

NOTICE OF INVITATION
TO SUBMIT A PROPOSAL FOR
PROFESSIONAL ENGINEERING SERVICES

Proposals are requested by the Erie County Department of Environment and Planning, Division of Sewerage Management (DEP/DSM) for engineering consultant services to prepare the Southtowns Advanced Wastewater Treatment Facility (AWTF), Sewage Sludge Incinerator Emission Control Upgrades. The top rated respondent will be selected to enter into an agreement to develop potential solutions that are cost effective and best serve the long-term function and viability of the Southtowns AWTF.

In accordance with Local Law No. 6, proposals are hereby invited for the subject project. Proposals are to be submitted in the exact format detailed in the request for proposals (RFP). Proposals will be due May 22, 2014 by 4:00 P.M. An optional pre-proposal meeting will be held in the training room of the Southtowns AWTF, S-3690 Lakeshore Road, Buffalo, NY 14219 at 10:00 A.M. on May 6, 2014 for the purpose of discussing the project with prospective respondents.

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 RFP guidelines, please visit the following website on or after April 23, 2014: http://www2.erie.gov/environment/index.php?q=DEP_RFP. Alternatively, you may call (716) 858-8383 or email beth.pfalzer@erie.gov if you would like to request a hardcopy.

This invitation does not commit Erie County Sewer District No. 3, Erie County, or its DEP to accept any priced proposal, nor does it obligate Erie County for any costs associated with preparing or submitting proposals.

By: Joseph L. Fiegl, P.E.
Deputy Commissioner
Erie County DEP/DSM

[RFP STARTS NEXT PAGE]



ERIE COUNTY

REQUEST FOR PROPOSALS TO PROVIDE

Engineering Services for
Erie County / Erie County Sewer District No. 3
Southtowns Advanced Wastewater Treatment Facility
Sewage Sludge Incinerator Emission Control Upgrades

RFP # 7.3.2.SSI Upgrades

April 2014

**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”)
RFP # 7.3.2.SSI Upgrades

TO PROVIDE Engineering Services for Erie County / Erie County Sewer District (ECSD) No. 3, Southtowns Advanced Wastewater Treatment Facility (AWTF), Sewage Sludge Incinerator (SSI) Emission Control Upgrades

I. INTRODUCTION

The County of Erie, New York (the “County”) is currently seeking Proposal Statements from qualified firms interested in providing engineering services. All proposers interested in providing engineering services are invited to respond to this request.

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

The County reserves the right to amend this RFP. The County reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive formalities, 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 purpose only. The County reserves the right to amend this schedule at any time.

Issue RFP: April 23, 2014

Optional Pre-Proposal Meeting : May 6, 2014

Proposals Due: May 22, 2014

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. Six (6) copies shall be submitted, each with a signed Proposal Certification. Unsigned proposals will be rejected.
3. Submission of the proposals shall be directed to:

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

All proposals must be delivered to the above office on or before May 22, 2014 at 4:00 p.m. Proposals received after the above date and time will not be considered. The County is under no obligation to return proposals.

4. Requests for clarification of this RFP must be written and submitted to David Millar, P.E. at 95 Franklin Street, Room 1034, Buffalo, New York 14202 or david.millar@erie.gov no later than 4:00 p.m. on May 8, 2014. Formal written responses will be distributed by the County on or before 4:00 p.m. on May 15, 2014. Anyone that wishes to be included on any responses to requests for clarification must submit a request, in writing, to Mr. Millar by 4:00 p.m. on May 8, 2014. **NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.**
5. Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.
6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.
7. Proposers are encouraged to attend the optional pre-proposal meeting which will be held at 10:00 A.M. on May 6, 2014 in the training room of the Southtowns AWTF, S-3690 Lakeshore Road, Buffalo, NY 14219.
8. **All firms submitting proposals must include a cost proposal in a separately sealed envelope.**

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 Office of the Erie County Attorney, and if required, the Erie County Fiscal Stability Authority.

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.
- 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.

WRITTEN PROPOSALS

In one envelope or package, six (6) copies of your written proposal shall be provided to include answers to the items listed below. Résumés of key personnel and your Federal Qualifications Form, if desired, are to be submitted at the end of the response. The individuals whose resumes are submitted are expected to substantially work on the project.

