ERIE COUNTY

REQUEST FOR PROPOSAL (RFP)
TO PROVIDE ECSD Nos. 1-6 & 8
CONSTRUCTION INSPECTION SERVICES

File 0.3.2. Construction Inspection Services

September 2013

DEPARTMENT OF ENVIRONMENT & PLANNING
DIVISION OF SEWERAGE MANAGEMENT
EDWARD A. RATH COUNTY OFFICE BUILDING
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202

COUNTY OF ERIE, NEW YORK

REQUEST FOR PROPOSALS ("RFP")

File 0.3.2. Construction Inspection Services

TO PROVIDE Erie County Sewer District Nos. (ECSD Nos.) 1-6 & 8 Construction Inspection Services

I. INTRODUCTION

The County of Erie, New York (the "County") is currently seeking Proposal Statements from qualified consulting firms interested in providing construction inspection services. Proposers interested in providing such service are invited to respond to this request.

It is the County's intent to select the Proposer that provides the best solution for the County's needs.

The County reserves the right to amend this RFP. The County reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive informalities, if such action is deemed to be in the best interest of the County. The County reserves the right to request additional information from any proposer. The County reserves the right to award negotiated contracts to one or more proposers.

This RFP is not intended and shall not be construed to commit the County to pay any costs incurred in connection with any proposal or to procure or contract with any firm.

The County will only contract with firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, citizenship status or any other status protected by New York State and Federal laws.

II. PROPOSAL PROCEDURES

A. ANTICIPATED SCHEDULE OF PROPOSAL

The following schedule is for informational purposes only. The County reserves the right to amend this schedule at any time.

Issue RFP:	September 12, 2013
Proposals Due:	October 3, 2013
Contract Signed:	Following all necessary County approvals

B. GENERAL REQUIREMENTS

1. Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate and reliable presentation.

2. One (1) original and six (6) copies shall be submitted. Proposals MUST include a signed Proposer Certification (Exhibit "A"). Proposals without a signed certification will be rejected.

3. Submission of the proposals shall be directed to:

Joseph Fiegl, P.E., Deputy Commissioner
Department of Environment & Planning
Division of Sewerage Management
95 Franklin Street – Room 1034
Buffalo, New York 14202

All proposals must be delivered to the above office on or before October 3, 2013 at 4:00 p.m. Proposals received after the above date and time will not be considered. The County is under no obligation to return proposals.

4. Requests for clarification of this RFP must be written and submitted to Matt Salah no later than the end of business day on September 19, 2013. Formal written responses will be distributed by the County on or before September 23, 2013. ANYONE WISHING FOR REPONSES TO REQUESTS FOR CLARIFICATION MUST SUBMIT SAID REQUEST TO MATT SALAH BY THE ABOVE MENTIONED DATE. NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.

5. Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.

6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

7. **All proposers submitting proposals must include the hourly rate for all proposed inspectors for the years 2014, 2015 and 2016.**

III. SCOPE OF PROFESSIONAL SERVICES REQUIRED

See Exhibit "D" (Schedule "A" of the Agreement).

IV. STATEMENT OF RIGHTS

UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this request for proposals, the proposer agrees to and understands:

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Erie and is not a bid under Section 103 of the New York State General Municipal Law;

- submission of a proposal, attachments, and additional information shall not entitle the proposer to enter into an agreement with the County of Erie for the required services;

- by submitting a proposal, the proposer agrees and understands that the County of Erie is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;

- that any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Erie, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by the Erie County Legislature, the Erie County Fiscal Stability Authority (if required), and the Office of the Erie County Attorney.

In addition to the foregoing, by submitting a proposal, the proposer also understands and agrees that the County of Erie reserves the right, and may at its sole discretion exercise, the following rights and options with respect to this Request for Proposals:

- To reject any or all proposals;
- To issue amendments to this RFP;
- To issue additional solicitations for proposals
- To waive any irregularities in proposals received after notification to proposers affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each proposer;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;
- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor;

- To interview the proposer(s);

- To request or obtain additional information the County deems necessary to determine the ability of the proposer;

- To modify dates;

- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the County for the expenses of preparation. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;

- While this is a RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;

- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

EVALUATION

- Evaluation criteria are not necessarily listed in order of importance. The County reserves the right to weigh its evaluation criteria in any manner it deems appropriate.

The following criteria, not necessarily listed in order of importance, will be used to review the proposals. The County reserves the right to weigh its evaluation criteria in any manner it deems appropriate:

- Proposer's demonstrated capability to provide the services.

- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing services.

- Proposer's experience to perform the proposed services.

- Proposer's financial ability to provide the services.

- Evaluation of the proposer's fee submission. It should be noted that while price is not the only consideration, it is an important one.

- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.

- An evaluation of the proposer's projected approach and plans to meet the requirements of this RFP.

- The proposer's presentation at and the overall results of any interview conducted with the proposer.

- Proposers MUST sign the Proposal Certification attached hereto as Exhibit "A". Unsigned proposals will be rejected.

- Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.

