

NOTICE OF INVITATION  
TO SUBMIT A PROPOSAL FOR  
THREE YEAR TERM  
(2017 – 2019)  
PROFESSIONAL ENGINEERING SERVICES

Proposals are requested by the Erie County Department of Environment and Planning, Division of Sewerage Management (DEP/DSM) for a three (3) year term agreement for various projects (work orders) in Erie County Sewer District Nos. 1 through 6 and 8. The top rated respondents will be selected to enter into a three (3) year term agreement for 2017, 2018 and 2019 with the County. The term agreement will be set for the not-to-exceed amount of \$300,000.00, with each work order not to exceed \$75,000.00.

In accordance with Local Law No. 6, proposals are hereby invited for the subject project. Proposals are to be submitted in the exact format of submittal available from Erie County Department of Environment and Planning, Division of Sewerage Management, Room 1034, 95 Franklin Street, Buffalo, New York 14202, Telephone (716) 858-8383. Proposals will be due September 15, 2016.

The DEP/DSM emphasizes that declining to respond at any step of the procurement process prior to selection will not hinder firms from being solicited for future jobs.

To obtain a copy of the Request for Proposals (RFP) or review documents related to this invitation, please call the above number, write to the above address, e-mail [courtney.scordato@erie.gov](mailto:courtney.scordato@erie.gov), or visit [www.erie.gov](http://www.erie.gov) and search under “Doing Business” on the top of the webpage.

This invitation does not commit Erie County Sewer District Nos. 1 through 6 and 8, Erie County, or its Department of Environment and Planning, Division of Sewerage Management, to accept any priced proposal, nor does it obligate Erie County for any costs associated with preparing or submitting proposals.

BY:  
Deputy  
Erie  
Environm  
Division  
mas  
PUBLISHED: 8 /3/16  
ISSUED:

Joseph L. Fiegl, P.E.  
Commissioner  
County Department of  
ent & Planning  
of Sewerage Management



# ERIE COUNTY

## REQUEST FOR PROPOSAL (RFP) TO PROVIDE A THREE YEAR TERM AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**File 0.3.2.(17 – 19 Term)**

August, 2016

**DEPARTMENT OF ENVIRONMENT & PLANNING  
DIVISION OF SEWERAGE MANAGEMENT  
EDWARD A. RATH COUNTY OFFICE BUILDING  
95 FRANKLIN STREET – Room 1034  
BUFFALO, NEW YORK 14202**

**COUNTY OF ERIE, NEW YORK**

**REQUEST FOR PROPOSALS (“RFP”)**

**File No. 0.3.2.(17 – 19 Term)**

**TO PROVIDE Professional Engineering Services for various projects in Erie County Sewer District Nos. 1 through 6 and 8.**

**I. INTRODUCTION**

The County of Erie, New York (the “County”) is currently seeking Proposal Statements from qualified Engineering firms interested in providing Engineering Services for various projects in Erie County Sewer District Nos. 1 through 6 and 8. Proposers interested in providing their services are invited to respond to this request.

It is the County's intent to select the top Proposers that provide the best solution and team of professionals 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:	August	3, 2016
Proposals Due:		September 15, 2016
Selection Made:	Approximately	45 days following due date
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 five (5) 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 L. Fiegl, P.E., Deputy Commissioner  
Erie County Division of Sewerage Management  
95 Franklin St. - Room 1034  
Buffalo, New York 14202

**All proposals must be delivered to the above office on or before September 15, 2016 at 4:00 p.m. local time. 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 David Millar, P.E. no later than September 8, 2016, at 12 p.m. Formal written responses will be distributed by the County on or before September 13, 2016. NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION. Those that wish to receive any formal written responses to questions must make a request to [david.millar@erie.gov](mailto:david.millar@erie.gov) for said information prior to September 8, 2016 at 4:00 p.m.
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.

## **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**

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 the design team you would assign to this project. If more than one design team is proposed or if design team support is to be provided by another office, please explain.
- 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. Note how this expertise suits the needs of the County for this particular contract. (Resumes should be attached at the end of the proposal.)

- 2) Indicate what professional or technical subcontractors you would utilize for the project that may enhance your firm's ability to deliver the wide array of services that may be required under term contract assignments. 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 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 indicates your unique approach to performing this project.
- 2) 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 recognizing that the utilization will be somewhat dependent on the scope of individual work orders. If your firm is a certified MBE and/or WBE firm, please state here and include self-performed work in the calculation of MBE and/or WBE utilization.

D. **Rate**

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. See Exhibit "C".

In addition, please provide a list of proposed direct wage rates (see Schedule "E")

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

### **SELECTION**

All Proposals, timely received and complete, will be evaluated and ranked by a selection committee comprised of staff from Erie County. The evaluation is based on the Written Proposals using a numerical score sheet related to the questions posed in the Proposal Guidelines. Interviews are generally not conducted, but may be called where determined to be appropriate for the evaluation .

