



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

April 21, 2021

To: Terrence D. McCracken, Secretary to the Authority

From: Daniel NeMoyer, Director of Human Resources

Subject: Employee Assistance Program  
ECWA Project No. 201800060

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The Erie County Water Authority (Authority) entered into a Professional Services Contract with Child and Family Services of Erie County (C&F Services) on May 18, 2018 to provide EAP services to all full and part time employees of the Erie County Water Authority.

The above referenced contract will expire on April 30, 2021. Under Section 3.B., Extension of Contract, this contract may be renewed for two additional one-year periods on the same terms and conditions. The Authority and C&F Services agree that a one-year extension of the current contract at the same terms and conditions would be mutually beneficial for both parties.

I have attached the Professional Services Contract and the proposed Extension of Contract. If all is in order, we would like have this on for board authorization and execution by the Chairman.

**Budget Information:**

Payments to the Service Provider are made under Unit 8010, Human Resources, Line 20, Miscellaneous.

Thank you.

Dan

DJN:slz  
Attachment  
cc: L.Lester  
P. Porebski

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES CONTRACT WITH  
CHILD AND FAMILY SERVICES OF ERIE COUNTY**

AMENDMENT, effective April 29, 2021, to the Professional Services Contract entered into on May 1, 2018, by and between

**ERIE COUNTY WATER AUTHORITY**

295 Main Street, Room 350  
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

**CHILD AND FAMILY SERVICES OF ERIE COUNTY**

330 Delaware Avenue  
Buffalo, New York 14202

hereinafter referred to as “Service Provider.”

**WHEREAS**, on May 1, 2018, the Authority and the Service Provider entered into a three-year professional services contract (the “Contract”) providing for employee assistance program services to the Authority from May 1, 2018 through April 30, 2021; and

**WHEREAS**, in accordance with paragraph 6 of the Contract, the parties may amend the Contract by written amendment; and

**WHEREAS**, the parties wish to extend the Contract for an additional one-year period from May 1, 2021 through April 30, 2022 pursuant paragraph 3, subparagraph B of the Contract;

**WHEREAS**, the Service Provider has agreed to extend the payment for services for year three of the Contract until April 30, 2022 at a composite rate of \$1.32 per employee per month pursuant to paragraph 4, subparagraph A of the Contract;

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

(1) The terms and conditions of the Contract shall continue in effect until April 30, 2022;

(2) Paragraph 4, subparagraph A of the Contract shall be amended to include the composite rate of \$1.32 per employee per month for the extension period of May 1, 2021 through April 30, 2022; and

(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.

**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

**CHILD AND FAMILY SERVICES OF  
ERIE COUNTY**

By \_\_\_\_\_

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

On the \_\_\_\_ day of April, in the year 2021, 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 \_\_\_\_\_ ) ss:**

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2021, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_ that he/she is the \_\_\_\_\_ of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

\_\_\_\_\_  
Notary Public

**PROFESSIONAL SERVICES CONTRACT**

AGREEMENT made this 1st day of May, 2018 by and between

**ERIE COUNTY WATER AUTHORITY**

295 Main Street  
Room 350  
Buffalo, New York 14203-2494

Hereinafter referred to as the "Authority"; and

**CHILD AND FAMILY SERVICES OF ERIE COUNTY**

330 Delaware Avenue  
Buffalo, New York 14202

Hereinafter referred to as the "Service Provider".

**WHEREAS**, the Authority desires to contract with the Service Provider to render professional services upon the terms and for the consideration hereinafter stated;

**WHEREAS**, the Service Provider represents that 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. QUALIFICATIONS OF SERVICE PROVIDER:**

The Service Provider shall perform its services under this agreement in a skillful and competent manner in accordance with the prevailing standards of the profession..

**2. SCOPE OF SERVICES:**

The Service Provider will deliver Employee Assistance Program Services to full-time and part-time Authority employees, (approximately 260) working at four separate locations within Erie County, New York.

The Service Provider agrees:

- A. To provide EAP assessment/referral services and short term crisis counseling for Authority employees and family members with staff professional(s) upon the request and need of the person or persons desiring assistance (up to 4 sessions per problem incident). The purpose of these sessions will be for the assessment of problem and referral, if necessary. If it is determined that an employee or family member needs to be referred for further or more specialized services, the Service Provider will provide such a referral and follow up with employee. In such cases, the referred person(s) will be financially responsible for those services they receive either through health insurance benefits or self-pay.
- B. Eligibility for consultation(s) shall be limited to Authority employee(s) in active service and their spouses and their Dependents who reside in the same household are eligible to receive EAP Services. "Dependent" shall mean an individual who is a dependent person for federal income tax purposes. The Service Provider will also be required to coordinate the provision of direct assistance and/or referral services for employees' family members who may not currently be living in the home (e.g. students away at college or parents in the eight (8) western-most counties of the State of New York who are cared for by employees).
- C. To ensure that employee or household member will be offered an appointment within 5 working days of initial call; accommodations for earlier appointments will be made available for urgent or crisis situations (e.g. same day or within 24 hours). The Service Provider's staff will determine the needs of the employee or family member, and when appropriate, will facilitate referrals for further or more specialized services, and provide follow-up to ensure successful linkage. When appropriate, Service Provider will also provide specialized consultation services for concerns and questions about legal, eldercare, childcare, personal budgeting, and wellness issues. To provide twenty-four (24) hour telephone access to the program for consultation regarding personal/family crises.
- D. To provide sufficient and ongoing employee orientations for all covered employees. Presentations at various times will be held so as to ensure the attendance of the maximum number of employees. These sessions shall be designed to acquaint employees with the services of the Employee Assistance Program and the procedures for utilizing these services.
- E. To provide sufficient and ongoing training for Authority managers, supervisors and union representatives. The primary focus of these sessions are: recognition of the "troubled employee", documentation of performance problems, strategies for intervention, and procedures for using the program as a resource for consultation and assistance for employees including "formal supervisory referrals".
- F. To provide sufficient consultation services to Authority supervisors to enable them to best identify employees needing program services including referral for problem assessment.
- G. To provide referrals to a qualified approved Substance Abuse Professional (SAP) as required by the Department of Transportation, Federal Motor Courier Safety Regulations, 40 CFR Part 382, as well as non-Commercial Driver License employees for substance abuse issues.

- H. To provide four (4) personal Enrichment Seminars for Authority employees per contract year in consultation with the Authority's Employee Assistance Program Committee. Additional seminars beyond those covered in the contract are available at a cost as set forth in section 4(C) PAYMENTS FOR SERVICES.
- I. To provide to the Authority for distribution, program promotional materials including wallet size cards, newsletter articles, and other promotional materials.
- J. To provide posters for the Authority to be displayed at various sites throughout Authority buildings publicizing programs, telephone number and the various types of services provided.
- K. To provide consultation and direct assistance for employees affected by traumatic incidents at the worksite, including individual assessment, counseling and on-site critical incident debriefing for employee groups.
- L. To provide consultation to the Authority with the review of the Authority Employee Assistance Program Policy and employees' use of the program.
- M. To provide consultation to the Authority in the implementation of the Drug and Alcohol Free Workplace Policy including compliance with DOT Regulations regarding employees testing positive for alcohol or drugs.
- N. To provide ongoing opportunities for Authority evaluation of services through periodic surveys of employees and/or supervisors to evaluate the program.
- O. To provide quarterly and annual comprehensive confidential utilization reports. These reports shall be designed to provide information regarding utilization of services while still maintaining confidentiality. The reports shall also be beneficial in reflecting the provision of promotional and training services as well as clinical trends (e.g. incidence of particular problems).
- P. To provide a copy of the Service Provider's Client Confidentiality policy.
- Q. To provide professional consultation and support for the Authority's EAP Advisory Committee and/or Safety or Wellness Committees.
- R. To provide a report of services provided on a quarterly basis.
- S. To participate in the Authority's wellness days (i.e. Health Fairs). Currently, this will require attendance at two (2) wellness events per contract year.

3. **TERM OF SERVICES:**

- A. The services for which the Service Provider shall be paid shall commence on the **1st day of May 2018**, and shall be completed to the satisfaction of the Authority by the **30th day of April, 2021**.

**B. EXTENSION OF CONTRACT** This Agreement may be renewed at the option of both parties hereto for two (2) additional one (1) year periods 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 Service Provider shall provide 90 days written notification to the Erie County Water Authority of the Contract extension prior to the expiration of the initial term of this Contract.

**4. PAYMENT FOR SERVICES:**

The Service Provider shall be paid in accordance with the following:

A. A composite rate as follows shall apply:

**\$ 1.25 per employee per month contract year one (1)**

**\$ 1.29 per employee per month contract year two (2)**

**\$ 1.32 per employee per month contract year three (3)**

As the Authority adds to or reduces its employee population, the Service Provider agrees to continue billing at the rates established above.

For the first contract year, the Service Provider will bill the Authority in quarterly increments, based on an employee count as provided by the Authority for each quarter, in the same manner as set forth in the paragraph below.

With respect to the second and third contract years, the Service Provider will request and the Authority shall provide its employee count to Provider no later than thirty (30) days after the 1<sup>st</sup> of each calendar year and the Authority will be billed quarterly based on such employee for each such contract year.

Payments are to be made quarterly, within thirty (30) days of the commencement of each contract quarter, with the first payment due no later than thirty (30) days after the effective date set forth in this Agreement or the date this Agreement becomes fully executed by the parties, whichever is later. Payments made later than thirty (30) days after the commencement of any contract quarter shall be subject to a penalty of 1.5% of the amount owed.

B. Service will include up to 5 hours of onsite Critical Incident Response Services (CIR). If requested by the Authority, the Service Provider will conduct additional seminars or CIR services at a rate of \$150 per clinician/per hour.