- No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

Proposals will be evaluated, generally on your firm's response to the following questions in addition to the general prequalification information submitted previously or herewith.

A. **Qualifications**

1) State clearly whether your main office/parent firm is currently licensed as an individual, partnership or corporation to do professional engineering in New York State. (If not licensed in New York State, please advise how you propose to execute an agreement as a licensed New York State firm.)

   Indicate if this would be a joint venture proposal with another professional organization. The reasons for a joint venture should be presented.

2) State any potential conflicts of interest. Include any employment or other relationship your firm has with regulating agencies, or any other entity which may be perceived as a conflict of interest. Explain why any such potential conflicts of interest would not impact this project.

3) State the number of Employees in the Firm - If a branch office will perform work, indicate the size of the branch office. Also indicate, in relation to this project, how size of firm would relate to performance.

4) State the location (municipality) of your firm.

5) Indicate the percent of minority personnel both at the firm level and on the project team. Females, if identified as minority, must be listed as technical or clerical.

6) List any current or anticipated obligations which may affect the project or use of the identified personnel proposed for this project.

B. **Expertise/Experience**

1) Present your special expertise for the project and how your firm's qualifications would best serve the County on this Project. (Resumes should be attached at the end of the proposal.)

2) Indicate what professional or technical subcontractors you would utilize for the project. Indicate where the subcontractors are located and what services they would provide. Recite any experience or familiarity of the subcontractors which is pertinent to the specific requirements of this project and the basis of your confidence in their ability to perform. If your firm possesses specialty capabilities which allows work normally subcontracted to be performed in-house, present this information here.

3) Recite a list of no more than five similar projects within the last five years giving the size of the project in dollars, the client, including the name and phone number of the person to whom you were accountable, whether DEC and/or EPA were involved and if the project was constructed or otherwise completed.

4) Recite current and past work experience within the last five year if any, your firm has had with the County outside of the Department of Environment and Planning. Identify the other Department(s) for which the services were provided and the project title.

5) Disclosure of any Past County Employees - Indicate any personnel (either as an employee or thru a contractual relationship) who, within the last year prior to the date of this proposal, had been employed by the County of Erie. Also, indicate that person's County work title and the Department for which he/she worked. If any, an explanation of the significance of the employee on the project should be presented.

C. **Project**

1) Provide a written evaluation of the "Scope of Services" which shall include a description of your in-house construction inspection procedures and the responsibility of your construction inspectors to those procedures.

2) Include with your proposal the resumes of your inspectors that are proposed to be utilized for this project.

3) Indicate which MBE/WBE subcontractors you would propose to use on this project and why. Show what percentage of work is proposed to be assigned to MBE and WBE subcontractors.

D. **Rate**

1) Indicate the hourly base rate for each inspector. Indicate the firm's total composite indirect cost rate(s) (overhead) which would be added to salaries in your billings for the project. The stated overhead rate(s) should take into consideration the project's duration. The rate(s) will be considered fixed for the duration of the project. The overhead rate is to be based either directly on actual costs (hours rates) or if salary cost is used, indicate the percentage applied to direct salaries to arrive at the salary cost. Indicate your firm's indirect cost rate which would be applied to overtime hours. If the same, indicate as such. List the overhead rates to be used for office and field personnel separately.

2) Include cost, i.e., Staffing table by title and salary information.

E. **Proposer Certification:** Proposals without of signed Proposer Certification will be rejected.

PRICED PROPOSAL – NOT APPLICABLE

CONTRACT

After selection of the successful proposer, a formal written contract (see Exhibit "D") will be prepared by the County of Erie and will not be binding until signed by both parties and, if necessary, approved by the Erie County Legislature, the Erie County Fiscal Stability Authority and the Office of the County Attorney. NO RIGHTS SHALL ACCRUE TO ANY PROPOSER BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE COUNTY FOR SUBMISSION TO THE ERIE COUNTY LEGISLATURE AND/OR THE ERIE COUNTY FISCAL STABILITY AUTHORITY FOR APPROVAL. THE APPROVAL OF SAID LEGISLATURE AND/OR AUTHORITY MAY BE NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.

INDEMNIFICATION AND INSURANCE

The proposer accepts and agrees that language in substantially the following form will be included in the contract between the proposer and the County:

> "In addition to, and not in limitation of the insurance requirements contained herein the Consultant agrees:
>
> The Consultant agrees: that except for the amount, if any, of damage contributed to, caused by, 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 the Consultant beyond such as may legally exist without regard to this provision.

Upon execution of any contract between the proposer and the County, the proposer will be required to provide proof of the insurance coverage described in Schedule "C" of the attached Agreement (Exhibit "D").

Insurance coverage in amount and form shall not be deemed acceptable until approved by the County Attorney.

INTELLECTUAL PROPERTY RIGHTS

The proposer accepts and agrees that language in substantially the following form will be included in the contract between the proposer and the County:

> 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 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 will be returned.
>
> All records compiled by the Consultant in completing the work described in this Agreement, including but not limited to written reports, source codes, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Consultant may retain copies of such records for its own use.

