



## ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

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

FROM: Jessica R. Brown, Comptroller *JRB*

DATE: July 8, 2024

SUBJECT: Professional Services Contract for Independent Accounting & Audit Services

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On June 3, 2024, the Finance Department issued a request for proposal for Independent Accounting & Audit Services. The RFP was posted on the Authority's website and sent to the following firms:

- Drescher & Malecki, LLP
- Lumsden McCormick CPA
- Freed Maxick CPAs PC
- CTBK, LLP

Two companies submitted proposals, Drescher & Malecki and CliftonLarsonAllen LLP. Freed Maxick declined submitting a proposal. All others did not respond.

Responses were reviewed by the RFP committee, and it was agreed that the Authority should pursue a professional services contract with Drescher & Malecki due to their competitive pricing.

Attached is a professional services contract for the years ended December 31, 2024, 2025, and 2026, with optional extensions in 2027 and 2028. The 5-year value of the contract for auditing services of financial statements is \$212,200, plus \$40,610 per single audit. Any additional services billed upon request at quoted hourly rates.

Please consider approval of the contract at the July 18, 2024 Board Meeting.

cc: J. Tomaka

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

**Contract:** \_\_\_\_\_ **Project No.:** 202400144  
**Project Description:** Professional services contract for independent accounting and auditing services - Drescher & Malecki, LLP

**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 checked="" 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 checked="" type="checkbox"/> Board Authorization to Award              | <input checked="" type="checkbox"/> Execution by the Chairman        |
| <input type="checkbox"/> Board Authorization to Advertise for Bids            | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals |  |
| <input type="checkbox"/> Other _____  |  |

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

- |  |                         |                         |
|--|-------------------------|-------------------------|
| <input checked="" type="checkbox"/> Comptroller                | <u>Jessica R. Brown</u> | Date: <u>7/5/2024</u>   |
| <input type="checkbox"/> Chief Operating Officer               | _____                   | Date: _____             |
| <input type="checkbox"/> Executive Engineer                    | _____                   | Date: _____             |
| <input checked="" type="checkbox"/> Director of Administration | <u>Rayona Lester</u>    | Date: <u>07/05/2024</u> |
| <input checked="" type="checkbox"/> Risk Manager               | <u>Molly Sp Musarra</u> | Date: <u>7/5/2024</u>   |
| <input checked="" type="checkbox"/> Chief Financial Officer    | <u>Oppe Imme</u>        | Date: <u>07/05/2024</u> |
| <input checked="" type="checkbox"/> Legal                      | <u>Mark Carney</u>      | Date: <u>7/5/2024</u>   |

**APPROVED FOR BOARD RESOLUTION:**

- |  |            |                       |
|--|------------|-----------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority | <u>TCD</u> | Date: <u>7/8/2024</u> |
|--|------------|-----------------------|

**Remarks:** \_\_\_\_\_  
\_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT  
AUDIT SERVICES**

This Agreement, effective as of July 18, 2024 (“Effective Date”), is by and between

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

hereinafter referred to as the “Authority,” and

**DRESCHER & MALECKI, LLP**  
2721 Transit Road, Suite 111  
Elma, New York 14059

hereinafter referred to as the “Consultant.”

**WHEREAS**, the Authority desires to enter into an agreement with the Consultant to render professional independent certified public accounting services upon the terms and for the consideration set forth in this Agreement; and

**WHEREAS**, the Consultant represents it is properly qualified to render such services;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the Authority and the Consultant agree as follows:

**ARTICLE 1 – SERVICES OF CONSULTANT**

**1.01 Standard of Performance**

- A. ***Standard of Care:*** The Consultant shall perform its services under this Agreement in a manner consistent with the level of care and skill customarily exercised by other professionals with the same degree of knowledge and experience under similar circumstances. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and for the failure to perform its services.

**1.02 Compliance with Laws and Regulations, and Policies and Procedures**

- A. The Authority and the Consultant shall comply with all applicable federal, state, or local laws and regulations and all applicable Authority policies and procedures.
- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority’s Request for Proposals, the Consultant submitted and signed the Public

Authorities Law forms, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.

- C. The Consultant shall comply with the provisions set forth in State Finance Law §§ 139(j) and 139 (k). In response to the Authority's Request for Proposals, the Consultant submitted and signed Forms A, B, and C, copies of which are attached to, and incorporated in, this Agreement as Appendix A.
- D. By executing this Agreement, the Consultant affirms under penalties of perjury, that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
- E. The Consultant shall comply with the provisions of the Human Rights Law (Executive Law §290, *et. seq.*) and Labor Law § 201-g of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement, as Appendix A.
- F. The Consultant shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
- G. The Authority shall provide the Consultant in writing any and all Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- H. If the Consultant, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Consultant's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

**1.03** Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Consultant, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using personal protective face masks, or complying with any testing or vaccination requirements, before entering any Authority property.

