



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

TO: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

FROM: Jennifer Hibit, Director of Human Resources

CC: Terrence D. McCracken, Secretary to the Authority

DATE: December 9, 2024

SUBJECT: Professional Services Contract with P&A Services, Inc.
Administration of the Authority's Flexible Spending Accounts
ECWA Project No. 202400173

The Erie County Water Authority (Authority) recently issued a Request for Proposals (RFP) for Flexible Spending accounts which include parking, HRA (value plan incentive), Dependent care, Individual premium reimbursement, adoption assistance and Medical Expense Reimbursement (medical FSA). The work for all programs will be performed under one contract.

The RFP was issued to three (3) professional benefit provider firms: P&A Group, Lifetime Benefit Solutions and Bene-Care. Additional two additional provider firms responded to the request, Nova Healthcare and Flexible Benefits Administrators.

The review committee reviewed all 5 proposals that were submitted. After careful consideration of services provided, details of the RFP submission, and cost, the review committee unanimously chose P&A group for our FSA needs.

Funds are available for the project in the 2025 HR Budget as follows:

- Unit: 8010 Human Resources, Line 20, Miscellaneous

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

Contract: _____ **Project No.:** _____
Project Description: Authorization to enter into a professional services contract with P&A
Administrative Services to provide Administration of Employee Accounts under Internal Revenue
Code Section 105h, Section 125 and Section 132f

Item Description:

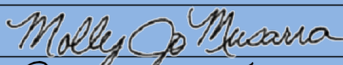



- | | | | |
|---|---|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input checked="" type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> 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 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 type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input type="checkbox"/> Chief Operating Officer | _____ | Date: _____ |
| <input type="checkbox"/> Executive Engineer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Risk Manager |  | Date: 12/17/2024 |
| <input checked="" type="checkbox"/> Director of Human Resources |  | Date: 12/17/2024 |
| <input checked="" type="checkbox"/> Chief Financial Officer |  | Date: 12/17/2024 |
| <input checked="" type="checkbox"/> Legal |  | Date: 12/17/2024 |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--|------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: 12/17/2024 |
|--|--|------------------|

Remarks: _____

Resolution Date: _____ **Item No:** _____



FLEXIBLE BENEFITS ADMINISTRATION SERVICES AGREEMENT

This Flexible Benefits Administration Services Agreement (“**Agreement**”) made effective as of January 1, 2025 (the “**Effective Date**”), by and between Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203 (the “**Employer**”), and **P&A ADMINISTRATIVE SERVICES, INC.**, 6400 Main Street, Suite 210, Williamsville, NY 14221 (“**P&A**”).

WITNESSETH:

WHEREAS, the Employer maintains a cafeteria plan as defined in Section 125 of the Internal Revenue Code of 1986, as amended (the “**Code**”), for its eligible employees (the “**Plan**”); and

WHEREAS, the Employer desires to retain P&A to provide administrative services with respect to the Plan, and P&A desires to provide such services upon certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, with the intention of being legally bound hereby, covenant and agree as follows:

1. **Services.** P&A shall provide the following services with respect to the Plan:
 - a. Prepare Plan documents, including: (i) the Plan Document, as of the Effective Date, and any subsequent amendments or restatements thereto; and (ii) the Summary Plan Description, which is a summary of the Plan for distribution to employees eligible to participate in the Plan (“**Participants**”), and any subsequent amendments or restatements. At the time provided to the Employer, such documents shall conform in all respects with applicable laws and regulations governing the Plan;
 - b. With the assistance of the Employer, enroll Participants in the Plan;