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. (Score sheet is shown in Exhibit "B".)

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. Include a project organization chart identifying the proposed team. Include résumés of only those individuals that will be directly involved in the Project. (Résumés should be attached at the end of the proposal.) Past work with the Erie County Department of Environment and Planning – Division of Sewerage Management will also be considered here.
- 2) Indicate what professional or technical subcontractors you would utilize for the project. Indicate where the subcontractors are located and what services they would provide. Recite any experience or familiarity of the subcontractors which is pertinent to the specific requirements of this project and the basis of your confidence in their ability to perform. If your firm possesses specialty capabilities which allows work normally subcontracted to be performed in-house, present this information here.
- 3) Recite a list of no more than five similar projects within the last five years giving the size of the project in dollars, the client, including the name and phone number of the person to whom you were accountable, whether any regulatory agencies (NYSDEC and/or USEPA) were involved and if the project was constructed or otherwise completed.

Include a matrix table that identifies the listed projects and the proposed team and identify the correlation between the listed projects/teams and the proposed project team.
- 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) Indicate any personnel (either as an employee or through a contractual relationship) who, within the last year prior to the date of this proposal, has 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) Based on the Scope of Services, Form of Contract, these Guidelines and the expected job duration, indicate the total number of manhours for each of the various employee types (job classification) who will be assigned to the project. The manhours should be listed and totaled by Job Classification and Engineering Task. If subcontractors are to be utilized on any task of the project, provide a separate breakdown which displays the number of manhours for each of their employee types who will assist on this project. The above information is to be

presented in a format as shown on the enclosed table labeled “Manhour Summary Sheet”. You may substitute your own layout (i.e. spreadsheet printouts) in lieu of using the enclosed form. (Please note the DEP Summary Form, ECDEP-CS-1, is to be utilized in the breakdown of costs in the sealed price proposal). Insofar as you propose utilizing County personnel for this project, state clearly the level of effort or task you would expect the County to provide. All manhours must be shown in this part of the proposal.

- 3) Indicate which MBE/WBE subcontractors you would propose to use on this project and why. Show what percentage of work is proposed to be assigned to MBE and WBE subcontractors. 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.
- 4) State the length of time necessary to complete each engineering task (Exhibit “D” - Agreement, Schedule C - Tasks A, B, C, D, E, F). Indicate the minimum time required.

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.

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

PRICED PROPOSAL

In a separately sealed envelope submit one (1) copy of your priced proposal clearly labeled with:

- The firm/proposer name,
- Due date of proposal,
- Project name: “Southtowns AWTF Sewage Sludge Incinerator Emission Control Upgrades, RFP # 7.3.2. SSI Upgrades – Cost Proposal”, and
- Mark the sealed envelope: “CONFIDENTIAL - Pricing Information - To be Opened by Deputy Commissioner, Joseph L. Fiegl, P.E.”

The priced proposal is to be for the entire project as described in these Instructions, the Form of Agreement and the Scope of Services attached. Exceptions or limitations in your proposal shall not be placed in the sealed priced proposal unless clearly described in the written proposal. Respondents are advised that all priced proposals are subject to negotiation at the discretion of County.

The proposed costs and fees are to be presented on the Erie County Division of Sewerage Management for entitled “Cost Summary Format for Engineering Subagreements” (ECDEP-CS-1). See Schedule “E” in Exhibit “D” and shall be presented in phases of the project.

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 (see Exhibit “B”). Interviews are generally not conducted, but may be called where determined to be appropriate for the evaluation.

When the evaluations of the written proposals are complete, all priced proposals will be opened. Total cost will be part of the final selection criteria.

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 approved by the Erie County Legislature, the Office of the County Attorney, and if necessary, the Erie County Fiscal Stability Authority. **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.

