

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this ____ day of December 2018 (the “Effective Date”), by and between:

ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

MASSIELLO, MARTUCCI, CALABRESE AND ASSOCIATES
438 Main Street, Suite 500
Buffalo, New York 14202

hereinafter referred to as the “Consultant.”

WITNESSETH

WHEREAS, the Authority wishes to procure from the Consultant to render lobbying services described in this Agreement, and the Consultant wishes to provide such services to the Authority, and

WHEREAS, the Consultant 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 CONSULTANT

1.1 The Consultant has represented to the Authority it is a registered lobbyist, as defined in Legislative Law § 1-c.

1.2 The Consultant has represented to the Authority it is familiar with the provisions set forth in Article 1-A of the Legislative Law, commonly known as the Lobbying Act.

1.3 The Consultant acknowledges the following responsibilities as a registered lobbyist:

1.3.1 The Lobbying Act requires public disclosure of the identities, activities, and expenditures of lobbyists. Every lobbyist that reasonably anticipates incurring, expending, or receiving more than \$5,000 in combined Reportable Compensation and Expenses for Lobbying Activity on a state and/or local level, in any calendar year during the biennial period is required to register and report with the New York State Joint Commission on Public Ethics (“JCOPE”), regardless of when the threshold is reached during the biennial period.

1.3.2 Once a lobbyist meets or anticipates meeting the cumulative \$5,000 threshold, a lobbyist must file a Statement of Registration for every client for whom the lobbyist lobbies, regardless of compensation or expenses paid by each client individually.

1.4 The Consultant shall perform services under this Agreement in a skillful and competent manner in accordance with the provisions of the Lobbying Act and any regulations promulgated pursuant to such act.

1.5 The Consultant is retained by the Authority for the purposes of consultation, advice and lobbying advocacy on legislative and regulatory issues as they arise and as authorized by the Authority. The Consultant is specifically not retained to provide legal advice to the Authority and the Consultant shall not be required to perform any additional services for the Authority, which constitutes the practice of law.

2. COMPLIANCE WITH THE PROVISIONS OF THE LOBBYING ACT

2.1 The Authority understands its responsibility to comply with the provisions of the Lobbying Act and any regulations promulgated pursuant to such act. In particular, the Authority acknowledges that it must file semi-annual reports with JCOPE.

2.2 The Consultant agrees to provide information and guidance to assist the Authority with preparing and filing semi-annual reports with JCOPE.

2.3 The Authority and Consultants understands that, in general, it is prohibited from giving gifts to public officials.

2.3.1 Gift shall mean anything of more than Nominal Value in any form including, but not limited to: money; service; loan; travel; lodging; meals; refreshments; entertainment; discount; or a forbearance of an obligation or a promise that has a monetary value.

2.3.2 It is only permissible to offer or give the gift if, under the circumstances, all of the following criteria are met:

- 2.3.2.1 it is not reasonable to infer that the gift was intended to influence the Public Official; and
- 2.3.2.2 the gift could not reasonably be expected to influence the Public Official, in the performance of his or her official duties; and
- 2.3.2.3 it is not reasonable to infer that the gift was intended as a reward for any official action on the Public Official's part.

2.3.3 In addition, no lobbyist or client may re-direct a gift to a third party, including a charitable organization, on behalf of or at the direction of a public official if such gift cannot be offered directly to the public official. Multiple permissible gifts given to a public official may also violate the gift prohibition if it can be reasonable to infer that the multiple gifts collectively were given with the intent to or could reasonably be expected to influence the public official or reward such official's actions.

3. **TERM**

3.1 The services to be provided by the Consultant, as described herein, shall commence on January 1, 2019 and end on December 31, 2020 ("Term"), with an option to extend the Agreement for one additional, two-year term on 30 days written notice by the Authority to the Consultant prior to the expiration of the Agreement. Such extensions shall be in writing and authorized by a resolution of the Authority's Board of Commissioners of the Authority, and signed by all parties. Unless otherwise agreed upon by both parties, any extension of this Agreement shall be on the same terms and conditions set forth herein.

4. **SCOPE OF SERVICE**

4.1 The Consultant shall provide government relations and public affairs consulting services to the Authority including all activities normally associated with state and local legislative lobbying, as specifically authorized by the Authority after consultant with the Authority's Board of Commissioners.