**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 “B” 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 and 8  
3 YEAR TERM AGREEMENT  
2017 - 2019

ITEMS	FIRMS					
A. <u>Qualifications</u>						
1. Licensed Firm	NNR					
2. Conflict of Interest	NNR					
3. Size of Firm vs. Project Size	10					
4. Location of Team(s)	10					
5. Percent Minority within Firm/ Project Team	10					
6. Current Obligations (Effect on Project Described)	10					
B. <u>Expertise/Experience</u>						
1. Special Expertise – Personnel	35					
2. Professional/Technical Subcontractors In-House	10					
3. Similar Projects	35					
4. Experience with other County Departments	NNR					
5. Past County Employees	NNR					
C. <u>Project</u>						
1. Evaluation of Scope of Services	35					
2. MBE/WBE Subcontractor(s)	25					
D. <u>Rate</u>						
1. Overhead Rate(s)	20					
E. Proposer Certification	NNR					
<b>TOTAL SCORE</b>	<b>200</b>					

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

**EXHIBIT “C”**

**TABLE 1**

**OVERHEAD AND FEE STRUCTURE**

	Fixed Fee Profit Percentage	Overhead Rate
a) Preliminary Design Phase (Schedule A-IA)		
b) Facilities Planning Phase (Schedule A-IB)		
c) Design Phase (Schedule A-III)		
d) Construction Phase		
General Services During Construction (Schedule A-III)		
Resident Engineer (Schedule A-IIIA)		
Start-Up Services (Schedule A-IIIB)		
Subcontracted Work Tasks (Schedule A-IIID)		N/A

**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”)

**WITNESSETH:**

**FIRST:** The Consultant shall provide Professional Engineering Services for various projects in Erie County Sewer District Nos. 1 – 6 and 8. The scope of each project shall be outlined in each work order issued, 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 the issued work order and the current industry standards and trade practices.

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

- Schedule A – Scope/Specifications
- Schedule A-1 – Department Specific Requirements
- Schedule B – Standard Insurance Certificate
- Schedule C – Time of Completion
- Schedule D – Detailed Description of Compensation
- Schedule E – Direct Wage Rates
- 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
Schedule J –	Erie County Equal Pay Certification
Schedule “k” -	Erie County Legislature Resolution

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, 2017 and shall terminate on December 31, 2019, 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.

**THIRD:** For the Work to be performed pursuant to Paragraph “FIRST,” the Consultant shall be paid an amount not to exceed the actual amount agreed upon for each executed work order and shall be paid upon completion of the Work. 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 Work to be performed hereunder.

The Consultant shall submit all requests for payment on a properly executed payment voucher, which must be accompanied by a numbered invoice and include the invoice number where indicated. All invoices submitted during each calendar year shall utilize

consecutive numbering and be non-repeating. In no event shall payment be made to the Consultant prior to completion of all Work and the approval of same by the Commissioner.

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.

- (1) **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 sub-consultants 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, sub-consultant, 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, sub-consultants 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 sub-consultants 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 Sewerage Management – Deputy Commissioner  
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**

**[CONSULTANT]**

\_\_\_\_\_  
Mark Poloncarz  
COUNTY EXECUTIVE  
DATE: \_\_\_\_\_

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

Witness: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO CONTENT

\_\_\_\_\_  
Kristen Walder  
ASSISTANT COUNTY ATTORNEY  
DOCUMENT NO. \_\_\_\_\_

\_\_\_\_\_  
Thomas Hersey  
COMMISSIONER  
DATE: \_\_\_\_\_

RECOMMENDED BY

FUNDING

AVAILABILITY

\_\_\_\_\_  
Joseph L. Fiegl, P.E.  
DEPUTY COMMISSIONER      DEPUT  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Y COMPTROLLER  
DATE: \_\_\_\_\_

Authorized by the Erie County Legislature

On: \_\_\_\_\_  
Item: \_\_\_\_\_

**SCHEDULE “A”**

**GENERAL SCOPE / SPECIFICATIONS**

**General**

Please note that due to the nature of this project, an exact scope cannot be provided. The scope will vary depending on the needs of the County and the tasks assigned under individual work orders. The information provided in Schedule “A” provides general guidelines for typical County projects.

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.

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

For each work order issued, all improvements shall be consistent with the guidelines as established in the latest edition of the “Recommended Standards for Wastewater Facilities” (10-State Standards) and the “DEP’s Construction Specifications”. Force main and pumping station structures, channels and wells shall be sized for 50 years of growth and process/mechanical equipment for a 20-year service life. All new building designs and/or building alterations shall comply fully with the requirements of the Americans with Disabilities Act of 1990 and New York State Building Codes. Gravity sewer system components shall be designed, and materials so designed and installed, shall provide service for 50 years of population and flow rate growth.

The design drawings for the project shall be prepared utilizing the latest version of AutoCad. Reproducible plans shall be provided on mylar. At the completion of the design phase and construction phase of the project, the Engineer will be required to provide the owner with one full set of reproducible mylars and a copy of the AutoCad design file on CD ROM which displays the improvements at that stage of the project.

The record drawings for most of the County’s Facilities are available but not necessarily reliable. They do, however, represent the best information available. The Engineer shall field verify all dimensions, elevations and layouts prior to start of design work.

Note: Section IA – III that follow include the general guidelines for a “standard” DEP project from preliminary design through construction. That said, there are a variety of tasks outside of the items in Sections IA – III that may be needed for individual work orders issued as part of this project. Respondents should keep this in mind while developing their proposals.