- c. Provide to each Participant who elects benefits under the Plan's Medical Expense Reimbursement Account benefit option or Dependent Care Assistance Account benefit option an electronic payment card that may be used to pay expenses that are eligible for reimbursement under that benefit option, and such additional cards for use by family members of the Participant as he or she reasonably shall request;
- d. Substantiate the eligibility of expenses paid by use of an electronic payment card to the extent required by applicable law;
- e. Provide Participants who have elected flexible spending account benefits under the Plan with a form to use in submitting flexible spending account claims;
- f. Review and, when authorized by the Plan and by applicable law, approve flexible spending account claims;
- g. From time to time, notify the Employer of the aggregate amount of funds needed from the Employer to pay pending approved claims and receive said funds as transmitted by the Employer;
- h. Pay approved flexible spending account claims from funds made available by the Employer for that purpose. Claims shall be paid by check or, where authorized by a claimant, by direct electronic deposit to a bank account of the claimant;
- i. Provide with each flexible spending account claim paid by check a statement of the Participant's remaining account balance under the flexible spending account from which the payment has been made;
- j. Before the end of each Plan Year of the Plan as described in the Plan document (the "**Plan Year**"), provide to each Participant who elected any flexible spending account benefits for that Plan Year a statement setting forth each of his or her flexible spending account balances and advise of the potential forfeiture of any balances not used to reimburse the Participant for eligible expenses incurred prior to the end of that Plan Year;
- k. Perform such benefits discrimination testing as P&A shall deem necessary to assure the Plan's continuing compliance under Code Section 125; and

- I. Prepare any annual return (Form 5500 Series or equivalent) required by applicable federal law with respect to the Plan for filing by the Employer with respect to each Plan Year ending prior to the termination of this Agreement.
2. **Compensation.** As compensation for the services rendered hereunder, the Employer shall pay P&A such fees as are set forth in Schedule A attached hereto and made a part hereof. P&A may modify this fee schedule as of the beginning of any Plan Year commencing on or after the initial term of the Agreement (as the period after the initial term is described in Section 5 below). P&A shall notify the Employer in writing of any modification to the fee schedule not less than ninety (90) days before the beginning of the Plan Year in which the modification is to become effective. Should the Employer be unwilling to accept any such modification, it may terminate this Agreement upon sixty (60) days' written notice to P&A, as set forth in Section 5 below.
3. **Employer Responsibilities.**
 - a. The Employer shall notify P&A in writing of any event or occurrence that affects the group of employees who are eligible for reimbursement of expenses under the Plan (e.g., hiring of a new employee, termination of an employee, change in hours worked) as soon as is reasonably practicable.
 - b. The Employer shall provide P&A on a timely basis with such other information as P&A reasonably shall request in furtherance of its responsibilities hereunder as soon as is reasonably practicable.
 - c. The Employer shall provide P&A with the funds necessary to pay all claims that qualify for reimbursement under the Plan. P&A shall not be obligated to advance funds to the Employer for this purpose.
 - d. The Employer shall be responsible for assuring that withholding from its payroll is consistent in all respects with salary reduction elections made under the Plan and for preparing Forms W-2 that reflect benefits that were received by Participants during the reporting year to the extent required by law.

4. Responsibilities of the Parties and Indemnification.

- a. The responsibilities and liabilities of P&A are only those set forth herein, and no others shall be implied. P&A shall have no duty or authority to make, or to compel the Employer to make payment of any benefit under the Plan. Except for its own misconduct or negligence, P&A shall not indemnify the Employer or any other provider of benefits under the Plan, with respect to its liability to pay benefits to Participants.
- b. Except for its own misconduct or negligence, neither P&A nor any of its officers, directors, or employees, nor any agent of or counsel for any of the foregoing, shall be liable to anyone at any time interested in the Plan, for any act or omission in providing services hereunder. P&A shall indemnify and hold harmless the Employer from any claim, liability, obligation or charge arising out of P&A's misconduct, negligence or other wrongdoing in connection with activities or responsibilities arising out of or relating to this Agreement. The Employer shall indemnify and hold harmless P&A from any claim, liability, obligation or charge arising out of the Employer's misconduct, negligence or other wrongdoing in connection with activities or responsibilities arising out of or relating to this Agreement.