**1.04 Scope of Service:** The Consultant agrees to provide professional independent certified public accounting services to the Authority as set forth below:

- A. Audit Authority financial statements in accordance with generally accepted auditing standards;
- B. Audit the Authority's Schedule of Cash & Investments and Income from Cash & Investments and expression of an opinion by account – Extension and Improvement Account, Operating and Maintenance Account, Debt Service Reserve Account, Debt Service Account, Long-Term Investment Account and any other required accounts;
- C. Audit the Authority's investment practices in compliance with § 2925 of the Public Authorities Law, including an internal control review, compliance with the Authority's own investment policies, and a statement of positive assurance of compliance on the items tested and a statement of any other material deficiency or finding;
- D. Examine the Schedule of Overhead Percentage resulting in the expression of an opinion on the overhead methodology and components used to arrive at the overhead percentage;
- E. Prior to conducting the Annual Audit, meet with the Authority's Executive and Senior Management to discuss issues, concerns, developments, matters and other information regarding the issuance of the financial statements, statements of investments and/or the schedule of overhead percentage, as requested by the Authority's Executive and Senior Management;
- F. Prior to conducting the Annual Audit, discuss with and provide the Authority's Executive and Senior Management a listing of client-assistance schedules prepared for the annual audit by the Independent Certified Public Accountant;
- G. Present to the Authority's Audit Committee on the results of the Annual Audit, including procedures followed and comments on any material items noted during the examination;
- H. Assist in the compilation of the Authority's Annual Comprehensive Financial Report (ACFR) or submission to the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting;
- I. Provide approximately 10 bound copies of the ACFR, Basic Financial Statements, Investment Audit, and Statement of Overhead Percentage;
- J. Prepare all Financial Statement Reports prior to March 25th of the year following the completed fiscal year to allow the Authority to comply with the New York State Public Authorities Law reporting deadline of March 31st for each of its fiscal years.

All prepared reports are required to be supplied in PDF format so that they can be posted on the Authority's website.

- K. Review ACFR information annually prior to the Authority's June meeting of its Board of Commissioners in order to meet the June 30<sup>th</sup> submission deadline for same.
- L. As requested by the Authority, conduct single and/or program-specific annual audits pursuant to the Uniform Guidance (2 CFR Part 200, Subpart F), in compliance with Federal laws and regulations for qualifying federal funds expended by the Authority received under one or more federally funded programs, including the WIFIA loan program;
- M. Provide additional services requested by the Authority, including, but not limited to:
  - 1. Assist with debt issuance as required by the Authority's underwriter;
  - 2. Establish agreed upon procedures requested by the Authority's Board of Commissioners upon the appointment of a new Authority Treasurer;
  - 3. Implement or Assess new Governmental Accounting Standards Board statements.

## **ARTICLE 2 – COMPENSATION**

**2.01** The Consultant agrees to accept an annual all-inclusive lump sum payment for general audit and accounting advisory services described in § 1.04, paragraphs A through K, in accordance with the following schedule:

For the following fiscal years:	2024 - \$39,180.00
	2025 - \$40,745.00
	2026 - \$42,375.00
If the Agreement is extended:	2027 - \$44,070.00
	2028 - \$45,830.00

**2.02** For single and/or program-specific audit services related to Federal funds as described in § 1.04, paragraph L of this Agreement, the Authority shall pay the Consultant a lump sum fee, in accordance with the following schedule:

For single audits occurring during the following fiscal years:	
	2024 - \$7,500.00
	2025 - \$7,800.00
	2026 - \$8,110.00



- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Consultant harmless from all third-party claims, liabilities, damages and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its contractors, engineers, or anyone for whom the Authority is legally liable.