**IA. Preliminary Design Phase**

1. Review of Facility Planning Documents prepared for this project. The Engineer must determine to his own satisfaction that the design parameters are adequate and notify the County in writing of this determination.
2. Consult with NYSDEC to obtain the latest design standards for the project. Also, the Engineer shall contact the local Building Inspector and/or Town Engineer to determine if any special local codes may be applicable to the planned improvements.
3. The Engineer shall conduct a thorough walk through of the entire project area to determine preferred site location and/or right-of-ways for the proposed improvements.
4. Prepare a preliminary site plan layout of the project facilities. It shall display the building, chamber, piping locations and the site limits. For pump stations, the site plan shall be prepared using a scale of 1"=10'-0". In the case of collector/interceptor sewers, the Engineer shall prepare a facility layout showing the proposed sewer route on a current planimetric map (Scale 1"=200'). The planimetric shall contain suggested break lines(s) to indicate the limits of the individual contract(s) if more than one (1) contract is proposed.
5. In the case of Facility Buildings and/or pump station sites, the Engineer shall prepare a parcel map and legal description which shall accurately indicate the land area to be purchased by the County and the additional area (temporary working easement area) required to construct the proposed improvements. Also, the Engineer will be required to complete the County of Erie form entitled "Erie County Environmental Property Review Checklist". Upon purchase of the additional property by the County, the Engineer shall prepare a final parcel map and stake the corners of the entire parcel with steel pins. The parcel map shall be sealed by a N.Y.S. Licensed Surveyor.
6. The Engineer shall prepare an Engineer's Report which shall establish the criteria for design.
7. Make revision to preliminary layout and report after review by the County. The County reserves the right to split the proposed improvements into more than one construction contract.
8. The Engineer shall forward reports to the NYSDEC and obtain the approval.
9. The Engineer shall provide a minimum eight (8) copies of the design report. Four (4) shall be provided initially, after approval by DEP, for submission to the NYSDEC and NYSEFC. The other four (4) copies shall be provided after State approval of the report.

10. The Division of Sewerage Management has a formal capital improvements planning (CIP) process that all projects will ultimately be part of. As part of this scope of services, the consultant shall document the following information in a standalone appendix to the Engineer's report (the consultant shall provide this information in an electronic form as well):

- Project Description and Purpose: a high level project overview and summary, noting the business drivers, factors are behind this proposal, the assets involved, etc.
- Service Level Impacts: an explanation of the specific impact(s) of this project on the Division's customers and/or staff, as well as the environmental service levels
- List of alternatives evaluated and reason for selected improvement
- Condition, Risk, and Criticality Analyses: summary of the asset assessments that have been performed, the probability and consequences of asset failure, and the importance of the asset
- Life Cycle Cost and Analyses: both for capital improvements and current/future operation and maintenance expenses
- Projected Financial Analysis: high level financial analysis of the project including such measures as Return on Investment, Net Present Value, and/or Internal Rate of Return
- Next steps and projected schedule

These items in most cases will be a brief summary of previously documented information from the Engineer's report. Division of Sewerage Management staff will use this appendix to develop the confidence level ratings, probability of failure scores, consequence of failure scores, and the business case for this project.

#### **IB. Facilities Planning Phase**

1. On the selected sewer route and location of other proposed improvements, conduct a Stage 1A and 1B Cultural Resource Survey.
2. Organize and conduct a Facilities Planning/Environmental Assessment Hearing including transcripts and a responsiveness summary in conformance with EPA/DEC Guidelines.
3. Preparation of SEQR/SERP application and all documents necessary to meet the requirements of 6NYCRR, Part 617 State Environmental Quality Review.
4. Considering the selected sewer route and/or location of proposed improvements complete a thorough review of the area which would disclose the potential location of any wetlands, hazardous waste sites and/or landfill areas. Prepare the necessary applications to the State/Federal Agencies for the purposes of construction through these area.

#### **II. Design Phase**

1. Topographical maps shall be prepared in such a manner as to accurately define and locate existing homes/buildings, structures, elevations, property lines, public/private utilities, site piping, roadways, R.O.W. limits, trees, shrubbery, etc. Utilizing information from

the latest County of Erie Tax Maps the Engineer shall identify by name and SBLE number (Section, Block, Lot) the property owner(s) in the areas directly affected by or immediately adjacent to the location of the proposed improvements.

2. Obtain soil borings where the Engineer determines a need or as directed by the County. Soil boring shall be witnessed by the Engineer and a copy of logs shall be included with final bid plan sets. In the case of a sewer line design, soil borings shall be taken at intervals no greater than 1000 feet along force mains and 400 feet along gravity sewers. For pump station design, a minimum of two (2) soil borings will be required at each site.
3. The Engineer shall analyze the soils information and his/her findings shall be contained in a bound soils report. Also lab tests on undisturbed samples shall be performed if soft or potential compressible subsoils are encountered below the structure base to determine the effect on the design. All construction documents released for bid shall identify that these documents are available for public inspection.
4. Prepare final plans and specifications in such a manner which satisfies the approved contract limits developed during the Preliminary Design Phase of the Agreement. All contract specifications shall be prepared to comply fully with the requirements of New York State Municipal Law. If required by State Law, the Engineer shall prepare a separate contract proposal section for each of the required building trade group(s).
5. County's standard contract documents and detail sheets shall be utilized in the preparation of the project's contract bid documents. The Engineer may modify these standards but such changes are subject to the approval of the DEP.
6. Prepare for the County's review and approval a list of the Engineer's recommended manufacturers for each major equipment item.
7. Prepare a shop drawing submittal schedule. The schedule shall list all item which will require a shop drawing submittal/approval. The listing shall be subdivided by each Division of the specification and contain a cross-reference to the Section and Item Number. The shop drawing schedule should be submitted to County with the final plans and specifications.
8. Prepare final plans and specifications for bidding (Drawing Scale shall be 1" = 50' H, 1" = 5' V for sewers and appropriate scales for pump station/structures). The drawings shall be clear and legible and prepared on 24" x 36" mylar.
9. Prepare a State Pollutant Discharge Elimination System (SPDES) Application and other State Permit Applications where applicable.
10. Make application and obtain or cause to be obtained all the necessary permit requirements from the Corp of Engineer, NYSDEC, Highway Department, Railroads, EPA, utilities and other public agencies.