5. Term; Termination.

- a. The initial term of this Agreement shall commence on January 1, 2025 and shall end December 31, 2027 (the "Initial Term"). Thereafter, this Agreement shall automatically renew for each additional Plan Year unless one of the parties hereto gives the other party notice in writing of its desire to terminate the Agreement as of the end of a specified Plan Year not less than sixty (60) days prior to the end of that Plan Year. Notwithstanding the foregoing, this Agreement shall terminate (a) automatically if either party is adjudicated a bankrupt or suffers appointment of a temporary or permanent receiver, trustee or custodian for all or a substantial part of their assets, which shall not be discharged within thirty (30) days of appointment, or makes an assignment for the benefit of creditors, or (b) after written notice by one party of the other party's material breach of, or material failure to perform, its obligations hereunder unless such breach or failure is cured within ten (10) days of said notice, or (c) after three additional Plan Years have elapsed after the Initial Term (specifically,

December 31, 2030), or (d) after the Initial Term, at the end of a Plan Year for any reason, so long as written notice is given by the terminating party at least ninety (90) days prior to the end of a Plan Year. Any notice of breach must provide all such details as are known to the non-breaching party regarding the nature of the other party's alleged breach, the specific obligation hereunder to which the alleged material breach relates, the approximate date on which the alleged breach occurred and the identity of any personnel of the other party that were involved. Failure to provide such detail shall render said notice null and void for the purposes of this Agreement.

- b. Should the Employer cause this Agreement to be terminated other than in accordance with the preceding paragraph, the Employer shall immediately become obligated to pay P&A as liquidated damages an amount equal to seventy-five (75%) percent of the fees that would have been due had the Agreement remained in effect for the period (i) commencing on the date next following the date on which the Agreement prematurely was or will become terminated, and (ii) ending on the earliest date as of which the Employer properly could have terminated the Agreement by giving the advance notice prescribed hereunder on the date the Employer first notified P&A in writing of the Employer's intention to terminate the Agreement ("Liquidated Damages Amount"). For purposes of calculating the Liquidated Damages Amount, the fees due to P&A hereunder for services it provided in the month preceding the month within which P&A first was notified of the premature termination of the Agreement shall be the fees due for each month during the period described in the preceding sentence.
6. **Confidentiality.** All books and records, including the data therein, pertaining to each party which may come into the hands of the other are to be treated as confidential and private records, and the other party shall not disclose information from such records unless it is required by law or authorized by the initial party in writing prior to such disclosure. Both parties reserve the right to control the use of any of their symbols, trademarks, computer programs and service marks currently existing or hereafter established. Both parties agree that they will not use the computer programs work, symbols, trademarks, service marks, or other devices of the other in advertising, promotional material, or

otherwise and will not advertise or display such devices without the prior written consent of the other party. In addition, both parties further agree that any such work, symbols, trademarks, service marks, or other devices furnished by one party to the other shall remain the property of the initial party and shall be returned by the other party upon demand of the initial party upon termination of this Agreement.

7. **HIPAA Compliance.** The parties hereto acknowledge that they have entered into a separate Business Associate Agreement of even date herewith, and agree that said Business Associate Agreement and all of the obligations and rights of the parties thereunder shall be incorporated herein by reference.
8. **Binding Effect.** Neither party may assign this Agreement without the other party's prior written consent. Any purported assignment in violation of this Section is void. This Agreement shall inure to the benefit of and be binding upon the parties, their legal representatives, contractors, agents, successors and assigns.
9. **Integration.** By their making of this Agreement, the parties hereto hereby acknowledge that this Agreement supersedes any previous understandings between them with respect to all matters contained herein and contains the entire understanding and agreement between them with respect to all matters contained herein and cannot be amended, modified or supplemented except by a subsequent written agreement entered into by both parties.
10. **Subcontracting.** P&A shall not subcontract any portion of this Agreement without the prior written approval of the Employer.
11. **Non-Exclusive Arrangement.** Nothing contained herein shall be construed to prevent either party from independently operating or participating in any other agreement concerning plan administration services independent and unrelated to the services and obligations of the parties pursuant to this Agreement.
12. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed as a waiver of a breach or violation of any other provision of this Agreement or of any subsequent breach or violation thereof.
13. **Insurance.**
 - a. P&A agrees to 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 Schedule B.

