrative account that can be changed or disabled by the Authority at any time.

3. COMPENSATION:

3.1 The Contractor shall be paid for hours worked times the hourly rates for each respective category of work being performed. The Contractor shall also be paid for direct expenses shown below. The Contractor shall submit periodic invoices to the Authority, 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. The Contractor will be responsible for completing all work covered by this Agreement.

3.2 Costs for the services provided under this Agreement shall not exceed \$35,000 and shall be billed at the following rates:

One Project Manager	\$ 64.00 per hour
Two Network Engineers	\$ 40.00 per hour for each

3.3 Any direct expenses relating to necessary hardware or software must be pre-approved by the Authority and may not exceed One Thousand Dollars (\$1,000.00). All hardware or software purchased under this provision will remain the property of the Authority at the conclusion of this Agreement.

4. INDEPENDENT CONTRACTOR:

4.1 In the performance of the consulting services pursuant to the terms set forth in this Agreement, the Contractor shall be an independent contractor and not an employee of the Authority. The Contractor is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of the Authority unless expressly authorized in writing by the Authority's Board of Commissioners.

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

4.3 The Contractor and its temporary employees will not be eligible for, not entitled to, and shall not participate in any of the Authority's pension, health, or other benefit plans.

4.4 The Contractor 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.

4.5 The Contractor 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 Contractor is an employee of the Authority.

5. EQUAL EMPLOYMENT OPPORTUNITY

5.1 The Authority and the Contractor affirm and agree they are equal employment opportunity employers and are in full compliance with all applicable anti-discrimination laws, rules and regulations.

5.2 The Authority and the Contractor agree not to harass, discriminate against, or retaliate against any employee of the other because of his or her race, national origin, age, sex, religion, disability, marital status, or other category protected by law; nor shall either party cause or request the other party to engage in such discrimination, harassment, or

retaliation. In the event of any complaint of unlawful discrimination, harassment, or retaliation by any employee, the Authority and Contractor agree to cooperate in the prompt investigation and resolution of such complaint.

6. SUBCONTRACT AND ASSIGNMENT:

6.1 The Contractor may not subcontract or delegate any of the work, services, and/or other obligations of the Contractor without the express written consent of the Authority. The Authority and the Contractor bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Contractor shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

7. AMENDMENTS:

7.1 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.

8. RIGHT TO TERMINATE:

8.1 The Authority reserves the right to terminate the Contractor's services at any time, without cause, based on seven (7) days written notice. The Contractor shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

9. INSURANCE:

9.1 The Contractor shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting there from in the amounts indicated on Exhibit A.

9.2 The Contractor shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Contractor shall provide Certificates of Insurance certifying the coverage required by this provision.

10. CONFIDENTIALITY:

10.1 In order to assist the Contractor in the performance of this Agreement, the Authority may provide the Contractor with confidential information including, but not limited to information relative to the services to be performed. All information received by the Contractor in any fashion and under any conditions resulting from the rendering of the services in consideration of this Agreement, is considered confidential. The Contractor

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.

10.2 All data and information in any format submitted or made available to the Contractor 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 Contractor under this Agreement, shall be utilized by the Contractor solely in connection with the performance of services under this Agreement only and shall not be made available by the Contractor to any other person.

10.3 In no event is the Contractor 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.

11. RIGHTS AND LICENSE IN AND TO AUTHORITY DATA:

11.1 The Authority shall own all data, information, and other work product developed or obtained by the Contractor pursuant to this Agreement. The Authority shall at all times have access to review the ongoing work of the Contractor 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.

11.2 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 Contractor in the performance of services hereunder shall remain the exclusive property of the Authority. The Contractor 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 Contractor any rights, implied or otherwise, to data, information, or intellectual property, except as expressly stated in this Agreement.

12. NEW YORK LAW AND JURISDICTION:

12.1 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 Contractor 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.

13. CONFLICTS OF INTEREST:

13.1 The Contractor 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 Contractor from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Contractor 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 Contractor, except for the payment of services rendered by the Contractor prior to termination.

14. ADDITIONAL CONDITIONS:

14.1 The Contractor 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.

15. ENTIRE AGREEMENT:

15.1 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.

16. COMPLIANCE:

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

17. GRATUITIES:

17.1 The Contractor 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:

18.1 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.

19. SEVERABILITY:

19.1 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.

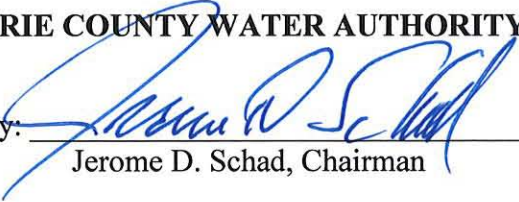
20. DURATION:

This Agreement shall remain in effect for a period of six months from the effective date of this Agreement.

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

AP PROFESSIONALS OF WNY, LLC

By: _____

Kelly Cultrara, President

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 NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2020, before me personally came Kelly Cultrara, to me known, who, being by me duly sworn, did depose and say that she resides in _____ that she is the President of the Limited Liability Corporation described in the above instrument; and that she has the authority to sign her name to this Agreement.

Notary Public

EXHIBIT A

Erie County Water Authority Insurance Requirements for Vendor Services

Project Number: _____

Description: ECWA Windows 10 Migration/Final Steps

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (ECWA). If a service or project, in the opinion of ECWA, represents an unusual or exceptional risk, ECWA may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract. These requirements include but are not limited to the minimum insurance requirements.

Insurance Requirements:

a) Workers Compensation:

Part 1: Workers Compensation: Statutory

Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

b) New York Disability Benefits Liability: Statutory coverage if New York State domiciled employees are used.

c) Commercial General Liability:

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

d) Automobile Liability:

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

e) Umbrella Liability:

- \$1,000,000. Each Occurrence
- \$1,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured

f) Professional Liability

- \$1,000,000 Per Claim
- \$1,000,000 Aggregate

g) Certificates of Insurance to be provided to ECWA prior to start of work as follows:

- ACORD 25 (Item a-f) including copy of Additional Insured Endorsement Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be submitted to ECWA prior to the award of contract. Renewals of Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be received by ECWA 30 days prior to the expiration of the insurance policy period.

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. Also, at the top of the Certificate of Insurance, please list the project number.

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

Certificates of Insurance should be e-mailed to mmurphy@ecwa.org or mailed to Ms. Margaret Murphy, ECWA General Counsel Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or if you have any questions you can contact Ms. Murphy by e-mail or phone (716) 849-8433.