**3.05 Confidential Information:**

- A. 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, are considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performance of services including but not limited to information relative to the services to be performed.
- B. 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 performance of this Agreement. No other use of the confidential information whether for the Consultant's benefit or for the benefit of others shall be permitted.
- C. All data and information in any format submitted or made available to the Consultant by the Authority or any other person on behalf of the Authority, unless otherwise publicly available, and all data and information, and other work developed by the Consultant under this Agreement, shall be utilized by the Consultant solely in connection with the performance of services under this Agreement only and shall not be made available by the Consultant to any other person.
- D. In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. Consultant may provide such information to its Authority-approved subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- E. The Authority and the Consultant both agree that neither party shall disclose, in whole or in part, by any means whatsoever, any Proprietary Information provided by the disclosing party to any third party without the express prior written consent of the disclosing party. The receiving party shall not alter, modify, decompile, disassemble, reverse engineer, or create derivative works from the disclosing party's Proprietary Information. The receiving party shall use Proprietary Information of the disclosing party only for the limited purpose of in relation to services provided under this Agreement and not for any other purpose. Proprietary Information shall include, but is not limited to, specifications, frameworks,



outlines, designs, process information, technical data, marketing and business plans, customers/client names/data, product road maps, pricing, toolkits, software, and/or intellectual property that the disclosing party considers to be protected by applicable laws.

- F. The terms of this paragraph shall be binding during and following the termination of this Agreement.

### **3.06 Insurance:**

- A. The Consultant 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 Appendix B.
- B. The Consultant agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Consultant agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant 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.

**3.07 New York Law and Jurisdiction:** Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

**3.08 Conflicts of Interest:** 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 being subject to further obligations under its terms, except for the payment of services already rendered by the Consultant. So long as the Consultant reports such a conflict as required by this section, the Consultant will have no further obligations for completing the scope of services under the terms of this Agreement.

**3.09 Additional Conditions:** The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.

**3.10 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 subsequent agreement 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 by such agreement.

**3.11 Independent Status:**

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant, an owner, member, officer, 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.
- B. The Consultant is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 2.
- C. 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.
- D. 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.

**3.12 Doing Business Status:** The Consultant represents it is qualified to do business in State of New York and has registered with the New York Secretary of State.

**3.13 Gratuities:** The Consultant shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstances 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.

**3.14 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.

**ARTICLE 4 – SEVERABILITY**

**4.01** Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agrees that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

**ARTICLE 5 – DURATION**

**5.01** All services to be provided under this Agreement shall be provided for each of the Authority’s fiscal years ending December 31, 2024, 2025, and 2026 with two potential one-year extensions for the fiscal years ending December 31, 2027 and 2028, at the sole discretion of the Authority, at mutually agreed upon terms.

**5.02** The Authority reserves the right to terminate this Agreement 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 Service Provider in accordance with the written notification terms of this Agreement.

**ERIE COUNTY WATER AUTHORITY**

By \_\_\_\_\_  
Jerome D. Schad, Chair

**DRESCHER & MALECKI, LLP**

By \_\_\_\_\_  
Luke R. Malecki, Partner

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

On the \_\_\_\_\_ day of July, in the year 2024, 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 Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2024, before me personally came Luke R. Malecki, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is a partner of the firm of Drescher & Malecki, LLP, and that he executed the foregoing instrument in the firm name of Drescher & Malecki, LLP, and that he had authority to sign same and he did acknowledge to me that he executed the same as the act and deed of said firm of Drescher & Malecki, LLP, for the uses and purposes mentioned herein.

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

**APPENDIX A  
REQUIRED FORMS**

## APPENDIX B

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES AGREEMENT

#### AUDIT SERVICES

##### ECWA Project No. 202400107

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract.

Insurance Requirements:

**a. Workers Compensation:**

Part 1: Workers Compensation: Statutory

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

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

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

**c. Commercial General Liability:**

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

**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
- Erie County Water Authority to be scheduled as an Additional Insured

APPENDIX A

**NON-COLLUSIVE BIDDING CERTIFICATION**  
as mandated by Public Authority Law § 2878

By submission of this bid or proposal, each bidder/respondent and each person signing on behalf of any bidder/respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- (1) The prices in this bid or proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/respondent or with any competitor; and
- (2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder/respondent and will not knowingly be disclosed by the bidder/respondent prior to opening, directly or indirectly, to any other bidder/respondent or to any competitor; and
- (3) No attempt has been made or will be made by the bidder/respondent to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**NOTICE**

(Penal Law § 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

Affirmed under penalty of perjury this 18 day June, 2024

FIRM NAME Drescher & Malecki LLP

ADDRESS 2721 Transit Road, Suite 111

Elma, New York ZIP 14059

AUTHORIZED SIGNATURE 

TYPED NAME OF AUTHORIZED SIGNATURE Luke R. Malecki

TITLE Partner TELEPHONE No. 716-565-2299

APPENDIX A

SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

§2875. GROUND FOR CANCELLATION OF CONTRACT BY PUBLIC AUTHORITY.