11. Prepare detailed cost estimates based upon final plans and specifications. Such cost estimates shall be made available to the County upon completion of design. The estimate shall be broken down in a manner which individually lists the costs of all major equipment items. Also cost estimates shall be updated one (1) week prior to advertising the project for construction bids.
12. Prepare a design report including NYSDEC 92-19-4 and 92-15-8 forms and all other required NYSDEC forms needed for the project. Forward plans, specifications and design report to the NYSDEC for purpose of receiving the State's approval to construct.
13. The Engineer shall supply a minimum of eight (8) sets of plans and specifications for DEC and EFC review.
14. Assist DEP in securing approval of final plans and specifications by NYSDEC and other affected controlling agencies.
15. Make modifications to plans and specifications based upon review by the DEC, EPA, Corp of Engineers and/or final review of DEP.
16. Modify planimetric maps (Scale 1" = 200') showing the final payout of facilities and property lines.
17. Update topography and utility information prior to bidding.
18. Added special design consideration for the proposed facilities are as follows:
  - a. Refer to the scope and tasks of each issued work order
19. Upon completion of the design phase, furnish the DEP with copy of AutoCad design file on CD ROM and the electronic file copy of the bid specifications. Also, include the PCP files and/or pen settings.

### **III. Construction Phase**

The construction phase is broken up into four (4) separate functions:

- a. Services During Construction
- b. Resident Engineering
- c. Start-Up Services
- d. Post Operation Maintenance

#### **A. General Services During Construction**

Include construction phase services as defined in ASCE Manual #45, 1972, pp. 12 and 13, including but not limited to, the following:

1. The Engineer will be responsible for the distribution of plans and specifications during the bid period. Twenty-five (25) bid sets of plans and specifications for each contract shall be provided by the Engineer. Each bid set of documents shall include a separately bound bid proposal section for each prime contract. Additional copies shall be supplied at cost.
2. Assist the County in securing bids for this project and make a written recommendation with regard to the award. Prepare and process all contract addenda which may be necessary during the bid period. A representative of the Engineer, familiar with the project's design, shall be present at the Pre-Bid and Pre-Construction Meetings.
3. Obtain from the contractors a construction schedule (Bar Chart Type) which shall indicate his/her complete operation as it pertains to this project. Review said schedule for conformance with the contract documents and engineering services during construction. If additional subsystems are required to further clarify the construction process, the Engineer shall instruct the contractor accordingly. Affix to the schedule a stamp indicating the Engineer's approval/disapproval.
4. Provide services of an officer, licensed engineer, and/or other engineers as needed, who will observe on a bi-weekly basis the construction to see that it conforms with the requirements of the plans and specifications. The engineer shall promptly report the findings of his observation to the County in writing.
5. Prepare a shop drawing submittal, review and acceptance schedule. Maintain the shop drawings acceptance schedule on a daily basis. Any time delay on the part of the Contractors shall be recorded with a written notification to the contractor sent out immediately.
6. Review and approve/disapprove shop drawings submitted by the contractor and manufacturer of equipment and affix to the shop drawings a stamp indicating the results of the review (approved/disapproved). If equipment suppliers/contractors propose changes from those specified in the bid documents, investigations by the Engineer shall be made to evaluate proposed changes, including visits to sites where similar equipment is in operation.

In cases where such investigations will cause excessive manhour use and expense, the Engineer shall promptly notify the County. Such costs shall be borne by the Engineer, Contractor, and/or Supplier. In the cases where the Engineer fails to notify the County, the Engineer will be responsible for all additional costs.

7. Review the contractor's requests for substitution of equipment and materials with the County and make appropriate recommendations to the County.
8. Witness and/or review appropriate tests for materials and equipment as submitted by contractor for acceptance and reject those that fail to meet the specification or standards of quality required by the contract documents.

9. Assemble all guarantees, warranties and similar items required by the contract documents.
10. Provide a detailed stakeout showing all benchmarks, reference lines, chambers, control points, grade, etc., which are required for the construction of said facilities. The scheduling of the stakeout shall be in conformance with the Contractor's approved construction schedule. The Engineer shall provide cut-sheets and grade stakes at 100' intervals.
11. Prepare a draft web based Operation and Maintenance (O&M) Manual. After review of the Manual by the DEP, the Engineer shall make the necessary revision and resubmit. Furnish the County five (5) printed copies of the final manual along with the electronic file on CD-ROM. Said manual shall include manufacturer's information and shop drawings in electronic format.
12. Assist the Contractor and Resident Engineer in preparing bid breakdown for purposes of subsequent payment requisitions. Check monthly estimates for payment to the Contractor as prepared by the Contractor and checked by the Resident Engineer and certify the same for payment. In certifying for payment, the Engineer is to insure that no payment is for more than the value of the work already completed.
13. Review and make appropriate recommendations to the County with respect to Contractor claims relating to a design change, differing site conditions and/or additional compensation due to alleged delays.
14. Advise, review and recommend, where applicable, any change order(s) to the contract that are in the best interest of the County or requested by the Contractor.
15. The Engineer shall perform parallel estimates to substantiate costs with respect to change orders and/or cost breakdowns furnished by the Contractor.
16. Prepare and process, with the assistance of the County all change orders.
17. Prepare and distribute minutes of the progress/coordination meetings to all concerned parties.
18. Issue supplemental drawings to further explain the intent of plans and specifications when necessary.
19. Prepare and distribute all field clarifications, memos and bulletins that may be required.
20. Attend project related meetings as requested by the County and/or as dictated by the project's progress/needs and provide minutes thereof.
21. Make recommendations to the County pertaining to special consultants.