NON-COLLUSION

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

CONFLICT OF INTEREST

All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Erie. Further, all proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent or more in the firm or any of its subsidiaries or affiliates.

There shall be no conflicts in existence during the term of any contract with the County. The existence of a conflict shall be grounds for termination of a contract.

COMPLIANCE WITH LAWS

By submitting a proposal, the proposer represents and warrants that it is familiar with all federal, state and local laws and regulations and will conform to said laws and regulations. The preparation of proposals, selection of proposers and the award of contracts are subject to provisions of all Federal, State and County laws, rules and regulations.

CONTENTS OF PROPOSAL

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84 et seq., mandates public access to government records. However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the proposer's competitive position or constitute a trade secret. Proposers who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall:

a) insert the following notice in the front of its proposal:

"NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the proposer's competitive position.

The proposer requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that the County considers proper under the law. If the County enters into an agreement with this proposer, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law."

and

b) clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page **" * THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW."**

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal which is accepted by the County, except portions "Protected from Disclosure", may become part of any agreement resulting from this RFP.

EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect (i.e. how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 days from the proposal date.

EXHIBIT "A"

PROPOSER CERTIFICATION

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Erie and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Erie for the required services. The undersigned agrees and understands that the County of Erie is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Erie, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Erie and, if necessary, approved by the Erie County Legislature, Erie County Fiscal Stability Authority and/or the Office of the County Attorney.

It is understood and agreed that the County of Erie reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Erie reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Erie is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

_____
Proposer Name

By: _____
Name and Title

EXHIBIT "B"
QUALIFICATIONS REVIEW RATING SHEET

DIVISION OF SEWERAGE MANAGEMENT
PROPOSAL REVIEW RATING SHEET
ERIE COUNTY SEWER DISTRICT NOS. 1-6 & 8
CONSTRUCTION INSPECTION SERVICES

ITEMS		FIRMS				
A. Qualifications 1. Licensed Firm	NNR					
2. Conflict of Interest	5					
3. Size of Firm vs. Project Size	5					
4. Location of Team(s)	10					
5. Percent Minority within Firm/ Project Team	5					
6. Current Obligations (Effect on Project Described)	10					
B. Expertise/Experience 1. Special Expertise – Personnel	15					
2. Professional/Technical Subcontractors In-House	10					
3. Similar Projects	30					
4. Experience with other County Departments	NNR					
5. Past County Employees	NNR					
C. Project 1. Evaluation of Scope of Services	10					
2. Evaluation of Resumes	30					
3. MBE/WBE Subcontractor	30					
D. Rate 1. Overhead Rate(s)	15					
2. Hourly Rate	25					
E. Proposer Certification	**NNR**					
TOTAL SCORE	**200**					

NNR – No Numerical Rating ; however, response is required from Proposer

EXHIBIT "C"

MANHOUR SUMMARY SHEET - NOT APPLICABLE

EXHIBIT "D"

AGREEMENT

AGREEMENT

THIS AGREEMENT made the _____ day of _____ 20__ 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

> **[Insert legal name of the CONSULTANT,]**, a **[insert state, e.g., New York State, and insert the legal status, e.g. corporation, partnership or limited liability company, if applicable]** having an office and principal place of business at **[insert address]**
> (hereafter the "Consultant")

W I T N E S S E T H :

FIRST: The Consultant shall provide construction inspection as detailed in each work order issued and, 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 industry standards and trade practices.

The Consultant expressly agrees that the provisions set forth in the following schedules:

Schedule A	–	Scope/Specifications
Schedule B	–	Standard Insurance Certificate
Schedule C	–	Time of Completion
Schedule D	–	Detailed Description of Compensation
Schedule E	–	Cost Summary Form
Schedule F	–	County of Erie Local Law No. 9
Schedule G	–	Certification Regarding Debarment and Suspension
Schedule H	–	Certification Regarding Drug-Free Workplace
Schedule I	–	Certification Regarding Lobbying

which are attached hereto shall be incorporated into this Agreement as if fully set forth herein.

SECOND: The term of this Agreement shall commence on **January 1, 2014** and shall terminate on **December 31, 2016**, unless terminated earlier pursuant to the provisions of this Agreement.

The Consultant shall report to the County on its progress toward completing the Work, as the Commissioner may request, and shall immediately inform the Commissioner 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.

The Consultant shall complete those specific Work items identified in Schedule "A" by the interim deadlines set forth therein, unless an interim deadline is extended by the Commissioner in writing, subject to any necessary legal approval of such amendment. Timely completion of the Work is of the essence.

The Consultant shall supply sufficient and adequate personnel to assure completion of the Work within the time agreed.

THIRD: For the Work to be performed pursuant to Paragraph "FIRST," the Consultant shall be paid an amount not-to-exceed $200,000 using the rates set forth in Schedule "D", which is attached hereto and made a part hereof. 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 County. 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 County.

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 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 "D". 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 Commissioner, 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 Commissioner 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 part hereof.

