

**General A/E Term Agreement 2008-2011**

**(Contract Document #)**

**By and Between**

**The County of Erie**

**&**

**Amendment #**

**WBS Element #**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 2010 by and between

**THE COUNTY OF ERIE**, a municipal corporation of the State of New York, having an office and place of business at 95 Franklin Street, Buffalo, New York 14202 (hereafter the "County")

and

having an office and principal place of business at Buffalo, (hereafter the "Consultant")

**WITNESSETH:**

**FIRST:** The Consultant shall provide Architectural/Engineering services in connection with \_\_\_\_\_ the scope of service shall be as more fully described in Schedule "A", which is attached hereto and made a part hereof (the "Work"). The Work shall be carried out by the Consultant in accordance with current professional standards and practices.

**SECOND:** The Consultant shall commence the Work immediately upon written notification from the Director of Real Estate ("Director") (the "Commencement Date") and shall be completed within \_\_\_\_\_ from the date of said notification.

The Consultant shall report to the County, as the Director may request, on its progress toward completing the Work, and shall immediately inform the Director in writing of any cause for delay in the performance of its obligations under this Agreement.

The Consultant shall properly maintain a detailed daily log relative to the services rendered for which compensation is to be paid by the County pursuant to the terms of this Agreement, which shall be submitted on a monthly basis. This log shall include, but not be limited to, the following:

1. Date.
2. Names and titles of employees rendering service.
3. Nature of service rendered.
4. Required time expended.

**THIRD:** For the Work to be performed pursuant to Paragraph “FIRST,” the Consultant shall be paid an amount including reimbursable expenses, which shall be paid once per month in proportion to work performed. Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Consultant for out-of-pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

Any and all requests for payment to be made, including any request for partial payment if such is permitted hereunder, shall be submitted by the Consultant on properly executed payment vouchers of the County and paid only after approval by the Director. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall final payment be made to the Consultant prior to completion of all Work and the approval of same by the Director.

The Consultant shall, at no additional charge, furnish all labor, services, materials, tools, equipment and other appliances necessary to complete the Work, unless specific additional charges are expressly permitted under this Agreement. It is recognized and understood that even if specific additional charges are expressly permitted under this Agreement; in no event shall total payment to the Consultant exceed the not-to-exceed amount set forth above.

**FOURTH:** Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Consultant as are reasonably pertinent to this

Agreement to substantiate the basis for payment. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

**FIFTH:** The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by the Erie County Legislature. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by the County Legislature during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and

rates approved herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

**SIXTH:** (a) The County, upon ten (10) days notice to the Consultant, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "A". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Consultant shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Director, and the Consultant shall direct any approved subconsultants to do the same.

In the event of a dispute as to the value of the Work rendered by the Consultant prior to the date of termination, it is understood and agreed that the Director shall determine the value of such Work rendered by the Consultant. The Consultant shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Consultant of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Consultant. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

**SEVENTH:** The Consultant agrees to procure and maintain insurance naming the County as additional insured where indicated, as provided and described in Schedule "B", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof.

The Consultant agrees: that except for the amount, if any, of damage contributed to, or resulting from the negligence of the County, the Consultant shall defend, indemnify and hold harmless the County, its officers, employees, and agents from and against the Consultant's proportional share of liability, damage, claim, demand, cost, judgment, fee attorneys' fees, or loss which the County may sustain, be subject to, or be caused to incur because of or as a result of (a) any wrongful act, error, or omission of the Consultant or third parties under the direction or control of the Consultant; or (b) any willful misconduct of the Consultant or third parties under the direction or control of the Consultant; or (c) any infringement of any claimed copyright or patent right of designs, plans, drawings, or specifications furnished by the Consultant or its subconsultant. Nothing contained herein shall create or give to third parties any claim or right of action against the County or Consultant beyond such as may legally exist without regard to this provision.

**EIGHTH:** The Consultant expressly agrees that neither it nor any consultant, subconsultant, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement.

**NINTH:** The Consultant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Consultant shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the Work hereunder.

**TENTH:** All records or recorded data of any kind compiled by the Consultant in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. Plans, drawings and specifications are to be prepared utilizing AutoCAD Version 14, AutoCAD 2000 or compatible. Other computer software enhancements of AutoCAD, (e.g. DCA) shall be

subject to prior approval of the County. The Consultant shall supply to the County such AutoCAD plans, drawings and specifications, including all addenda, RFI's, etc. in electronic format. The Consultant shall further supply as be required by the County paper sets of plans, drawings and specifications for review by the County and to gain approval from various regulatory agencies. In addition, the Consultant shall provide bidding sets (quantity to be determined between the County and the Consultant) of approved plans, drawings and specifications for the purpose of taking bids for the project. A complete set of documents includes a full set of plans, drawings and specifications, reference drawings and supplemental data and an additional bid proposal section(s) bound separately. Upon project completion the Consultant shall provide a full AutoCad set of "As - Built" drawings to the County. The Consultant shall make available at the County's place of business, on request, its complete design file including all computations related to the project.