22. Cooperate with local municipal representatives.
23. Review retention money clauses of contracts and make recommendations to the County with respect to release of any retained funds.
24. Receive, review and forward to the County with recommendations, all relevant documents such as release of liens, claims, etc., prior to preparation and the County's issuance of certificate of final completion.
25. Establish procedures and coordinate arrangements between the County and the Contractors with respect to the start-up of constructed facilities, operation and maintenance, protection of existing utilities, contractual insurance, right-of-entry(s), start of guarantee period, etc., including but not limited to the following matters:
  - a. Owner occupancy and/or use upon substantial completion of an active construction contract.
  - b. Owner occupancy and/or use upon completion of separate contract work prior to completion of total project.
26. Provide services to assist the Contractors and Resident Engineer in checking out the completed facilities for ready-to-serve status and commencement of testing. Also provide services for assisting the contractor and the County to perform hydraulic and process tests of the completed facilities. No training of plant personnel is included under this item.
27. The Engineer shall maintain an accurate record of all design changes made during construction. (NOTE: The Engineer shall not be dependent on any information from the contractors to complete this work task.) At the end of construction, the Engineer shall utilize this information and revise the contract drawings to show the improvements as finally constructed. One complete set of as-built drawings prepared on mylar and a copy of the modified AutoCad design file will be furnished to the County at the end of the project or upon request. The as-built drawings shall be signed by the Engineer and contain a stamped reference indicating "Record" drawings.
28. Certify at the completion of the project that the facilities have been built, and are operating, in accordance with the Facilities Planning Documents and the plans/specifications for the project.

B. Resident Engineering Services

1. Pursuant to the needs of the project and for the number of calendar days allowed by the Construction Specifications, the Engineer shall provide an on-site Resident Engineer and Assistants to coordinate the day-to-day construction. These individuals will inspect the

construction for conformance with the plans and specifications and monitor the Contractor's performance pursuant to approved construction schedule.

2. The Engineer shall continuously monitor and approved construction schedules and provide updating information to the County and assistance to the contractors for the purpose of overcoming or controlling slippages. In cases where the Contractor is failing behind schedule, the Engineer shall promptly issue a written notice to the Contractor advising him of this fact.
3. Act as the County's advisor and liaison and coordinate the activities of all Contractors in accordance with the construction schedule which has been accepted by the Contractors, the County and the Engineer. This will include the monitoring of the adequacy of each Contractor's personnel and equipment in relation to his progress in accordance with the schedule and making of recommendations for actions when required.
4. The Engineer shall maintain a shop drawing acceptance schedule on a daily basis. Approved shop drawings shall be duly recorded on the schedule with a copy of the approved drawing placed in a construction file for future reference.
5. Regulate use of site and building area with respect to storage of materials, temporary offices, storage sheds, parking, traffic control, etc.
6. Monitor the daily performance of the contractor(s) 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 improvements/appurtenances and repair, if need be, of storm sewers, roads, lawns, driveways, water lines and other existing utilities damage and/or disturbed during construction.
7. Inspect material/equipment deliveries to the job site to insure compliance with the approved shop drawings.
8. Perform spot grade checks on the installed improvements to verify line and grade.
9. Monitor the contractor's method of construction to insure his/her construction activities are conducted within the dedicated right-of-ways and/or easement areas as shown on the contract plans.
10. Prepare a daily inspection report(s) which will describe, in detail, the contractor's performance for that particular day, the on-site equipment, size of labor force, etc.
11. Monitor the contractor's operation for compliance with the Maintenance and Protection of Traffic Section of the specification and governing permit conditions.

12. Prepare parallel monthly construction pay estimates which indicate the construction completed to date. Certify that the amount of payment does not exceed the value of the work in place.
13. Coordinate and witness the final testing of the in place improvements as required by the contract specifications.
14. Maintain a detailed daily journal of all on-site activities and visitors.
15. The Engineer shall take progress photos digital during the course of construction. The Engineer will be required to review the photos and place a reference station or small description for each photo in a photo log. The file name of each photo shall be the reference station for each photo. The photos shall be given to the County at the project's completion in digital format (jpeg) on DVD-ROM or CD-ROM, and the DVD or CD shall contain the photo log file saved in ASCII (text) format for all photos contained on the DVD or CD.
16. Maintain complete and accurate job records of all correspondence, memoranda, supplemental drawings, field clarification memos, change orders, shop drawings, supplemental equipment brochures and monthly payment estimates together with appropriate backup information. At the end of the project, one copy of all material will be submitted to the County for its records. In addition, the Consultant shall provide a copy in digital format on DVD-ROM or CD-ROM in both Portable Document Format (PDF) and Tagged Image File Format (TIFF) image formats. The DVD or CD shall contain a log saved in ASCII format showing all files contained on the DVD or CD.
17. Hold and chair coordination meetings with all contractors and the County a minimum of bi-weekly.  
  
Prepare a monthly construction report for the County detailing all activities that took place during the prior month.
18. Prepare a monthly construction report for the County detailing all activities that took place during the prior month.
19. Cooperate with local municipal representatives.
20. Monitor cleanup activities of all Contractors and coordinate such activities with provisions in the respective contract documents.
21. Prepare punch-lists and monitor Contractor's activities as required to effect prompt correction of all items listed.