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 and Erie County Fiscal Stability Authority and 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
Southtowns AWTF Sewage Sludge Incinerator Emission Control Upgrades

ITEMS		FIRMS			
A. <u>Qualifications</u>					
1. Licensed Firm (NNR)	NNR				
2. Conflict of Interest	NNR				
3. Size of Firm vs. Project Size	5				
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 / Past experience with ECDEP - DSM	25				
2. Professional/Technical Subcontractors In-House	10				
3. Similar Projects	25				
4. Experience with other County Departments (NNR)	NNR				
5. Past County Employees (NNR)	NNR				
C. <u>Project</u>					
1. Evaluation of Scope of Services	35				
2. Manhours Projects per Phase	20				
3. MBE/WBE Firm / Subcontractors	15				
4. Time of Completion	20				
D. <u>Rate</u>					
1. Overhead Rate(s)	15				
TOTAL SCORE	200				
TOTAL PRICE					

NNR – No Numerical Rating

EXHIBIT "C"
MANHOUR SUMMARY SHEET

ERIE COUNTY DEPARTMENT OF ENVIRONMENT AND PLANNING
ERIE COUNTY SEWER DISTRICT NO. 3

Southtowns AWTF Sewage Sludge Incinerator Emission Control Upgrades

ENGINEERING TASK	PERSONNEL MANHOURS BY JOB CLASSIFICATION					TOTALS
Task A - Preliminary Engineering						
Task B - Development of Contract Documents						
Task C - Bid Phase Services						
Task D - Construction Administration						
Task E - Resident Engineering						
Task F - Regulatory / Operations Assistance						
TOTAL						

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 Erie County /Erie County Sewer District No. 3, Southtowns AWTF Sewage Sludge Incinerator Emission Control Upgrades (the “Project”), as more fully described in Schedule “A”, which is attached hereto and made a part hereof (the “Project”). The Project shall be carried out by the Consultant in accordance with current industry standards and trade practices.

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

- Schedule A – Scope/Specifications
- Schedule B – Standard Insurance Certificate
- Schedule C – Time of Completion
- Schedule D – Detailed Description of Compensation
- Schedule E – Cost Summary Form
- Schedule F – County of Erie Local Law No. 9-2005
- Schedule G – Certification Regarding Debarment and Suspension
- Schedule H – Certification Regarding Drug-Free Workplace Requirements
- Schedule I – Certification Regarding Lobbying

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

A list of key personnel of the Consultant, who shall be responsible for the implementation of this Agreement, is set forth in Schedule "A". The Consultant shall provide the County with prior written notice of any proposed changes in key personnel, and the Commissioner of Environment and Planning or his/her duly authorized designee (the "Commissioner") shall have sole discretion to approve or disapprove of any such personnel changes.

The Consultant shall report to the County on its progress toward completing the Project, 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.

SECOND: The Consultant shall commence the Project immediately upon written notification from the Commissioner (the "Commencement Date") and shall be completed no later than within the time frames set forth in Schedule "C".

The Consultant shall report to the County, as the Commissioner may request, on its progress toward completing the Project, 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. Phase of project worked on.
4. Required time expended.

The Consultant shall complete those specific Project items identified in Schedule “A” by the interim deadlines set forth therein, unless an interim deadline is extended by the Commissioner in writing, subject to any necessary legal approval of such amendment. Timely completion of the Project is of the essence. It is hereby agreed that the Consultant will complete the Project within the time as described in Schedule “C” attached hereto and made a part hereof. It is further agreed that the County may invoke liquidated damages, if any, as set forth in said Schedule “C”, for failure on the part of the Consultant to complete the Project as specified.

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

THIRD: For the Project to be performed pursuant to Paragraph “FIRST,” the Consultant shall be paid an amount not-to-exceed **[insert amount]** (\$**[insert numeric amount]**) Dollars, in the manner and at the rates set forth in Schedule **["D"]** **[If there is no Schedule “D”, or if payment provisions are not set out in Schedule “D”, insert a description of how often and when payments will be made and how much of the total will be paid, e.g., “which shall be paid in equal monthly installments”, and delete the rest of this sentence]**, which is attached hereto and made a part hereof. Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Consultant for out-of-pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

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

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

FOURTH: Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Consultant as are reasonably pertinent to this Agreement to substantiate the basis for payment. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

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

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

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

In the event of a dispute as to the value of the Project rendered by the Consultant prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Project 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 Project provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and

paid by the Consultant. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

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

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

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

NINTH: The Consultant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Consultant shall further

comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the Project hereunder.