**5. SUBCONTRACT AND ASSIGNMENT:**

The Service Provider may not subcontract any of the work, services, and/or other obligations of the Service Provider or assign this Agreement without the express written consent of the Authority, except for the specialized consultation services described under "2 A and C". The Authority and the Service Provider bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Service Provider 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 Service Provider's services at any time, without cause, based on thirty (30) days' written notice. Service Provider shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

8. **MUTUAL INDEMNIFICATION:**

Both Parties agree to indemnify and hold harmless the other against any claim, suit, cost, expense or liability (including reasonable attorneys' fees when and as incurred) arising as a result of the act or failure to act on the part of the indemnifying Party's obligations under the Agreement, for a period ending three (3) years from the date this Agreement is terminated. The Service Provider will be responsible to the Authority for negligent errors or omissions in the performance of its services and failure to perform thereof.

9. **CONFIDENTIAL INFORMATION:**

In order to assist the Service Provider in the performance of this Agreement, the Authority may provide the Service Provider with confidential information including, but not limited to information relative to the services to be performed. All information received by the Service Provider in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, is considered confidential. The Service Provider 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 as required by law and/or regulations, Service Provider shall not during the term of this Agreement or any extension thereof, or at any time thereafter, report to any other party any confidential information acquired or which may be acquired in the performance of the professional services under this Agreement. Service Provider agrees to treat as confidential and not to use for its own business advantage or to disclose to anyone other than to the client any information except a quarterly statistical report to the Authority detailing usage of services. Client confidentiality in conformity with this provision shall extend to communications between client and the Service Provider and shall include records of the identity, diagnosis, evaluation or treatment of a client/patient which are created and maintained by a professional under Federal and New York State Law.



All records generated through, by or in connection with the services provided by Service Provider and which are created or acquired by an agent or employee of the agency are the property of Service Provider and all agency affiliates. Records will be maintained in a secure location at the office of Service Provider and/or its affiliates and will be treated as confidential in accordance with this paragraph.

In no event is the Service Provider authorized to disclose confidential information regarding the treatment, case planning or progress of any employee without prior written approval of the employee. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

In no event is the Service Provider authorized to disclose any confidential information without prior written approval of the individual receiving services.

**10. INSURANCE:**

The Service Provider 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 therefrom in the amounts indicated on Exhibit "A". The Service Provider shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Service Provider shall provide Certificates of Insurance certifying the coverage required by this provision as set forth in Exhibit A.

**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 Service Provider 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 Service Provider 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 Service Provider from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Service Provider 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 Service Provider, except to pay for services actually rendered.

**14. ADDITIONAL CONDITIONS:**

The Service Provider 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 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.

**16. INDEPENDENT STATUS:**

Nothing contained in the Agreement shall be construed to render either the Authority or the Service Provider 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 Service Provider shall remain an independent contractor responsible for its own actions. The Service Provider is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

Neither the Service Provider 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 Service Provider 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 Service Provider agrees to furnish upon request copies of documentation to the Authority evidencing its compliance with such laws. The Service Provider further represents and warrants that any income accruing to the Service Provider and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

**17. COMPLIANCE:**

The Service Provider 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 Service Provider further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to Authority which forms the basis of the within Agreement.

**18. GRATUITIES:**

The Service Provider 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 Service Provider 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.

**19. 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.

**20. 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.

**21. TERMINATION:**

The Authority reserves the right to terminate this contract in the event it is found that the certification filed by the Service Provider 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 Service Provider in accordance with the written notification terms of this contract.

ERIE COUNTY WATER AUTHORITY

By: Robert Anderson  
Robert Anderson  
Chairman

CHILD AND FAMILY SERVICES OF ERIE COUNTY

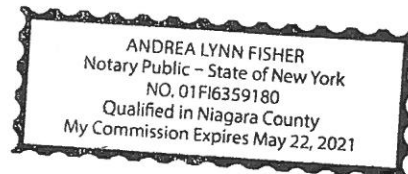
By: Julie M. Loesch  
Julie M. Loesch  
Director of EAP

STATE OF NEW YORK)  
COUNTY OF ERIE ) ss:

On this 10<sup>th</sup> day of APRIL, 2018, before me personally came JULIE M. LOESCH, to me known, who being by me duly sworn, did depose and say that he/she resides at 51 RADCLIFFE RD; that he/she is DIRECTOR of CHILD AND FAMILY SERVICES, the corporation described in, and which executed, the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he/she signed his/her name thereto by like order.

Andrea Lynn Fisher  
Notary Public - State of New York

STATE OF NEW YORK)  
COUNTY OF ERIE ) ss:



On this 19<sup>th</sup> day of April, 2018, before me personally came Robert Anderson, to me known, who being by me duly sworn did depose and say that he resides in Williamsville, New York, that he is the CHAIRMAN of the ERIE COUNTY WATER AUTHORITY, the corporation named in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by a duly adopted resolution of the said Authority and that he signed his name thereto by like resolution.

Patricia Fabozzi  
Notary Public - State of New York

PATRICIA FABOZZI #4957583  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires October 16, 2021

**EXHIBIT "A"**  
**INSURANCE REQUIREMENTS**  
**ERIE COUNTY WATER AUTHORITY**

**Accord Certificate**

This Agreement constitutes the entire agreement between the parties.