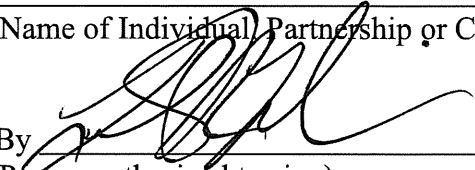
A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

- (a) Such person, and any firm, partnership, or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation termination shall be paid.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

Drescher & Malecki LLP

\_\_\_\_\_  
(Name of Individual Partnership or Corporation)

By   
\_\_\_\_\_  
(Person authorized to sign)

(SEAL)



## APPENDIX A

### SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

#### §2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this article.

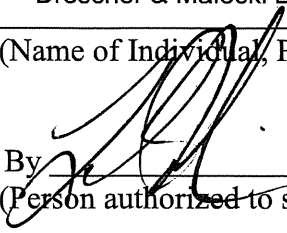
It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

**APPENDIX A**

Drescher & Malecki LLP

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By  \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

APPENDIX A

**FORMS A, B, and C**

STATE FINANCE LAW REQUIREMENTS

The Erie County Water Authority (the “Authority”) is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). When the Authority seeks to procure goods or services by means of an Invitation or Notice to Bid, or a Request for Proposals, the State Finance Law imposes certain restrictions on anyone who may wish to offer goods or services to the Authority as an Offerer, as that term is defined in §§ 139-j(1)(h) and 139-k(1)(h).

During the Restricted Period, as defined in §§ 139-j(1)(f) and 139-k(1)(f), when bids or proposals are being solicited, the Authority will designate a contact person with whom the Offerer may contact for information and other authorized purposes as set forth in §139-j of the State Finance Law. The designated contact is identified in the Notice to Bidders, or in the Request for Proposal. An Offerer is authorized to contact the Authority’s designated contact for such purposes as set forth in § 139-j(3).

Pursuant to the State Finance Law, the Authority is also required to make certain findings before making any determinations as to the qualifications and eligibility of those seeking a procurement contract, as that term is defined in State Finance Law §§ 139-j(1)(g) and 139-k(1)(g). Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings of non-responsibility occurring within a 4-year period, the Offerer will be debarred from obtaining procurement contracts with the Authority. Further information about these requirements can be found in §§139-j and 139-k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

The following forms will be used by the Authority to make such findings:

Form A - Offerer’s Affirmation of Understanding of, and Agreement to Comply with, the Authority’s Permissible Contact Requirements During the Restricted Period.

Form B - Offerer’s Certification of Compliance with State Finance Law.

Form C - Offerer’s Disclosure of Prior Non-Responsibility Determinations.

APPENDIX A

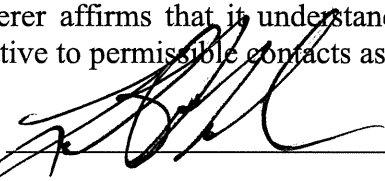
FORM A

**Offerer's Affirmation of Understanding of, and Agreement to Comply with, the Permissible Contact Requirements During the Restricted Period**

**Instructions:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a written affirmation of understanding and agreement to comply with procedures regarding permissible contacts with the Authority in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By:  \_\_\_\_\_ Date: 6/18/2024 \_\_\_\_\_

Name: Luke R. Malecki \_\_\_\_\_

Title: Partner \_\_\_\_\_

Contractor Name: Drescher & Malecki LLP \_\_\_\_\_

Contractor Address: 2721 Transit Road, Suite 111 \_\_\_\_\_

Elma, New York 14059 \_\_\_\_\_

APPENDIX A

**FORM B**


**Offerer's Certification of Compliance  
With State Finance Law §139-k(5)**

**Instructions:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a Certification that the information submitted for a procurement contract is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to sign the Certification, under penalty of perjury, and to provide the Certification to the Authority. The Certification should be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

**Offerer Certification:**

*I certify that all information provided to the Authority relating to the awarding of a procurement contract is ~~complete~~, true, and accurate.*

By:  \_\_\_\_\_ Date: 6/18/2024

Name: Luke R. Malecki

Title: Partner

Contractor Name: Drescher & Malecki LLP

Contractor Address: 2721 Transit Road, Suite 111

Elma, New York 14059

**FORM C****Offerer's Disclosure of Prior  
Non-Responsibility Determinations****Background:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §§139-j(1). And §139-k(1). These sections also set forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement, as that term is defined in State Finance Law §§ 139-j(1)(b) and 139-k(1)(b), within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

**Instructions:**

The Authority must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Authority conducting the Governmental Procurement no later than when the Offerer submits its proposal.