TENTH: All records or recorded data of any kind compiled by the Consultant in completing the Project 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.

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

The Consultant agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Consultant agrees to enable the County’s continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

ELEVENTH: The Consultant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Consultant shall not subcontract any part of the Project without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties,

assignment of rights or subcontracting of Project under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subconsultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Consultant that for the purposes of this Agreement, all Project performed by a County-approved subcontractor shall be deemed Project performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

Notwithstanding the above, the parties hereto acknowledge and agree that, at the time of execution of this Agreement, the following subconsultants have been approved to provide services for the named purpose(s) in connection with this Agreement: **[insert subconsultant(s) name(s), address(es) and purpose(s)]**.

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 Project or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

FOURTEENTH: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as set forth below or to such other

addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

Joseph L. Fiegl, P.E.
Deputy Commissioner
Department of Environment & Planning
Division of Sewerage Management
95 Franklin Street – Rm. 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 Project 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: 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. In addition, the Consultant agrees to sign the certifications regarding Drug Free Workplace and Lobbying, attached hereto as Schedules “H” and “I”, and made a part hereof.

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

SCHEDULE "A"

SCOPE / SPECIFICATIONS

Southtowns AWTF Sewage Sludge Incinerator Emission Control Upgrades

GENERAL

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

ECDSM	-	<u>Erie County Department of Environment and Planning/ Division of Sewerage Management</u>
DEC/NYSDEC	-	<u>New York State Department of Environmental Conservation</u>
USEPA	-	<u>United States Environmental Protection Agency</u>

The Southtowns Advanced Wastewater Treatment Facility (AWTF) Sewage Sludge Incinerator (SSI) Emission Control Upgrades project (hereinafter referred to as the "Project") must satisfy specific conditions and limitations related to the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge incineration Units; Final Rule, 40 CRD 60 Subparts LLLL and MMMM (hereinafter referred to as the "SSI MACT rule"). All improvements shall be consistent with the guidelines established in the latest edition of the "Recommended Standards for Wastewater Facilities" (10-State Standards), the "ECDSM's Construction Specifications", and applicable regulatory requirements. Any building alterations shall comply fully with the requirements of the Americans with Disabilities Act of 1990 and New York State Building Codes.

Drawings and information pertaining to the Southtowns AWTF are available but not necessarily reliable. They do, however, represent the best existing information.

BACKGROUND

The Erie County Sewer (ECSD) District No. 3 Southtowns AWTF is located at S3690 Lakeshore Road, Buffalo, New York 14219. The facility operates two (2) fluidized bed SSI units as its means of solids reduction and disposal.

In March 2011 the USEPA released the SSI MACT rule. In response to this new rule, ECSD No. 3 contracted with Empire Stack Testing, LLC to analyze the emissions from the SSI units. CDMSmith was also retained by ECSD No. 3 to provide engineering services consisting of reviewing the stack testing results, analyzing compliance with the new limitations, developing and evaluating alternatives, and to provide recommendations for future operations.

The "Southtowns Advanced Wastewater Treatment Facility (AWTF) Sewage Sludge Incinerator (SSI) Maximum Achievable Control Technology (MACT)" report (CDMSmith, April 2012)

presented a preliminary recommendation to continue operation of the fluidized bed incinerators and complete upgrades to the existing units to allow for full compliance with the SSI MACT rule. A caustic feed system was recommended to control hydrogen chloride (HCl) emissions. Final recommendations were not made for mercury emissions, however, as data were inconclusive relative to the need for additional controls.

ECSD No. 3 once again contracted with Empire Stack Testing, LLC for further emissions analyses. The supplemental stack testing confirmed that mercury control was necessary to meet SSI MACT limitations at all times. Because of the need for a relatively low reduction in mercury, it was ascertained by CDMSmith that a sorbent polymer composite technology would meet the mercury control requirements of the facility (in lieu of a much more expensive carbon adsorption system being installed). Therefore, the recommendation to continue operation of the SSI units remained valid.

A Title V application was prepared by CDMSmith and submitted to NYSDEC in March 2014 in accordance with the SSI MACT rule. This RFP is the next step in ECSD No. 3's efforts for SSI MACT rule compliance. The engineering work associated with the Project will be the necessary consultant services to implement emission controls for the continued operation of the fluidized bed SSI units. Only alternatives associated with the continued operation of the incinerators are to be evaluated as part of the Project.