The Consultant agrees: that except for the amount, if any, of damage contributed to, caused by, 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 the 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 or any other status protected by New York State or Federal laws 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. 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 Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

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:

Joseph L. Fiegl, P.E., Deputy Commissioner
Environment & Planning, Division of Sewerage Management
95 Franklin Street, Room 1034
Buffalo, New York 14202

with a copy to:

County Attorney
95 Franklin Street, Room 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 "G" 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: Mark Poloncarz/Richard Tobe
Title: County Executive/Deputy County Executive
Date: _____

CONSULTANT

By: _____
Name:
Title:
Date: _____

Witness: _____

Approved as to content

By: _____
Name: Maria R. Whyte
Title: Commissioner

Approved as to form

_____
Name: Kristen Walder
Title: Assistant County Attorney
Doc. No. _____
Date: _____

Recommeded by:

By: _____
Name: Joseph L. Fiegl, P.E.
Title: Deputy Commissioner
Date: _____

Authorized by the Erie County Legislature

On: _____
Item: _____

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SCHEDULE "A"

SCOPE / SPECIFICATIONS

General

For the purposes of this Agreement, the words or abbreviations listed shall have the definitions following; other terms not specifically defined shall be as commonly defined in the profession.

DEP	-	Erie County Department of Environment and Planning
DEC/NYSDEC	-	New York State Department of Environmental Conservation
EPA	-	United States Environmental Protection Agency

The Erie County Division of Sewerage Management has completed plans and specifications for various repairs or improvements in the Erie County Sewer Districts. The County will provide General Services During Construction. The Engineer will provide the on-site construction inspectors who will under the direction of the County perform the following as per the Erie County Inspection Manual:

1. Monitor the daily performance of the contractor to insure compliance with the plans, specifications and applicable permits. Inspection will involve all aspects, directly or indirectly associated with the project. It shall include, but not be limited to, the installation of the proposed sanitary sewer/appurtenances and repair, if need be, of storm sewers, roads, lawns, driveways, waterlines and other existing utilities.

2. Inspect material/equipment deliveries to the job site to insure compliance with the approved shop drawings.

3. Perform daily grade check on the installed improvements to verify line and grade.

4. Regulate the contractor's method of construction to insure his construction activities are conducted within the dedicated right-of-ways and/or easement areas as shown on the contract plans.

5. Following the Resident Engineer's direction, prepare a daily inspection report(s) which will describe, in detail, the contractor's performance for the particular day.

6. Per the Resident Engineer's direction maintain a detailed daily journal of all on-site activities and visitors.

7. Assist the Resident Engineer in the preparation of monthly pay estimates.

8. Monitor the contractor's clean-up activities pursuant to the contract documents.

9. Monitor the contractor's operation for compliance in the Maintenance and Protection of Traffic Section of the specification and governing permit conditions.

10. Assist the Resident Engineer in the maintenance of the field record plans to show the actual manner of construction. If a grade/alignment change is approved during construction, the inspector will record said change on the field office's record plan set. The inspector, also, shall record all changes to other existing utilities.

11. As directed by the Resident Engineer, will attend on-site progress meetings.

12. As directed, the inspector will coordinate and witness the final testing of the in-place improvements as required by the contract specifications.

13. Prepare punch lists and monitor the contractor's activities to effectively resolve the items so noted.

SCHEDULE "B"
STANDARD INSURANCE PROVISIONS

County of Erie Standard Insurance Certificate

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 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).

PRODUCER	CONTACT NAME	
	PHONE (A/C No. Ext)	FAX A/C No:
	EMAIL ADDRESS	
	PRODUCER CUSTOMER ID #:	
	INSURER(S) AFFORDING COVERAGE	**NAIC #**
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS COMP/OP AGG	$
	☐ POLICY ☐ PRO-JECT ☐ LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident)	$
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	$
	☐ HIRED AUTOS							$
	☐ NON-OWNED AUTOS							$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DEDUCTIBLE							$
	☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ WC STATUTORY LIMITS- ☐ OTHER-	$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? ☐ **(Mandatory in NH)**	N/A					E.L. EACH ACCIDENT	$
	If yes describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L.DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	**CANCELLATION**
County of Erie 95 Franklin St Buffalo NY, 14202	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

X. FOR COUNTY USE ONLY:

Name of County Dept. Requesting Certificate _____

Purchase Order or Contact Number _____

Vendor Insurance Classification _____

INSTRUCTIONS FOR COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE

I. Insurance shall be procured and certificates delivered before commencement of work or delivery of merchandise or equipment.

II. CERTIFICATES OF INSURANCE

A. Shall be made to the "County of Erie, 95 Franklin St, Buffalo NY, 14202"

B. Coverage must comply with all specifications of the contract.

C. Must be executed by an insurance company, agency or broker, which is licensed by the Insurance Department of the State of New York. If executed by a broker, notarized copy of authorization to bind or certify coverage must be attached.

III. Forward the completed certificate to: County of Erie, (Department or Division) responsible for entering into the agreement for construction, purchase, lease or service.