- b. P&A agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- c. P&A agrees to provide Certificates of Insurance certifying that coverage required by this provision.
- d. P&A agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority requires the name of the employee, the employee's phone number and email address.

14. **Severability.** In the event any provision of this Agreement is rendered invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

15. **Governing Law.** 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 P&A and the Employer shall be governed, interpreted and decided by a court of competent jurisdiction in the State of New York in accordance with the laws of the State of New York.

16. **Enforcement.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret any one or more of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

17. **Notice.** Any notice hereunder by either party shall be deemed to have been duly given three (3) business days after mailing, and shall be given by fax and by being mailed in any post office or post office box maintained by the United States Postal Service, enclosed in a postage paid envelope, registered or certified mail, return receipt requested, addressed to the party to whom or which notice is intended to be given at such party's address as stated above or to such other address as each party shall specify in writing to the other.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

ERIE COUNTY WATER AUTHORITY

P&A ADMINISTRATIVE SERVICES, INC.

BY: _____

Name: Jerome D. Schad

Title: Chair

BY: _____

Name: Michael Rizzo

Title: President



SCHEDULE A – FEES

The Employer will pay to P&A:

1. **INSTALLATION FEE. \$0.00**
2. **ADMINISTRATION FEES.** Administration fees for each calendar month commencing while this Agreement remains in effect.

After open enrollment of Plan Participants has been completed for each Plan Year, P&A shall determine if an Annual Minimum Fee in the amount of **\$0.00** is due with respect to that Plan Year. This Annual Minimum Fee shall be due only if the following total is less than **\$0.00**: The number of Plan Participants who enrolled in any of the Plan's Flexible Spending Account options during open enrollment multiplied by **\$2.65** (the per Participant monthly fees described below) then multiplied again by 12 months.

If it is determined, with respect to a particular Plan Year, that the Annual Minimum Fee provision above does not apply, P&A shall begin during the second month of this Agreement to extract the administrative fees due for services in the prior month from a bank account designated by the Employer for purposes of providing P&A with the funds needed for the administration of the Plan (the "Employer's Account"). The fees for a given month shall equal **\$2.65** for each individual who was eligible for the reimbursement of expenses under any of the Plan's Flexible Spending Account options as of the first day of that month on account of a salary reduction agreement in effect on that date or otherwise, including (i) any individual who, on that date, would have been eligible for reimbursement under any of the Plan's Flexible Spending Account options but for the fact that he or she previously was reimbursed for the full amount of his or her benefit election for the Plan Year; (ii) any individual whose eligibility to make additional salary reduction contributions to the Plan had terminated prior to that date but who, on that date, remained eligible to submit post-termination run-out claims under the terms of the Plan; and (iii) any individual who had elected COBRA coverage prior to that date and whose COBRA coverage remained in effect on that date.

If it is determined to apply with respect to a Plan Year, P&A shall extract the Annual Minimum Fee from the Employer's Account. Once extracted, this Annual Minimum Fee shall be credited against the Employer's obligation for monthly fees as determined in accordance with the preceding paragraph. As soon as the year- to-date total of those monthly fees exceeds the amount of the Annual Minimum Fee, P&A shall begin to extract the excess monthly fees from the Employer's Account.