THE PROJECT

The County of Erie/Erie County Sewer District No. 3 is interested in securing professional services to perform preliminary engineering, development of contract documents, bid phase services, construction administration, construction inspection, and regulatory / operations assistance. The ECDSM asks that respondents to this request for proposals review all reports, data, and related information listed below, conduct supporting investigations as necessary, and develop their own scope of services for the Project. The following reports, data, and related information referenced throughout this RFP are available for review by contacting William Lardo or Daniel Skowronski at the ECDSM at (716) 858-8383:

- Southtowns AWTF record drawings
- “Southtowns Advanced Wastewater Treatment Facility (AWTF) Sewage Sludge Incinerator (SSI) Maximum Achievable Control Technology (MACT)” report (CDMSmith, April 2012)
- “Emission Test Report – Emission Rate Testing on Sludge Incinerator ‘Unit-X’ at Erie County Southtowns Wastewater Treatment Facility, Test Dates: July 06 & 07, 2011” (Empire Stack Testing, LLC, September, 2011)
- “Emission Test Report – Emission Rate Testing on Sludge Incinerator ‘Units-X & Y’ at Erie County Southtowns Wastewater Treatment Facility, Test Dates: September 17-27, 2013” (Empire Stack Testing, LLC, November, 2013)
- Southtowns AWTF Air Permit
- “ECSD No. 3 Southtowns Advanced Wastewater Treatment Plant, Title V Application, Facility DEC ID: 9-1448-00012” (CDMSmith, March 2014).

All proposers shall note the following milestone dates (per the SSI MACT rule) when scoping the Project:

- November 21, 2015: construction of the emission control improvements and process modifications complete
- March 16, 2016: Southtowns AWTF in full compliance with new SSI MACT emission limits

Respondents are encouraged to utilize their experiences to develop potential solutions that are cost effective and best serve the long-term function and viability of these facilities. The following items are expected to be part of the scope of services:

A. Preliminary Engineering:

Due to time constraints, a detailed engineering report is not contemplated. The consultant shall develop a memorandum providing the fundamental design basis for the HCl and mercury control work based on past stack emission testing data and engineering analysis.

At this time, the following improvements are anticipated. Firms may propose alternative methods to meet SSI MACT limitations and deadlines that they believe will be of better value to the County:

- For HCl control, it is assumed that two (2) 2,500 gallon tanks to store 50% sodium hydroxide, along with pumps, piping, controls, and associated appurtenances will be required to add caustic to the existing scrubber system. Presently, the Southtowns AWTF has a basement chemical storage room that includes two (2) FRP acid wash tanks that are no longer used – one 2,500 gallons, the other 1,500 gallons. It is assumed that the 2,500 gallon tank will remain and the 1,500 gallon tank will be replaced with a larger unit. Calculations completed by ECSD No. 3 indicate that the spill containment area should be sufficient for these purposes. Furthermore, it appears that the existing chemical transfer station area may be retrofitted for this duty. The engineer shall verify all parameters, perform necessary calculations, update the assumptions above to make final recommendations, and determine what will be necessary for a functional and code compliant system to provide the required level of HCl emission control.
- For mercury control, it is assumed that a sorbent polymer composite (or similar technology) system will be retrofitted in the existing scrubbers. This is a relatively new application for this technology; however, ECSD No. 3 understands that certain manufacturers will guarantee removal efficiencies. The engineer shall verify all parameters, perform necessary calculations (pressure drop, sorbent bed depth, etc.), and make final recommendations for a functional and code compliant system to provide the required level of mercury emission control.

A cost estimate shall be developed and included in the basis of design memorandum. Recommendations to accelerate the schedule for completion of the improvements shall also be provided. The final memorandum shall be stamped by a licensed professional engineer.