IV. Minimum coverage with limits are as follows:

Vendor Classification	A Construction and Maintenance	B Purchase or Lease of Merchandise or Equipment	C Professional Services	D Property Leased To Others Or Use Of Facilities Or Grounds	E Concession-aires Services	F Livery Services	G All Purposes Public Entity Contracts
Commercial Gen. Liab.	$1,000,000 per occ.	$1,000,000 CSL	$1,000,000 CSL	$1,000,000	$1,000,000 CSL	$1,000,000	$1,000,000 CSL
General Aggregate	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Products Completed Operations Liability	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Blanket Broad Form Contractual Liability	INCLUDE						
Contractual Liability		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Broad Form P.D.	INCLUDE						
X.C.U. (explosion, collapse, Underground)	INCLUDE						
Liquor Law				INCLUDE	INCLUDE		
Auto Liab.	$1,000,000 CSL		$1,000,000 CSL	$1,000,000 CSL	$1,000,000 CSL	$1,000,000 CSL	$1,000,000 CSL
Owned	INCLUDE		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Hired	INCLUDE		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Non-Owned	INCLUDE		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Excess/Umbrella Liab.	$5,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$5,000,000	$1,000,000
Worker's Compensation	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY
& Employer's Liability							
Disability Benefits	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY
Professional Liability			$5,000,000				
Erie County, To Be Named Add'l Insd.	Gen. Liab., Auto Liab., & Excess	Broad Form Vendors May Be Required	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess

V. Construction contracts require excess Umbrella Liability limits of $5,000,000.

VI Coverage must be provided on a primary-non contributory bases.

VII. Designated Construction Project General Aggregate Limit Per Project Endorsement CG 25 03 is required.

VIII. In the event the concessionaire is required to have a N.Y.S. license to dispense alcoholic beverages an endorsement for liquor liability is required.

IX. Waiver of Subrogation: Required on all lines unless noted

X Transportation of people in buses, vans or station wagons requires $5,000,000 excess liability.

XI. Workers Compensation: State Workers' Compensation / Disability Benefits Law
Use Applicable Certificates Below:

Workers Compensation Forms

CE-200	Exemption
C105.2	Commercial Insurer
SI-12	Self Insurer
GSI-105.2	Group Self Insured
U-26.3	New York State Insurance Fund

DBL (Disability Benefits Law) Forms

CE-200	Exemption
DB-120.1	Insurers
DB-155	Self Insured

XII. The "ACORD" form certificate may be used in place of the County of Erie Standard Insurance Certificate, provided that all of the above referenced requirements are incorporated into the "ACORD" form certificate.

SCHEDULE "C"

TIME OF COMPLETION

Time Schedule

The Contractor's approved construction schedule will determine the schedule for completion. It is understood the Engineer's cost proposal for each work order considers all construction inspection services being completed during calendar years 2014, 2015 and 2016.

SCHEDULE "D"

DETAILED DESCRIPTION OF COMPENSATION

The Engineer shall be compensated for completion of the services as described in Schedules "A" of the Agreement on a Hourly Rate Basis as hereinafter provided.

I. Total Compensation Breakdown

Payment for services shall be as follows:

		Total Cost	Cost Ceiling	Profit (10%)
(A)	Resident Engineering	$200,000.00	$181,818	$18,182

For each work order issued, the inspector's hourly rate shall be calculated as direct hourly rate multiplied by an overhead percentage and a percentage for profit.

II. Cost Computation Method

The methods of Computing Cost are specified in section II (1) thru II (8) herein and in the attached Cost Summary Format for Engineering Agreements.

(1) Direct Labor Cost

Direct Labor cost shall be the actual wages paid to technical employees for the time actually devoted to the work on the project. Technical employees shall include the following categories:

Officers*
Engineers
Inspectors
Technicians

***NOTE:**

Officers salaries may be billed and paid as a direct expense for the time such officer/administrative staff is engaged in productive technical services on the project under this Agreement. An officer is defined as a Vice-President or higher ranked officer, owner, partner or any other person empowered to sign contracts on behalf of the Engineer.

The following categories of employees shall be included in indirect costs (overhead):

Officers
(engaged in administrative or supervisor activities)

(2) Direct/Indirect Overhead Cost

Overhead Costs shall be computed as a percentage rate of the actual wages paid to employees associated with the project. This overhead cost is to cover employee benefits such as holiday pay, vacation, sick leave, unemployment insurance, excise and payroll taxes, social security, employee medical and life insurance and retirement benefits, all as normally provided to the Engineer's employees. Also, the composite overhead rate shall consider all "indirect" expenses associated with the operation of the engineering office such as rent, utilities, office equipment, computers (Hardware/Software), telephone equipment and usage fees, printing, internet and web hosting fees, CAD Workstations, xerox copying, supplies, executive salaries, accounting, legal, clerical support salaries, etc. The following composite overhead rates have been established for this contract:

a. For the Engineer's employees whose basic work assignments are in the offices of the Engineer, the Engineer's overhead shall be computed at a rate of _____ percent of the actual wages paid to the employees associated with the project.

b. For the Engineer's employees whose basic work assignments are not in the offices of the Engineer, such as at the County's offices or at the construction field offices supplied by a Contractor (resident engineering services), the Engineer's overhead shall be computed at a rate of _____ percent of the actual wages paid to employees associated with the project.

c. For the Engineer's employees on overtime (defined as work time exceeding 40 hours per week), if prior approved in writing by the County, the overhead costs shall be computed at a rate of:

Office Personnel _____

Field Personnel _____

of the straight time wages paid to employees associated with the project. Overhead will not be applied to premium wages.