4.2 The Consultant, as outlined in the Request for Proposal for Government Relations and Lobbying Services issued on August 16, 2018 (hereinafter referred to as the "RFP") and the proposal submitted by the Consultant on September 14, 2018 (hereinafter referred to as the "Proposal"), agrees to provide all necessary professional services as a Consultant of the Authority, which shall include the following activities:

- 4.2.1 Developing and implementing a proactive government relations strategy on behalf of the Authority.

- 4.2.2 Providing strategic consultation and planning on Authority government relations strategies and matters.
- 4.2.3 Communicating and representing the Authority's interests with state legislators, state agencies, the Executive Chamber, and local government officials.
- 4.2.4 Advise and assist the Authority on how to advance its agenda and interests before the state government.
- 4.2.5 Monitoring, tracking, and researching legislation, regulations, and executive branch action or proposed actions that would be of significance to the Authority that is currently under consideration by the state legislature or Governor's office.
- 4.2.6 Provide the Authority with periodic updates, copies of relevant legislations, rules, orders and/or decisions and otherwise keep the Authority informed of significant proposed governmental actions.
- 4.2.7 Attend meetings with Commissioners to discuss potential opportunities and challenges, as requested by the Secretary to the Authority or Board of Commissioners.
- 4.2.8 Prepare factual documents and briefing materials as may be advisable, and prepare written and oral testimony to be delivered before one or more committees and subcommittees of the New York State Legislature if required.
- 4.2.9 Preparation of any lobbying registrations as may be required by JCOPE.
- 4.2.10 Provide information and assistance to assist the Authority in completing the JCOPE semi-annual reports required to be filed by the Authority.
- 4.2.11 Other government relations activities as requested by the Authority.

5. COMPENSATION

5.1 The Authority will retain the Consultant at a flat rate of Five Thousand Dollars (\$5,000.00) per month. The first month's retainer will be due and payable upon the Chair 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. There will be no cap on the number of hours rendered on a monthly basis.

5.2 The Authority further agrees to reimburse the Consultant for all reasonable expenses incurred as a direct result of the Consultant's service under this Agreement. It is anticipated that such expenses will be limited to such standard charges as express mail, copying charges, telephone toll charges; along with reasonable travelling expenses. Out of pocket expenses are billed at cost with no agency mark-up.

6. SUBCONTRACT AND ASSIGNMENT:

6.1 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.

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 Either party reserves the right to terminate this Agreement at any time, without cause, based on thirty (30) 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.

9. INDEMNIFICATION:

9.1 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.

10. CONFIDENTIAL INFORMATION:

10.1 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 performing of services including but not limited to information relative to the services to be performed, except such information as required under applicable law and information required to be submitted to JCOPE.

10.2 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 specific performance of this Agreement. Confidential information, whether for the Consultant's benefit or for the benefit of others, shall be otherwise permitted exception as in the specific performance of this Agreement or with the Authority's written consent.

10.3 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.

11. INSURANCE:

11.1 The Consultant 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 set forth in Attachment "A." The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by Attachment "A."

12. COPYRIGHTS, TRADEMARKS, AND LICENSING:

12.1 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.

12.2 In performing work under this Agreement, the Consultant may be granted access to the Authority's GIS data, documents and other information. The Consultant understands and agrees the use of such data, documentation and information shall be treated as confidential information and the Consultant shall abide by the terms of any confidentiality and copyright leasing agreements that may exist.

13. NEW YORK LAW AND JURISDICTION:

13.1 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 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.

14. CONFLICTS OF INTEREST:

14.1 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.

15. ADDITIONAL CONDITIONS:

15.1 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.

16. ENTIRE AGREEMENT:

16.1 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 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.

17. INDEPENDENT STATUS:

17.1 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.

17.2 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.

17.3 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.

17.4 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.

18. COMPLIANCE:

18.1 The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of §§ 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 the Authority which forms the basis of the within Agreement.

19. GRATUITIES:

19.1 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.

20. NOTICE:

20.1 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.

21. TERMINATION:

21.1 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 Agreement.

22. SEVERABILITY:

22.1 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.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

MASIELLO, MARTUCCI, CALABRESE AND ASSOCIATES

By _____

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of December, 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.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of December, in the year 2018, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in _____, 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