3. **ANNUAL REPORT PREPARATION.** \$300.00 for each annual return (Form 5500 Series or equivalent) that is prepared by P&A pursuant to Section 1 of this Agreement.
4. **REQUESTED ADDITIONAL SERVICES AND MATERIALS.** For such services and materials requested by the Employer that are in addition to the services and materials described in Section 1 of this Agreement, P&A shall be entitled to such additional compensation from the requesting party as is mutually agreed upon by the requesting party and P&A.
5. **MAILING EXPENSES.** The cost of any mailing required under the Agreement the rate for which exceeds the first-class rate charged by the U.S. Post Office.
6. **RECOUPMENT OF PENALTIES AND FEES.** The amount of any penalty or like fee that is imposed on P&A as a result of any action or inaction by the Employer or by the employees or other agents of the Employer with respect to the administration of the Plan, including but not limited to returned check charges or ACH rejection fees. P&A shall be entitled to immediately recoup any such penalty or fee from the Employer after giving the Employer written notice that P&A has paid such amount.

Note: Should the Employer elect to change the terms of the Plan or should changes in applicable laws necessitate changes to the Plan documents, P&A will provide the Employer with a quote as to the cost of having P&A make the document changes.

SCHEDULE B - INSURANCE REQUIREMENTS

Flexible Spending Accounts

Project No. 202400234

Insurance specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority 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 lifetime use of vendors "Product" and/or applicable statute of limitation. 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 Statedomiciled 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

·Per Project/Job Aggregate Limit Required

·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:

·\$5,000,000. Each Occurrence

·\$5,000,000. Aggregate

·Per Project/Job Aggregate Limit Required

·Erie County Water Authority to be scheduled as an Additional Insured

f. Medical Professional Liability/Errors & Omissions:

·\$1,000,000. Per Claim

·\$3,000,000. Aggregate

Certificates of Insurance to be provided to the Authority prior to start of work as follows:

ACORD 25 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 the Authority 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 the Authority 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 the Authority 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 the Authority, 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. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

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 the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities, or liabilities.

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, Claim 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 Ms. Musarra by e-mail or phone (716) 849-8465.



TRANSPORTATION FRINGE BENEFIT PLAN SERVICES AGREEMENT

This Agreement (the "**Agreement**") made effective as of January 1, 2025 (the "**Effective Date**"), by and between Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203 (the "**Employer**"), and **P&A ADMINISTRATIVE SERVICES, INC.**, 6400 Main Street, Suite 210, Williamsville, NY 14221 ("**P&A**").

WITNESSETH:

WHEREAS, the Employer desires to establish an arrangement pursuant to which eligible employees may elect to reduce their taxable compensation in exchange for the right to be reimbursed for the expenses of certain "qualified transportation fringe" benefits (a "**Transportation Fringe Benefit Plan**" or "**Plan**"), as permitted under Section 132(f)(4) of the Internal Revenue Code (the "**Code**"), and

WHEREAS, the Employer desires to retain P&A to provide certain services with respect to the Plan, and P&A desires to provide such services upon certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, with the intention of being legally bound hereby, covenant and agree as follows:

1. **Services.** P&A agrees to provide the following services with respect to the Plan:
 - a. advise the Employer regarding the qualified transportation fringe benefits that may be offered to employees pursuant to Code Section 132(f)(4) and the manner in which same must be offered;
 - b. process the enrollment information submitted by eligible employees who elect benefits under the Plan ("**Participants**");
 - c. provide to each Participant an electronic payment card that may be used to pay expenses that are eligible for reimbursement under the Plan;

- d. substantiate the eligibility of expenses paid by use of an electronic payment card to the extent required by applicable law;
- e. provide Participants who have elected benefits under the Plan with a form to use in submitting benefit claims;
- f. receive, review and, when authorized by applicable law, approve claims;
- g. from time to time, notify the Employer of the aggregate amount of funds needed from the Employer to pay pending approved claims and receive said funds as transmitted by the Employer;
- h. pay approved claims from funds made available by the Employer for that purpose. Claims shall be paid by check or, where authorized by a Participant, by direct electronic deposit to a bank account of the Participant; and
- i. provide with each claim paid by check a statement of the Participant's remaining account balance under the account from which the payment has been made.