C. Start-Up Services

Provide services to assist the County with understanding the operational features of the completed facilities. The Engineer shall provide and/or schedule training services of County personnel in the operation of the Facilities.

D. Post Operation Maintenance

During the first year of operation, the Engineer shall provide the following services.

- a. Conduct two on-site tours with the Owner to observe the operation and performance of the facilities. The dates and time of the scheduled tours will be determined at a later date.
- b. Based on the Engineer's observations, make recommendations to the Owner and, where applicable, amend the Operation and Maintenance Manual.
- c. One year after initial start-up, certify to the Owner whether the facilities are meeting the intended design performance standards.

## SCHEDULE "A-1"

### DEPARTMENT/PROJECT SPECIFIC REQUIREMENTS

#### 1. GENERAL PROVISIONS

##### A. Engineer Licensed

The Engineer represents that it is licensed and authorized to practice engineering in the State of New York, and there shall be attached to the plans and specifications a licensed engineer's seal and a licensed surveyor's seal where applicable.

##### B. Plans and Files

1. All approved original drawings prepared by the Engineer shall become the property of the County. The Engineer shall retain one set of reproducible mylars.
2. Plans, if required under this Agreement, are to be prepared utilizing AutoCad Version 14, AutoCad 2000 or compatible. Other computer software enhancements of AutoCad, (eg. DCA) shall be subject to prior approval of the County. Reproducible Plans shall be provided on mylar.
3. The Engineer shall supply as many sets of Plans and Specifications for review by the DEP and to gain approval from various regulatory agencies. In addition, the Engineer shall provide 25 sets per prime contract of approved Plans and Specifications for the purpose of taking bids under this contract. A complete bid set of documents includes a full set of plans and specifications, reference drawings and supplemental data and an additional bid proposal section(s) bound separately. Additional sets of approved Plans and Specifications shall be provided by the Engineer at cost.
4. The Engineer shall make available at the County's place of business, on request, its complete design file including all computations related to the Project.

##### C. Assistance and Exchange Data

1. The County shall direct its officers, agents and employees to render all reasonable assistance and provide available data to the Engineer in connection with its performance under this Agreement.

The Engineer shall have the duty to make independent inquiry as to the reasonable correctness of such data if the correctness thereof appears doubtful on its face to the Engineer.

2. The Parties hereto agree to furnish to the other Party copies of previous reports, data and drawings which may be available and as may be pertinent to the Project. All such data,

reports, data, drawings and any other documents and information provided shall be returned to its owner.

3. Information provided to the Engineer for the project shall be held in confidence by the Engineer and used only for the project that is the subject of this Agreement. Sharing of information provided by the County for this project with subcontractors, other consultants, manufacturers and potential suppliers or vendors shall not be done without the express advance written authorization of the County.
4. The Engineer shall not reproduce or copy information supplied to him by the County for this project without the express advanced written permission of the County. Where retaining a copy of information supplied by the County is required by Law, the Engineer shall so inform the County, in writing, of such copying or reproduction, the requirement of the law and the Engineer's procedures for confidentiality and for release of such information to third parties. The Engineer shall keep such copied or reproduced information confidential to the extent possible.

D. Design/Construction Survey

All members of the survey crew engaged in work on this project shall be paid in accordance with the New York State Wage Rate Schedule. The Engineer and its subcontractors will be required to furnish the DEP with duplicate copies of their certified payrolls. Payrolls displaying the survey manhours are to be submitted on U.S. Department of Labor Payroll Form WH-347.

E. Progress Reports

The Engineer shall submit written progress reports to the County on a monthly basis during design, and during construction. Oral reports shall be made on request. The County may amend the reporting schedule at its pleasure at any time upon written notice to the Engineer, except that the frequency of submitting written progress reports shall not be made more frequent than weekly. During design, a monthly meeting shall be held at the offices of the County or another location which is to be determined by the DEP to discuss the project.

F. Release of Data

All plans, estimates and other data prepared under this Agreement shall be released only to the County or the County's designee. The Engineer shall hold in confidence the plans and related information prepared under this agreement and shall advise its subcontractors of this requirement. Release of plans, estimates and other data to third parties shall be subject to written approval by the County. The Engineer shall keep a record of its release of plans and related information and make available such record upon request by the County.

G. Equipment Purchases

1. The Engineer shall purchase for the County such materials, equipment or services if required to perform work in accordance with written authorization given by the County to the Engineer. Materials or equipment charged to the County under this Agreement shall be used only for work on this Project.
2. The Engineer will deliver to the County at the completion of this contract, all materials and equipment for which the County has paid, in the same condition as when acquired except for normal wear and tear during use.

H. Limitations

1. Since it is recognized that the Engineer has no control over the cost of labor, materials or equipment, or over Construction Contractor(s) method of determining prices, or over competitive bidding or market conditions, the estimates of probable Project Cost of Construction provided for herein are to be made on the basis of experience and qualifications and represent the Engineer's best judgement as a design professional familiar with the construction industry, but the Engineer shall not be required to guarantee Construction Cost.
2. It is recognized that the Engineer cannot guarantee the performance or the safety of the construction work by the Contractor nor can it assume any responsibility for the contractor's failure to perform without defects or deficiencies. Provided, however, that nothing herein shall modify the duties of the Engineer as are set forth herein to observe and review construction of the contract, to require the contractor to conform with the requirements of the Plans and Specifications and to report to the County any deviations by the contractor of which it becomes aware or in the course of reasonable care should become aware.
3. The Engineer shall be responsible only for its decisions or actions during the course of construction of the Project. The Engineer shall not be held responsible for any decision or action made by the County without the Engineer's prior knowledge and consent.