**FORM C (Continued)**

**Offerer's Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Drescher & Malecki LLP

Address: 2721 Transit Road, Suite 111

Elma, New York 14059

Name and Title of Person Submitting this Form: Luke R. Malecki, Partner

Contract Procurement Number: ECWA Project No. 202400107

Date: 6/18/2024

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):  No  Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):  No  Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle)  No  Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

**FORM C (Continued)**

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):  No  Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

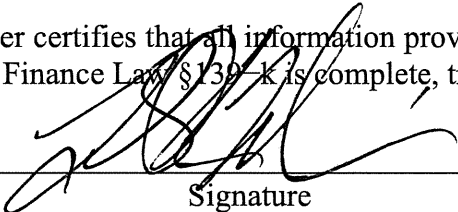
Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Erie County Water Authority with respect to State Finance Law §139-k is complete, true, and accurate.

By:  \_\_\_\_\_  
Signature

Date: 6/18/24 \_\_\_\_\_

Name: Luke R. Malecki \_\_\_\_\_

Title: Partner \_\_\_\_\_



APPENDIX A

**OFFERER'S STATEMENT REGARDING PREVENTION OF UNLAWFUL DISCRIMINATORY PRACTICES**

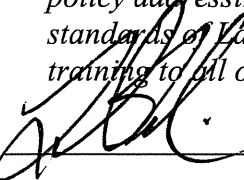
The Erie County Water Authority (the "Authority"), as an employer in New York State, is subject to the Human Rights Law, codified as Executive Law §290, *et. seq.*, and Labor Law §201-g. The Authority seeks to provide a work environment that is free from unlawful discriminatory practices as they are defined in Executive Law §296, as well as from inappropriate harassing conduct even if not deemed unlawful, to its employees, contractors, subcontractors, vendors, consultants, and any other person providing services on Authority premises. Pursuant to the Human Rights Law, it shall be unlawful to discriminate against an individual, or to subject an individual to harassment, due to age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence. Accordingly, the Authority requires that any Offeror of a proposal or bid, agree to sign the following statement regarding unlawful discriminatory practices, including, but not limited to sexual harassment, under penalty of perjury. This statement should be provided to the Authority as early as possible in the procurement process, but not later than at the time of execution of a contract with the Authority. Failure to agree to sign the statement may result in the Authority deeming the bid or proposal withdrawn by the Offerer.

**Offerer Statement:**

*I certify, under penalty of perjury, that the following statements are accurate:*

- *Offerer is aware of its obligations under the Human Rights Law (Executive Law §290, et. seq.*
- *Offerer complies with the provisions of Executive Law §290, et. seq., including Executive Law §296, and does not permit unlawful discriminatory practices or harassment based on an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence in its workplace.*
- *Offerer complies with the provisions of Labor Law §201-g, has implemented a written policy addressing sexual harassment in the workplace which meets the minimum standards of Labor Law §201-g, and provides annual sexual harassment prevention training to all of its employees.*

By: \_\_\_\_\_



Date: \_\_\_\_\_

6/18/24

Name: Luke R. Malecki

Title: Partner

Offerer Name: Drescher & Malecki LLP

Offerer Address: 2721 Transit Road, Suite 111

Elma, New York 14059

## APPENDIX B

f. Cyber Liability (if network access is required):

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

**g. Professional Liability**

- \$5,000,000. Per Claim
- \$5,000,000. 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 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

## **APPENDIX B**

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](mailto: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.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/04/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> WNY Insurance Agency, LLC 2477 Union Rd. Cheektowaga, NY 14227	<b>CONTACT NAME:</b> J. Niezgoda <b>PHONE (A/C. No. Ext):</b> 716-771-0012 <b>E-MAIL ADDRESS:</b> joe@wnyinsuranceagency.com	<b>FAX (A/C. No):</b> 716-675-1817
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Drescher & Malecki LLP 3083 William Street Suite 5 Buffalo, NY 14227	<b>INSURER A:</b> Hudson Excess Insurance Company	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** 2024jhuytg                      **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Cyber Liability Self Insured Retention \$2,500			CYB-3052243-00	09/19/2023	09/19/2024	Liability Aggregate \$1,000,000 \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
  
Full Prior Acts  
Project number: 202400144

<b>CERTIFICATE HOLDER</b> ERIE COUNTY WATER AUTHORITY 295 Main Street, Room 350 Buffalo, New York 14203	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 