2. Compensation. As compensation for the services rendered by P&A under this Agreement, the Employer agrees to pay P&A fees in accordance with the fee schedule set forth at Schedule A hereto. P&A may modify this fee schedule as of the beginning of any Contract Year commencing after December 31, 2027. For purposes of this Agreement, the term "Contract Year" means the period beginning on the Effective Date and ending one year later and each subsequent one-year period beginning on an anniversary of the Effective Date. P&A shall notify the Employer in writing of any modification to the fee schedule not less than ninety days before the beginning of the Contract Year in which the modification is to become effective. Should the Employer be unwilling to accept any such modification, it may terminate the Agreement upon written notice to P&A.

3. Employer Responsibilities.

- a. The Employer shall notify P&A in writing of any event or occurrence that affects the group of employees who are eligible for reimbursement of expenses under the Plan (e.g., hiring of a new employee, termination of an employee, change in hours worked) as soon as is reasonably practicable.
- b. The Employer shall provide P&A on a timely basis with such other information as P&A reasonably shall request in furtherance of its responsibilities hereunder as soon as is reasonably practicable.

The Employer shall provide P&A with the funds necessary to pay all claims that qualify for reimbursement under the Plan. P&A shall not be obligated to advance funds to the Employer for this purpose.

- c. The Employer shall be responsible for assuring that withholding from its payroll is consistent in all respects with salary reduction elections made under the Plan and for preparing Forms W-2 that reflect benefits that were received by Participants during the reporting year to the extent required by law.

4. Responsibilities of the Parties and Indemnification.

- a. The responsibilities and liabilities of P&A and Employer are only those set forth herein, and no others shall be implied. P&A shall have no duty or authority to make, or to compel the Employer to make payment of any benefit under the Plan. Except for its own misconduct or negligence, P&A shall not indemnify the Employer or any other provider of benefits under the Plan, with respect to its liability to pay benefits to Participants.
- b. Except for its own misconduct or negligence, neither P&A nor any of its officers, directors, or employees, nor any agent or counsel for any of the foregoing, shall be liable to anyone at any time interested in the Plan, for any act or omission in providing services hereunder. P&A shall indemnify and hold harmless the Employer from any claim, liability, obligation or charge arising out of P&A's misconduct, negligence or other wrongdoing in connection with activities or responsibilities arising out of or relating to this Agreement. The Employer shall indemnify and hold harmless P&A from any claim, liability, obligation or charge arising out of the Employer's misconduct, negligence or other wrongdoing in connection with activities or responsibilities arising out of or relating to this Agreement.

5. Term; Termination.

- a. The initial term of this Agreement shall commence on January 1, 2025 and shall end December 31, 2027 (the "Initial Term"). Thereafter, this Agreement automatically shall be renewed for each additional Contract Year unless one of the parties hereto gives the other party notice in writing of its desire to terminate the Agreement as of the end of a specified Contract Year not less than sixty (60) days prior to the end of that Contract Year. Notwithstanding the foregoing, this Agreement shall terminate (a) automatically if either party is adjudicated a bankrupt or suffers appointment of a temporary or permanent receiver, trustee

or custodian for all or a substantial part of their assets, which shall not be discharged within thirty days of appointment, or makes an assignment for the benefit of creditors, or (b) after written notice by one party of the other party's material breach of, or material failure to perform, its obligations hereunder unless such breach or failure is cured within ten days of said notice, or (c) after three additional Plan Years have elapsed after the Initial Term (specifically, December 31, 2030, or (d) after the Initial Term, at the end of a Plan Year for any reason, so long as written notice is given by the terminating party at least ninety (90) days prior to the end of a Plan Year. Any notice of breach must provide all such reasonable details as are known to the non-breaching party regarding the nature of the other party's alleged breach, the specific obligation hereunder to which the alleged material breach relates, the approximate date on which the alleged breach occurred and the identity of any personnel of the other party that were involved. Failure to provide such detail shall render said notice null and void for purposes of this Agreement.