B. Development of Contract Documents:

The below includes general guidelines for all ECDSM projects. Not all items will be required for each project. The scope for this effort should include the minimum steps necessary to implement an effective solution for the County, while meeting regulatory requirements and deadlines:

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 SBL number (Section, Block, Lot) the property owner(s) in the areas directly affected by or immediately adjacent to the location of the proposed improvements. Contract drawings shall utilize this information to accurately depict existing and proposed features.
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 contract documents. In the case of a sewer line design, soil borings shall be taken at intervals no greater than 400 feet along force mains and 400 feet along gravity sewers. For pump station design, a minimum of two (2) soil borings will be required.
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 Engineering 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 ECDSM.
6. Prepare for the County's review and approval a list of the Engineer's recommended manufacturers for major equipment items.
7. Prepare a shop drawing submittal schedule. The schedule shall list all items which will require a shop drawing submittal/approval. The listing shall be subdivided by 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).
9. Prepare a State Pollutant Discharge Elimination System (SPDES) Application and other Permit Applications where applicable.
10. Make application and obtain or cause to be obtained all the necessary permit requirements from the Corp of Engineers, 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 the Design required NYSDEC forms needed for the project. Where needed, forward plans, specifications and reports/memorandums 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 NYS/DEC and NYS/EFC review.
14. Assist the County 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 ECDSM.
16. Modify planimetric maps (Scale 1" = 200') showing the final layout of facilities and property lines.
17. Update topography and utility information, as required, prior to bidding.
18. Added special design consideration for the proposed facilities are as follows:
Any modifications that may be required at the Southtowns AWTF, including SCADA interface, must be included in the project's construction documents.
19. Upon completion of the design phase, furnish the ECDSM 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.

C. Bid Phase Services:

The below includes general guidelines for all ECDSM projects. Not all items will be required for each project. The scope for this effort should include the minimum steps necessary to

implement an effective solution for the County, while meeting regulatory requirements and deadlines:

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 and distributed at cost.
2. Assist the County in securing bids for this project and make a written recommendation with regard to the award. Prepare, process and distribute 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 and conduct the Pre-Bid Meeting. Engineer shall also prepare and distribute agendas and minutes for each meeting and if necessary issue addenda.

D. Construction Administration:

The below includes general guidelines for all ECDSM projects. Not all items will be required for each project. The scope for this effort should include the minimum steps necessary to implement an effective solution for the County, while meeting regulatory requirements and deadlines:

1. A representative of the Engineer, familiar with the project's design, shall be present at and conduct the Pre-Construction Meeting. Engineer shall also prepare and distribute agendas and minutes for each meeting and if necessary issue addenda.
2. 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.
3. 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 to the requirements of the plans and specifications. The engineer shall promptly report the findings of his/her observation to the County in writing.
4. Prepare a shop drawing submittal, review and acceptance schedule. Maintain the shop drawings acceptance schedule on a daily basis. Any slippage on the part of the Contractors shall be recorded with a written notification to the contractor sent out immediately.
5. Review all 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.

- a. In cases where such investigations will cause excessive man-hour 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.
6. Review the contractor's requests for substitution of equipment and materials with the County and make appropriate recommendations to the County.
7. 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.
8. Assemble all guarantees, warranties and similar items required by the contract documents.
9. 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.
10. Prepare a draft web based Operation and Maintenance (O&M) Manual. After review of the Manual by the ECDSM, the Engineer shall make the necessary revisions 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. Also, the O&M Manual shall be formatted and configured to be compatible with the Erie County Sewer District No. 3 Electronic O&M Manual. (TIFF Images and *.pdf's)
11. 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.
12. Review and make appropriate written 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.
13. Advise, review and recommend, where applicable, any change order(s) to the contract that are in the best interest to the County or requested by the Contractor.
14. The Engineer shall prepare written parallel estimates to substantiate costs with respect to change orders and/or cost breakdowns furnished by the Contractor.
15. Prepare and process, with the assistance of the County all change orders.