(3) Overhead Rates

The above stated overhead rates are fixed for the period of time indicated on Schedule "C" and further defined below. Thereafter, the rates are subject to adjustment upon audit, except that the maximum increase in overhead rate shall be fifteen percent (15%) of the rate(s) listed above.

The overhead rate(s) contained in the attached cost summaries are for the period from January 1, 2011 to December 31, 2013.

(4) Other Direct Costs

Direct identifiable Project related costs, subject to prior approval by the County shall be reimbursed as follows:

Travel, Auto	at current Erie County rate
Travel, Other	at cost

(5) Travel

During the construction phase of the project, the Project Engineer and/or Construction Inspector will be required to report directly to the assigned construction site, field trailer or District Office. Mileage from the Engineer's Office and/or the inspector's home to the work site/field office, will not be a billable item under the terms of this agreement. Also, mileage associated with the personal travel and mileage to and from lunch is NOT billable under this agreement.

(6) Subcontracts

The following County approved subcontracts to this Agreement will be paid by the Engineer and billed to the County at cost plus mark-up as listed in the attached "Cost Summary Format for Engineering Subagreements":

Subcontractor Name	Cost w/o Mark-Up
_____	$ _____
_____	$ _____
_____	$ _____

The use of substitute or additional subcontractors are subject to prior written approval by the County.

(7) Other Costs

Other direct costs (if any) not heretofore identified are specifically enumerated hereinafter.

(8) Profit

(a) Profit for Resident Engineering

For these specific phases of the Agreement, profit shall be included as a percentage of direct and indirect costs. The Engineer's allowable profit should be an amount equal to the approved percentage as applied to the technical services provided by the Engineer and approved by the County. The approved percentage for this project is 10%. The Engineer understands the amount of profit listed for these phases is not to be construed as a fixed fee.

(b) Special Conditions for Profit

The amount of profit identified in the Agreement cannot be increased unless there is a formal amendment/change order increasing the scope of work.

Profit is computed on straight time wages and no profit is paid on the overtime premium portion of wages.

Profit on other Direct Costs, such as subcontractors, other than travel is limited to 5%. Profit on travel is zero.

(c) Total

The sum of direct labor, indirect/direct overhead, other direct costs, subcontracts, other costs (if any) and profit shall not exceed the total price entered in the Agreement. The total price of this agreement cannot be exceeded unless there is a formal amendment/change order to the agreement.

(9) Lump Sum Method

Whenever a Lump Sum method of compensation is stipulated in Schedule "D", of the Agreement, the Engineer shall submit monthly invoices for services rendered. The invoices shall be based upon the Engineer's estimate of the services actually completed at the time of the billing, subject to the approval of the County.

(10) Per Diem Rate Method

Whenever the Per Diem Rate method of compensation is stipulated in Schedule "D", of the Agreement, the Engineer shall submit monthly invoices for the services rendered. The invoices shall be based upon the actual accrued engineering manhours at the time of billing, subject to the approval of the County.

In the case of the on-site Resident Engineer and Project Inspectors, the Engineer will be compensated at the per diem rate of _____ for the Resident Engineer, and _____ for the Project Inspectors. To establish the payroll record, the Engineer shall maintain a daily sign in/out attendance sheet in the Construction Field Office. Further, the Resident Engineer and Project Inspectors overtime hours will be at the above noted per diem rates. No premium rates will be considered.

The Engineer's approved miscellaneous expenses such as mileage or specialty subcontractors will be handled in a fashion as described in Section II of Schedule "D".

III. Project Costs/Total Compensation

The Engineer's reimbursement under this Agreement shall be subdivided by contract phase as listed in Section I of this Schedule "D" and as listed on the attached "Cost Summary Format for Engineering Agreements" and attachments.

Total Compensation

1. The total amount of compensation to be paid by the Owner, and which the Engineer agrees to accept as full compensation for all services under this Agreement is _____ . The above compensation shall be subdivided as indicated below.

2. It is agreed that the total compensation for services rendered for Phases I and II, as detailed in Schedule A, shall be at a cost plus fixed fee. The total compensation for services rendered for these phases of the work shall not exceed $_____ which is made up of a cost ceiling in the amount of _____, a fixed fee (profit) in the amount of _____ and a contingency amount of _____. The contingency may only be applied to services rendered during Phases I and II.

3. It is agreed that the total compensation for services rendered for Phase IIIA, as detailed in Schedule A, shall be at cost plus a fixed fee. The total compensation for services rendered for this Phase of the work shall not exceed $_____ which is made up of a cost ceiling in the amount of $ _____ and a fixed fee (profit) in the amount of $_____.