- b. Should the Employer cause this Agreement to be terminated other than in accordance with the preceding paragraph, the Employer shall immediately become obligated to pay P&A as liquidated damages an amount equal to seventy-five (75%) percent of the fees that would have been due had the Agreement remained in effect for the period (i) commencing on the date next following the date on which the Agreement prematurely was or will become terminated, and (ii) ending on the earliest date as of which the Employer properly could have terminated the Agreement by giving the advance notice prescribed hereunder on the date the Employer first notified P&A in writing of the Employer's intention to terminate the Agreement ("Liquidated Damages Amount"). For purposes of calculating the Liquidated Damages Amount, the fees due to P&A hereunder for services it provided in the month preceding the month within which P&A first was notified of the premature termination of the Agreement shall be the fees due for each month during the period described in the preceding sentence.

6. Confidentiality. All books and records, including the data therein, pertaining to each party which may come into the hands of the other are to be treated as confidential and private records, and the other party shall not disclose information from such records unless it is required by law or authorized by the initial party in writing prior to such disclosure and receiving party shall, before disclosing any such

disclosure required by law, notify disclosing party of such requirements so that disclosing party may seek a protective order or other remedy, and receiving party shall reasonably assist disclosing party therewith. If receiving party remains legally compelled to make such disclosure, it shall: (a) only disclose that portion of the confidential information that, in the written opinion of its legal counsel, receiving party is required to disclose; and (b) use reasonable efforts to ensure that such confidential information is afforded confidential treatment. Both parties reserve the right to control the use of any of their symbols, trademarks, computer programs and service marks currently existing or hereafter established. Both parties agree that they will not use the computer programs work, symbols, trademarks, service marks, or other devices of the other in advertising, promotional material, or otherwise and will not advertise or display such devices without the prior written consent of the other party. In addition, both parties further agree that any such work, symbols, trademarks, service marks, or other devices furnished by one party to the other shall remain the property of the initial party and shall be returned by the other party upon demand of the initial party upon termination of this Agreement.

7. Binding Effect. Neither party may assign this Agreement without the other party's prior written consent. Any purported assignment in violation of this Section is void. This Agreement shall inure to the benefit of and be binding upon the parties, their legal representatives, contractors, agents, successors and assigns.

8. Integration. By their making of this Agreement, the parties hereto hereby acknowledge that this Agreement supersedes any previous understandings between them with respect to all matters contained herein and contains the entire understanding and agreement between them with respect to all matters contained herein and cannot be amended, modified or supplemented except by a subsequent written agreement entered into by both parties.

9. Subcontracting. P&A shall not subcontract any portion of this Agreement without the prior written approval of the Employer.

10. Non-Exclusive Arrangement. Nothing contained herein shall be construed to prevent either party from independently operating or participating in any other agreement concerning plan administration services independent and unrelated to the services and obligations of the parties pursuant to this Agreement.

11. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed as a waiver of a breach or violation of any other provision of this Agreement or of any subsequent breach or violation thereof.

12. Insurance.

- a. P&A agrees to 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 Schedule B.
- b. P&A agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- c. P&A agrees to provide Certificates of Insurance certifying that coverage required by this provision.
- d. P&A agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority requires the name of the employee, the employee's phone number and email address.

13. Severability. In the event any provision of this Agreement is rendered invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

14. Enforcement. If any action at law or in equity (including arbitration) is necessary to enforce or interpret any one or more of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

15. Notice. Any notice hereunder by either party shall be deemed to have been duly given three (3) business days after mailing, and shall be given by being mailed in any post office or post office box maintained by the United States Postal Service, enclosed in a postage paid envelope, registered or certified mail, return receipt

requested, addressed to the party to whom or which notice is intended to be given at such party's address as stated above or to such other address as each party shall specify in writing to the other.

16. Governing Law. 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 P&A and the Employer shall be governed, interpreted and decided by a court of competent jurisdiction in the State of New York in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

ERIE COUNTY WATER AUTHORITY

P&A ADMINISTRATIVE SERVICES, INC.