I. Time Extension

1. Each and every obligation of the Engineer under this Agreement shall be subject to the following force majeure clause: If, because of an act of God, war, strike, riot, catastrophe or other condition, including official action or delay of governmental bodies, delay of contractors or any other condition beyond the control of the Engineer, the Engineer cannot comply with the obligations or schedules in this Agreement, the Engineer may apply in writing to the County for an extension or modification of such obligations or schedules within a reasonable time after it obtains knowledge of such facts. Such application shall contain a specific justification for the required extension or modification and upon establishment of any of the conditions set forth above, the Engineer shall be

entitled to such relief as may be reasonable under the circumstances, including waiver by the County of the liquidated damages provisions as set forth in Schedule B.

J. Compliance with Laws

The Engineer specifically agrees to comply fully with the rules and regulations as stated in OSHA 29 CFR, Parts 1910, as it may be amended. The Engineer shall have in-place and will implement a Confined Space Program for its activities which adheres fully with these requirements. The Engineer will be solely responsible for its established Confined Space Program and the coordination of such with its subcontractors.

K. Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Participation

The consultant engineer agrees to make a good faith effort to secure MBE/WBE subcontractors. Upon receiving the Notice to Proceed, the Engineer shall submit, to the County, an MBE/WBE Utilization Plan which identifies those MBE/WBE subcontractors who were contacted and/or secured for this project.

**2. SPECIAL PROVISIONS**

A. Facilities Performance

The facilities to be constructed under this Agreement have been designed by the Engineer and shall perform to the following limits:

1. Capacity

a. Pumping Stations shall be designed to handle the proposed peak flow rate consistent with the facilities planning documents previously approved by the NYS DEC/DEP.

b. The size of a pumping station may be modified. However, the Engineer shall be notified and authorized in writing by the County and shall make the appropriate design changes.

2. Proof of Performance

If the County desires the testing of the facilities under design conditions, then the costs of providing the said proposed peak flow will be paid by the County, it is understood that hydraulic testing of the peak flow through the facilities can be done after they are on line.

### 3. Penalties

If the tests do not meet the design conditions, as a result of inadequate design, then any retention money that may be due the Engineer will be withheld under either a satisfactory bond that guarantee corrective measures are undertaken to make the facilities meet the design condition is provided and, if the bond is not available, the same corrective measures are undertaken by the Engineer. All costs of further testing shall be borne by the Engineer. As soon as all the facilities have been tested to meet the conditions specified herein, the County shall issue a certificate of acceptance and release the retained funds. If the County does not elect to test the capacities of the facilities within 6 months after beneficial use, the County will then release the retained funds.

**SCHEDULE "B"**  
**STANDARD INSURANCE PROVISIONS**



**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 Concessionaires 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 & Employer's Liability	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY
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.  
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.
- VIII. 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**

A. Time Schedule

The Engineer shall complete the work as listed in Schedule A of this Agreement or, as mutually agreed to in writing via a Work Order with the DEP, for each assigned project within a time frame developed by the Department of Environment and Planning for each Work Order.

**SCHEDULE "D"**

**DETAILED DESCRIPTION OF COMPENSATION**

The Engineer shall be compensated for completion of the services as described in Schedules "A" and "A-1", as follows.

I. Total Compensation Breakdown

Payment for services is broken down into contract phases with payment for each phase being separately authorized.

(1) The contract phase costs are as follows:

	<u>Total Cost</u>	<u>Cost Ceiling*</u>	<u>Fixed Fee (Profit)*</u>
(a) Preliminary Design Phase (Schedule A-IA)**			
(b) Facilities Planning Phase (Schedule A-IB)			
(c) Design Phase (Schedule A-II)			
(d) Construction Phase			
(i) General Services During Construction (Schedule A-III A)			
(ii) Resident Engineering (Schedule A-III B)			
(iii) Start Up Services (Schedule A-III C)			
(iv) Post Operation (Schedule A-III D)			
Totals	\$300,000.00	\$260,869.57	\$39,130.43

**NOTE:**

\* Cost Ceiling and Fixed Fee (Profit) are for cost plus fixed fee basis.

\*\* (Schedules A-IA, etc.) refers to the Phases of the work as designated in Schedule A.

(2) The costs listed above assume that the Notice to Proceed for the earliest phase of the project as listed above is given by the County to the Engineer by January 1, 2017. In the event the Notice to Proceed is given after the date, the Engineer is to notify the County within two weeks if the delayed Notice to Proceed will result in

increased engineering costs. Any increase in costs as a result of a delayed Notice to Proceed is subject to negotiations.

## 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  
Technicians  
Surveyors  
Draftsmen  
Secretarial Staff

#### **\*NOTE:**

Officers and administrative staff 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)

Accounting Staff

Other employees, such as, secretarial, CAD operators, etc. shall be included in indirect costs unless identified in the Engineer's cost summary form as Direct Labor and approved by the County.

(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 \_\_\_\_\_ 1/1/2017 \_\_\_\_\_ to \_\_\_\_\_ 12/31/2019 \_\_\_\_\_.

(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 Sub-agreements":

<u>Subcontractor Name</u>	<u>Cost w/o Mark-Up</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____

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 herein                      after.