16. Prepare and distribute agendas and minutes for regular progress/coordination meetings to all concerned parties.
17. Issue supplemental drawings to further explain the intent of plans and specifications when necessary.
18. Prepare and distribute written responses to all requests for information (RFI's), field clarifications, memos and bulletins that may be required.
19. Attend other project related meetings as requested by the County and/or as dictated by the project's progress/needs and provide minutes thereof.
20. Make recommendations to the County pertaining to special consultants.
21. Cooperate with local municipal representatives.
22. Review retention money clauses of contracts and make recommendations to the County with respect to release of any retained funds.
23. Receive, review and forward to the County with recommendations, all relevant documents such as release of liens, claims, etc., prior to preparation and the issuance of the certificate of final completion.
24. 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.
25. 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 start-up, hydraulic, and process tests of the completed facilities. No training of plant personnel is included under this item.
26. 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.
 - a. One complete set of as-built drawings prepared on mylar and a copy of the modified AutoCad design file along with all applicable external referenced drawings and images

and Pen Settings (CTB's) on CD 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.

27. Certify at the completion of the project that the facilities have been built, and are operating, in accordance with the Planning Documents, Design Analysis Report and the plans/specifications for the project.

E. Resident Engineering:

The below includes general guidelines for all ECDSM projects. Not all items will be required for each project. The scope for this effort should include the minimum steps necessary to implement an effective solution for the County, while meeting regulatory requirements and deadlines:

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 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/her 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 and the Engineer. This will include the monitoring of the adequacy of each Contractor's personnel and equipment in relation to his/her 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 designated work areas, 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 all required shutdowns/tie-ins and other tasks involving operational systems with Erie County Sewer District No. 3 personnel.
14. Coordinate and witness the final testing of the in place improvements as required by the contract specifications.
15. Maintain a detailed daily journal of all on-site activities and visitors.
16. 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.
17. 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.
18. Hold and chair coordination meetings with all contractors and the County a minimum of bi-weekly.

19. Prepare a monthly construction report for the County detailing all activities that took place during the prior month.
20. Cooperate with local municipal representatives.
21. Monitor cleanup activities of all Contractors and coordinate such activities with provisions in the respective contract documents.
22. Prepare punch-lists and monitor Contractor's activities as required to effect prompt correction of all items listed.

F. Regulatory / Operations Assistance:

The proposer shall include scope to assist ECSD No. 3 with regulatory interactions and requirements associated with the SSI MACT rule during/after installation of the emission controls to be constructed as part of the Project. This may include drafting and submitting a modified Title V permit, development of required monitoring plans, engineering associated with analyzing/certifying emission testing, outlining changes ECSD No. 3 must make once SSI MACT rule limitations are effective (training, testing, operation/maintenance manuals), etc.

SCHEDULE

Pursuant to the SSI MACT rule, certain milestones must be met. Proposers shall develop schedules that meet these key dates. See Schedule "C" of this Agreement for schedule details.

FUNDING

This Project may be eligible for assistance under the New York State Revolving Fund Loan Program. The Engineer will be required to comply with the requirements of the New York State Revolving Fund Loan Program, accordingly.

GENERAL INFORMATION

This invitation does not commit the County of Erie/Erie County Sewer District No. 3 to accept any proposal, nor does it obligate these entities for any costs associated with preparing or submitting proposal packages.

Respondents are advised that the firm selected must be prepared to perform all services necessary for the successful completion of this project. However, the County may authorize only portions of the work at its discretion. The right to amend the scope of the work and subdivide or combine work is retained. The right to reject any or all proposals is also retained.

SCHEDULE "B"
STANDARD INSURANCE CERTIFICATE

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 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

AGREEMENT FOR CONSULTANT ENGINEERING SERVICES

A. Time Schedule

The Engineer shall complete the work as listed in Schedule A of this Agreement according to the following dates, recognizing key milestones/deadlines in the SSI MACT rule:

Task A	Preliminary Engineering	_____
Task B	Development of Contract Documents	_____
Task C	Bid Phase Services	_____
Task D	Construction Administration	_____
Task E	Resident Engineering	_____
Task F	Regulatory / Operations Assistance	_____

Each time period shall begin from the County's Notice to Proceed with that phase of the work or the Engineer's first date of work on that date for that phase if no formal notice is given.

B. Liquidated Damages

Time is of the essence on this project. If through the actions of the Engineer the work above is not completed within the timeframes stated, the Engineer may be charged Liquidated Damages in an amount up to ten percent (10%) of the total amount budgeted for the work included as part of this Agreement. Furthermore, if the work above is not approved by the New York State Department of Environmental Conservation due to a negligent error or omission of the Engineer, the same liquidated damages may apply.