BY: _____

Name: Jerome D. Schad

Title: Chair

BY: _____

Name: Michael Rizzo

Title: President

SCHEDULE A

FEES

The Employer will pay to P&A:

1. INSTALLATION FEE. \$0.00

2. ADMINISTRATION FEES. Administration fees for each calendar month commencing while this Agreement remains in effect.

As of the first day of each Plan Year, P&A shall determine if an Annual Minimum Fee in the amount of **\$0.00** is due with respect to that Plan Year. This Annual Minimum Fee shall be due only if the following total is less than **\$0.00**. The number of individuals who are enrolled in any of the Plan's benefits as of the first day of the Plan Year multiplied by **\$2.50** (the per Participant monthly fees described below) then multiplied again by 12 months.

If it is determined that, with respect to a particular Plan Year, the Annual Minimum Fee provision above does not apply, P&A shall provide the Employer with invoices for administrative fees on a monthly basis. The fees for a given month shall equal the sum of (A) **\$2.50** for each individual who was enrolled for the reimbursement of expenses under the Plan as of the first day of that month, including (i) any individual who, on that date, would have been eligible for reimbursement but for the fact that he or she had previously been reimbursed for the full amount of benefits available to him or her under the terms of the Plan; (ii) any individual whose eligibility for the Plan had terminated prior to that date but who, on that date, remained eligible to submit post-termination run-out claims under the terms of the Plan.

If it is determined to apply, the Minimum Annual Fee shall be due and payable within thirty (30) days after P&A provides the Employer with an invoice with respect to same. Once paid, the Minimum Annual Fee shall be credited against the Employer's obligation for monthly fees as determined in accordance with the preceding paragraph, and P&A shall not bill for any monthly fees until the total of all such fees

accrued to date exceeds the amount of the Minimum Annual Fee. Monthly fees shall be due and payable within thirty (30) days after P&A provides the Employer with an invoice with respect to same.

3. REQUESTED ADDITIONAL SERVICES AND MATERIALS. For such services

and materials requested by the Employer that are in addition to the services and materials described in Section 1 of this Agreement, P&A shall be entitled to such additional compensation from the requesting party as is mutually agreed upon by the requesting party and P&A.

4. MAILING EXPENSES. The cost of any mailing required under the Agreement the rate for which exceeds the first-class rate charged by the U.S. Post Office.

5. RECOUPMENT OF PENALTIES AND FEES. The amount of any penalty or like fee that is imposed on P&A as a result of any action or inaction by the Employer or by the employees or other agents of the Employer with respect to the administration of the Plan, including but not limited to returned check charges or ACH rejection fees. P&A shall be entitled to immediately recoup any such penalty or fee from the Employer after giving the Employer written notice that P&A has paid such amount.

Note: Should the Employer elect to change the terms of the Plan or should changes in applicable laws necessitate changes to the Plan documents, P&A will provide the Employer with a quote as to the cost of having P&A make the document changes.

SCHEDULE B - INSURANCE REQUIREMENTS

Flexible Spending Accounts

Project No. 202400234

Insurance specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority 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 lifetime use of vendors "Product" and/or applicable statute of limitation. 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

·Per Project/Job Aggregate Limit Required

·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:

·\$5,000,000. Each Occurrence

·\$5,000,000. Aggregate

·Per Project/Job Aggregate Limit Required

·Erie County Water Authority to be scheduled as an Additional Insured

f. Medical Professional Liability/Errors & Omissions:

- \$1,000,000. Per Claim
- \$3,000,000. Aggregate

Certificates of Insurance to be provided to the Authority prior to start of work as follows:

ACORD 25 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 the Authority 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 the Authority 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 the Authority 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 the Authority, 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. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

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 the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities, or liabilities.

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, Claim 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 Ms. Musarra by e-mail or phone (716) 849-8465.