(8) Profit

(a) Profit for Facility Planning, Preliminary & Final Design and General Services During Construction

For these specific phases of the Agreement, profit, sometimes called a fixed fee, shall be a fixed amount. In the billing for profit, the Engineer understands the amount of billed profit shall be prorated based on the percentage of the work completed to date as determined by the County. The fixed fee is only paid in full for completed Phases in which the agreed upon work products are delivered to the County. At the completion of each Engineering Phase and subject to the approval of the County, the Engineer may bill for the profit remaining in that specific contract phase.

(b) Profit for Resident Engineering, Startup and Post Operation Services

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 \_\_\_\_\_. The Engineer understands the amount of profit listed for these phases is not to be construed as a fixed fee.

(c) Special Conditions for Profit on All Contract Phases

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.

(d) 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.

**SCHEDULE "E"**  
**PROPOSED DIRECT WAGE RATES**

JOB TITLE	DIRECT SALARY RATES		
	2017	2018	2019

\*Add additional sheets for subconsultants

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

RECEIVED  
ERIE COUNTY LEGISLATURE

COUNTY OF ERIE  
LOCAL LAW NO. 9 2005 JUL -b 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/WRE 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 15<sup>th</sup>, 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 30<sup>th</sup> 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).

---

Organization

Authorized

---

Date                      Signature                      Title

**SCHEDULE "T"**

**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.

---

Organization

---

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

**SCHEDULE "J"**  
**Erie County Equal Pay Certification**

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together " Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

\_\_\_\_\_  
Signature

**Verification**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

A)

\_\_\_\_\_, being duly sworn, states he or she is the owner of (or a partner in) \_\_\_\_\_, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)

\_\_\_\_\_, being duly sworn, states that he or she is the Name of Corporate Officer \_\_\_\_\_, of \_\_\_\_\_, Title of Corporate Officer Name of Corporation the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this \_\_\_\_\_

Day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_



## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

### **Executive Order #13 Pay Equity Certification on County Contracts**

**WHEREAS**, federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and Federal Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity) (together "Federal Equal Pay Law"), requires that men and women in the same workplace be given equal pay for equal work; and

**WHEREAS**, Section 194 of New York State Labor Law ("NYS Equal Pay Law") prohibits compensating men and women differently for the same work; and

**WHEREAS**, on average, a full-time working woman in New York State earns just 85 cents for every dollar that a man earns and the pay gap is even greater for African-American and Latina women; and

**WHEREAS**, females make up nearly fifty-two percent of Erie County's population; and

**WHEREAS**, women make up nearly half of the U.S. labor force and are a growing number of breadwinners in their families; and

**WHEREAS**, this pay differential shortchanges women and their families by thousands of dollars a year, and potentially hundreds of thousands of dollars over a lifetime, presenting a lifelong threat to those families' economic security and reducing their earnings through Social Security and other post retirement plans; and

**WHEREAS**, poverty is recognized as a leading cause of or contributing factor to many social problems, including but not limited to substance abuse, domestic violence, child abuse, improper nutrition, obesity, improper health care and criminal conduct; and

**WHEREAS**, the impact of pay differentials is exacerbated as workers age, causing underpaid workers to disproportionately rely upon various forms of public support in their retirement years; and

**WHEREAS**, pay inequity can significantly impact the County, necessitating the provision of various public subsidies for low income residents and leading to the lack of receipt of income by women residents which would be spent in our local economy; and

**WHEREAS**, through the enforcement of current state and federal laws that ban unequal pay for equal work, Erie County can help ameliorate the many negative consequences of pay inequality, thereby improving the lives of those who might otherwise be underpaid, strengthening families and protecting children, and reducing the demand for public services, all positively impacting county, state and federal budgets.

**NOW, THEREFORE, I MARK C. POLONCARZ**, Erie County Executive, by virtue of the authority vested in me by the Erie County Charter § 302, do hereby order as follows:

1. It is ordered that on and after January 1, 2015, all Erie County offices, departments and administrative units, including but not limited to the Division of Purchase, fully implement a requirement in all bids, requests for proposals and other contract solicitations that the contractor submit an Erie County Equal Pay Certification which certifies the contractor's compliance with Federal Equal Pay Law and New York State Equal Pay Law (together, the "Equal Pay Laws"). Such certification shall be required prior to execution of the contract; and it is,

2. Further ordered that such certification shall include a representation by the contractor that it has not been the subject of an adverse finding under the Equal Pay Laws within the previous five years and shall include disclosure of any currently pending claims against the contractor; and it is,

3. Further ordered that violation of any provision of the Equal Pay Laws during the effective period of such a contract or the filing of a false or misleading Erie County Equal Pay Certificate may constitute grounds for immediate termination of such a contract; and it is,

4. Further ordered that violation of any provision of the Equal Pay Laws during the effective period of such a contract or the filing of a false or misleading Erie County Equal Pay Certificate may constitute grounds for determining a bidder or responder is not qualified to participate in future County contracts; and it is,

5. Further ordered that the Law Department prepare an Erie County Equal Pay Certification for use by Erie County offices, departments and administrative units and assure compliance with this Executive Order in the contract approval process; and it is,

6. Further ordered that the County Division of Equal Employment Opportunity ("EEO") establish a procedure for compliance monitoring and periodic auditing of certification records; and it is,

**GIVEN**, under my hand and the Privy Seal of the County of Erie in the City of Buffalo this 6<sup>th</sup> day of November, in the year two thousand fourteen.



COUNTY OF ERIE

BY:   
MARK C. POLONCARZ  
ERIE COUNTY EXECUTIVE