The Consultant may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Director. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Consultant are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Consultant hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Consultant agrees to assist the County, if required, in perfecting these rights. The Consultant shall provide the County with at least one copy of each deliverable.

The Consultant agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Consultant agrees to enable the County's continued use of the deliverable, or to

modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

**ELEVENTH:** The Consultant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Consultant shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subconsultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Consultant that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

**TWELFTH:** The Consultant and the County agree that the Consultant and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**THIRTEENTH:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

**FOURTEENTH:** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or

overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

Division of Real Estate and Asset Management  
95 Franklin Street, Suite 1400  
Buffalo, New York 14202

with a copy to:

County Attorney  
95 Franklin Street, Suite 1634  
Buffalo, New York 14202

To the Consultant:

**FIFTEENTH:** This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

**SIXTEENTH:** Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance

upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

**SEVENTEENTH:** The Consultant recognizes that this Agreement does not grant the Consultant the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other consultants on an “as needed” basis.

**EIGHTEENTH:** The Consultant hereby represents that, if operating under an assumed name, it has filed the necessary certificate pursuant to New York State General Business Law Section 130. The Consultant further represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Consultant) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

**NINETEENTH:** Pursuant to Federal Executive Order 12549, and as prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Consultant hereby agrees to complete the Debarment and Suspension Certificate attached hereto as Schedule “C” and which is made a part hereof.

**TWENTIETH:** The Consultant shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Consultant shall also use all reasonable means to avoid any appearance of impropriety.

**TWENTY-FIRST:** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

**TWENTY-SECOND:** This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

**IN WITNESS WHEREOF,** The County of Erie and the Consultant have caused this Agreement to be executed.

**THE COUNTY OF ERIE** .

By: \_\_\_\_\_  
Name: Al Hammonds  
Title: Deputy County Executive

By: \_\_\_\_\_  
Name:  
Title:

Approved as to content

Approved as to form

By: \_\_\_\_\_  
Name: Michelle Mazzone  
Title: Director of Real Estate

\_\_\_\_\_  
Assistant County Attorney  
Doc. No. \_\_\_\_\_  
Date \_\_\_\_\_



**SCHEDULE "B"**

**STANDARD INSURANCE PROVISIONS**

I. Insurance shall be procured by the Consultant before commencing work, not later than fourteen (14) days after the signing of the Agreement, and maintained without interruption for the duration of the Agreement, in the kinds and minimum amounts specified below.

II. CERTIFICATES OF INSURANCE:

- A. Shall be made to the County of Erie, c/o Department of Law, 95 Franklin Street, Suite 1634, Buffalo, New York, 14202.
- B. Coverage must comply with all specifications listed below.
- C. Executed by an Insurance Company and/or Broker, which is licensed by the Insurance Department of the State of New York. If executed by a Broker, notarized copy of the authorization to bind or certify coverage must be attached.

III. The "ACORD" form certificate may be used providing the following additional conditions are added to the form, verbatim:

- A. "Prior to non-renewal or cancellation of these policies, at least forty-five days (45) advance written notice shall be given to the Department of Public Works, Office of the Director, before such change shall be effective."

IV. Forward the completed certificate to: County of Erie, Department of Public Works, Office of the Director, Edward A. Rath, County Office Building, 95 Franklin Street, Room 1408, Buffalo, New York, 14202.

V. Minimum coverage with limits are as follows:

- |                                    |                  |
|------------------------------------|------------------|
| A. Comprehensive General Liability | \$500,000. CSL   |
| Premises & Operations              |                  |
| Products & Completed Operations    |                  |
| Independent Contractor             |                  |
| Contractual                        |                  |
| Personal Injury                    |                  |
| B. Automobile Liability            | \$1,000,000. CSL |
| Owner Hired                        |                  |
| Non-Owned                          |                  |
| C. Excess Umbrella Liability       | \$1,000,000. CSL |

**SCHEDULE "B"**

**STANDARD INSURANCE PROVISIONS**

- |  |              |
|--|--------------|
| D. Worker's Compensation & Employers Liability   | Statutory.   |
| E. Disability Benefits   | Statutory.   |
| F. Professional Liability  | \$1,000,000. |
| G. County of Erie must be named Additional Insured on:<br>General Liability, Automobile Liability, and Excess Liability. |              |