4. It is agreed that the total compensation for services rendered for Phase IIIB as detailed in Schedule A, shall be on an hourly rate basis computed to include direct labor cost, direct/indirect overhead cost and profit. Other direct costs, subcontractors costs and travel costs may be applied to calculate total compensation for this phase but only to the extent that prior written approval has been provided by the County. The hourly rate shall be developed for each employee that provides service for this phase based on actual direct labor cost, direct/indirect overhead cost and profit. The allowable direct/indirect

overhead rate and percent profit shall be as defined in Schedule D. The total compensation for services rendered for this phase of the work shall not exceed $_____.

5. The total compensation for any Phase of the project cannot be increased without a formal amendment/change order to the contract. The formula and rates which will be utilized in billing is detailed in Schedule C attached hereto and made part hereof.

***NOTE:** The above listed costs are assuming the Notice to Proceed to the Engineer is issued by January 1, 2014.

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SCHEDULE "E" COST SUMMARY FORM

COST SUMMARY FORMAT FOR ENGINEERING SUBAGREEMENTS	
PART I - GENERAL	
1. OWNER	2. PROJECT NO.
3. NAME OF ENGINEER	4. DATE OF PROPOSAL
5. ADDRESS OF ENGINEER (Include Zip Code)	6. TYPE OF SERVICE TO BE FURNISHED

PART II - COST SUMMARY				
7. DIRECT LABOR (specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
DIRECT LABOR TOTAL				
8. INDIRECT COSTS (specify indirect cost pools)	RATE	x BASE	ESTIMATED COST	
INDIRECT COST TOTAL				
9. OTHER DIRECT COSTS			ESTIMATED COST	
a. TRAVEL				
TRAVEL SUBTOTAL				
b. EQUIPMENT, MATERIALS, SUPPLIES (specify categories)	QTY.	COST	ESTIMATED COST	
EQUIPMENT SUBTOTAL				
c. SUBCONTRACTS			ESTIMATED COST	
SUBCONTRACTS SUBTOTAL				
d. OTHER (specify categories)			ESTIMATED COST	
OTHER SUBTOTAL				
e. OTHER DIRECT COSTS TOTAL				
10. TOTAL ESTIMATED COST				
11. PROFIT				
12. TOTAL PRICE				

PART III - PRICE SUMMARY

13. COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES (Indicates basis for price comparison)	MARKET PRICE(S)	PROPOSED PRICE

PART IV - CERTIFICATIONS

14. ENGINEER

14a. HAS A FEDERAL, AGENCY OR A FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL GRANT OR CONTRACT WITHIN THE PAST TWELVE MONTHS?

☐ YES ☐ NO (If YES, give name address and telephone number of reviewing office)

14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

14c. This proposal is submitted for use in connection with and in response to: (1) _____. This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current and accurate as of (2) _____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understanding that the subagreement price may be subject to renegotiation and/or recoupment where the above costs and pricing data have been determined, as a result of audit, not to have been complete, current and accurate as of the above date.

(3) _____ (4)

DATE OF EXECUTION SIGNATURE OF PROPOSER

TITLE OF PROPOSER

15. OWNER

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appear acceptable for subagreement award.

DATE OF EXECUTION SIGNATURE OF REVIEWER

TITLE OF REVIEWER

SCHEDULE "F"
COUNTY OF ERIE LOCAL LAW NO. 9

RECEIVED
ERIE COUNTY LEGISLATURE

COUNTY OF ERIE
LOCAL LAW NO. 9 2005 2005 JUL -6 P 1:10
LOCAL LAW INTRO NO. 8 2005
PRINT NO. 2

A LOCAL LAW in relation to the utilization by the County of Erie of minority-owned businesses and woman-owned businesses for professional, technical or other consultant services.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

Section 1. Short Title. This local law shall be known as the Erie County MBE/WBE Utilization Commitment Act.

Section 2. Legislative Intent. As a direct result of Local Law #1,of 1987 the County of Erie has significantly increased its utilization of businesses owned by minority group members and women, and especially locally owned and operated businesses, on construction contracts and has thereby significantly enhanced the opportunities and entrepreneurial skills of minority group members and women in Erie County. The growth and development of such businesses have a substantial positive impact on the economic health of the County. The County's utilization of minority and women-owned professional, technical and other consultant services, such as in the areas of law, finance, information technology, accounting and engineering, outside of construction projects, has not achieved the same level of success, notwithstanding the increased growth of minority and women owned business and firms in these areas and professions.

Section 3. Definitions: For the purposes of this local law, the following terms shall have the following meanings:

A. Minority-Owned Business Enterprise (MBE) shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by minority group members or, in the case of a publicly-owned business, at least fifty-one percent (51%) of all stock is owned by minority group members, with such ownership certified by the Erie County Office of Equal Employment Opportunity and who is doing business and maintains an office in the County of Erie. For the purposes of this paragraph, minority group members are citizens of the United States who are African American, Hispanic, Asian-American and Native American (American-Indian).