SCHEDULE “D”

DETAILED DESCRIPTION OF COMPENSATION

AGREEMENT FOR CONSULTANT ENGINEERING SERVICES

The Engineer shall be compensated for their work as specified and described in Schedule “A” of the Agreement on a Cost Plus (Percentage or Fixed) Fee Basis as hereinafter provided.

I. Total Compensation Breakdown

Payments for services, when cost plus fixed fee basis is specified in Article 3 of the Agreement, are broken down by contract task with payment for each being separately authorized.

(1) The contract task costs are as follows:

	<u>Total</u> <u>Cost</u>	<u>Cost</u> <u>Ceiling</u>	<u>Profit</u>
Task A Preliminary Engineering			
Task B Development of Contract Documents			
Task C Bid Phase Services			
Task D Construction Administration			
Task E Resident Engineering			
Task F Regulatory / Operations Assistance			
Totals	_____	_____	_____

NOTE:

* Cost Ceiling and Fixed Fee (Profit) are for cost plus fixed fee basis. Does not apply to Hourly Rate which is calculated as direct hourly rate multiplied by an overhead percentage and a percentage for profit.

(2) The costs listed above assume that the Notice to Proceed (NTP) for the project as listed above is given by the Owner to the Engineer by November 18, 2014 (180 days from submission of this RFP). It is anticipated that NTP will be provided well in advance of this date. In the event the NTP is given after November 18, 2014, the Engineer is to notify the Owner within two weeks if the delayed NTP will result in increased engineering costs. Any increase in costs as a result of a delayed NTP is subject to negotiation.

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 _____ to _____.

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

<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 hereinafter.

(8) Profit – Cost Plus Fixed Fee Basis

The fixed fee is only paid in full for completed tasks in which the agreed upon work products are delivered to the Owner. In the event work on a Project Task is not given a Notice to Proceed, no profit will be paid. If a Task is terminated before completion, Profit will be prorated for the work actually completed.

(a) Profit Draft Preliminary & Final Design, General Services During Construction, and Regulatory / Operations Assistance

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 and Startup 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 Tasks

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 Article 3, 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 Article 3, 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

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. The total compensation for any Task 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" COST SUMMARY FORM

COST SUMMARY FORMAT FOR ENGINEERING SUBAGREEMENTS				
PART I - GENERAL				
1. OWNER	2. PROJECT NO.			
3. NAME OF ENGINEER	4. DATE OF PROPOSAL			
5. ADDRESS OF ENGINEER (Include Zip Code)	6. TYPE OF SERVICE TO BE FURNISHED			
PART II - COST SUMMARY				
7. DIRECT LABOR (specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
DIRECT LABOR TOTAL				
8. INDIRECT COSTS (specify indirect cost pools)	RATE	x BASE	ESTIMATED COST	TOTALS
INDIRECT COST TOTAL				
9. OTHER DIRECT COSTS			ESTIMATED COST	TOTALS
a. TRAVEL				
TRAVEL SUBTOTAL				
b. EQUIPMENT, MATERIALS, SUPPLIES (specify categories)	QTY.	COST	ESTIMATED COST	
EQUIPMENT SUBTOTAL				
c. SUBCONTRACTS			ESTIMATED COST	
SUBCONTRACTS SUBTOTAL				
d. OTHER (specify categories)			ESTIMATED COST	
OTHER SUBTOTAL				
e. OTHER DIRECT COSTS TOTAL				
10. TOTAL ESTIMATED COST				
11. PROFIT				
12. TOTAL PRICE				

SCHEDULE "F"
COUNTY OF ERIE LOCAL LAW NO. 9-2005

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/WRF Utilization Commitment Act.

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

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

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

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

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

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

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

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

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

Section 5. Reporting

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

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

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

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

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

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

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

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

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

GEORGE A. HOLT, JR.

DEMONE SMITH

ALBERT DEBENEDETTI

LYNN M. MARINELLI

SCHEDULE "G"

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

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

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

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

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

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

Date: _____

Signature

Title

Organization

SCHEDULE "H"

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

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

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

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

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

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

and,

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

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

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

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

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

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

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

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

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

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

Organization

Authorized Signature
Date

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