B. Women-Owned Business Enterprise (WBE) shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by a woman or women or, in the case of publicly-owned business, at least fifty-one percent (51%) of all stock is owned by a woman or women, with such ownership certified by the Erie County Office of Equal Employment Opportunity and who is doing business and maintains an office in the County of Erie.

C. Department shall mean every County Department, Agency or Administrative Unit, , including but not limited to the County Executive, the Legislature, Sheriff's Department, Comptroller's Office, County Clerk's Office and District Attorney's Office.

Section 4. Minority And Women-Owned Business Enterprise Utilization Commitment

(A) Every Department shall annually prepare and implement a written plan for the utilization of bona-fide minority and women owned businesses on County contracts let by or on behalf of such Department for professional, technical, or other consultant services. The plan must include a goal of awarding to MBE's, directly or through subcontracts, in each fiscal year, at least fifteen percent (15%) of the total value of all contracts intended to be let by the Department and a goal of awarding to WBE's at least five percent (5%) of the total value of all contracts intended to be let by the Department. The plan shall be submitted to the Erie County Division of Equal Employment Opportunity for review and approval by September 15th, preceding the calendar year covered by such plan.

(B) If the Department determines that the goals set forth in Section 4 (A) cannot be met, the Department's annual plan must include a justification why the policy goals are unobtainable. The written justification must include the Department's reasonable good faith efforts to meet the utilization goals and which may include the utilization of minority and women professionals in non-minority and non-women owned businesses.

(C) The County Executive must submit a summary of each Department's plan pursuant to this local law to the Legislature simultaneously with the annual proposed Budget. The plans are not to be considered as a part of the proposed budget.

Section 5. Reporting

A. Every Department shall prepare and submit an initial plan by September 15, 2005 that will cover the period January 1, 2006 to December 31, 2006. Annual plans, including the initial plans, will be modified as appropriate to reflect the Department's final adopted budget for the applicable year and subsequent modifications to the Department's budget during the applicable year.

B. On or before the 30th day of April, and quarterly thereafter, each Department head shall prepare a status report in such standard form as shall be periodically established by the Division of Equal Employment Opportunity, on the implementation and results of its utilization of minority owned business and women owned businesses during the three-month period ending one month before the due date of the report. Each report shall be submitted to the Division of Equal Employment Opportunity. Failure by any Department to submit any reports required by this section shall be grounds for discipline by the County Executive, except that for those Departments whose head are elected, the legislature shall determine the appropriate remedy for non-compliance with of the provisions of this law.

C. As evidence of a Department's good faith efforts to attain the goals set forth in its annual policy, a Department seeking approval by the Legislature of a matter which may involve the utilization by the County of professional, technical or other consultant services, must attach to each such request, a copy of its current status report on its policy goals.

D. The Division of Equal Employment Opportunity shall: (1) monitor the achievement of the annual goals established by each Department and (2) prepare a quarterly report on each Department's goal achievement, including each Department's good faith efforts to each those goals. The report shall be submitted to each Department that submitted a report, the County Executive, the Department and the Legislature.

E. Reasonable efforts shall include, but not limited to:

1. Utilizing a source list of MBEs and WBEs;
2. Solicitation of bids, RFQS and RFPs from WBEs and MBEs
3. Providing MBEs and WBEs sufficient time to submit proposals in response to solicitations;
4. Maintaining records showing utilization of MBEs and/or WBEs, as well as the specific efforts to identify and utilize these companies;
5. Causing its prime contractors to enter into sub-contracts with MBE/WBE firms, if appropriate and feasible, to effectuate the policy goal set forth herein;
6. Building the capacity of local and regional MBE and/or WBE firms to provide quality technical and professional services.

F. The Division of Equal Employment Opportunity shall prepare an annual report to the County Executive and the Legislature on the compliance of Departments with the requirement of this law.

Section 6. Applicability to contractual agreements for professional, technical or other consultant services. Notwithstanding any other application, this local law shall apply to any and all contractual agreements for professional, technical or other consultant services made in accordance with Section 19.08 of the Erie County Administrative Code. Waiver of Section 19.08, in accordance with the Erie County Legislature's authority to make a finding of necessity that the special service or skill must be provided immediately, or a determination that the procedure is impracticable, shall not constitute waiver or inapplicability of the provisions of this local law.

Section 7. Effective Date. This Local Law shall take effect immediately upon filing with the Secretary of State pursuant to Section 27 of the New York State Municipal Home Rule Law.

GEORGE A. HOLT, JR. DEMONE SMITH

ALBERT DEBENEDETTI LYNN M. MARINELLI

SCHEDULE "G"

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Consultant certifies that it, and its principals:

(a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Consultant is unable to certify to any of the statements in this paragraph, the Consultant shall attach an explanation to this certification.

Date:_____

_____
Signature

_____
Title

_____
Organization

SCHEDULE "H"

Certification Regarding
Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988, 41 U.S.C. § 701 et seq. *See* 48 C.F.R. Subpart 23.5.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).

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Organization

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Authorized Signature Title
Date

SCHEDULE "I"

Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member or Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Organization

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Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. Will Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001