

NOTICE OF INVITATION
TO SUBMIT A PROPOSAL:
Engineering Services for Erie County /
Erie County Sewer District No. 5
Transit Road Corridor Sanitary Sewer Service Evaluation Report

Proposals are requested by the Erie County Department of Environment and Planning, Division of Sewerage Management (DEP/DSM) for the Transit Road Corridor Sanitary Sewer Service Evaluation Report in Erie County Sewer District No. 5. The highest rated respondent will be selected to enter into an agreement with the County.

In accordance with Local Law No. 6, proposals are hereby invited for the subject project. Proposals are to be submitted in the exact format of submittal available from the DEP/DSM, 95 Franklin Street, Room 1034, Buffalo, New York 14202. Proposals will be due January 31, 2023 at 4:00pm.

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 work.

To obtain a copy of the RFP guidelines, please visit the following website, <http://www2.erie.gov/purchasing/index.php?q=requests-proposals-amp-construction-bids>. Alternatively, you may e-mail DSM@erie.gov

This invitation does not commit Erie County nor its DEP/DSM to accept any proposal, nor does it obligate Erie County for any costs associated with preparing or submitting proposals.

BY: Joseph Fiegl, P.E., BCEE
Deputy Commissioner
Erie County Department of
Environment & Planning
Division of Sewerage Management

Date: 12/14/22
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ERIE COUNTY

REQUEST FOR PROPOSAL (RFP)

TO PROVIDE

Engineering Services for Erie County /

Erie County Sewer District No. 5

Transit Road Corridor Sanitary Sewer Service

Evaluation Report

RFP# 5.3.2.TR

December 2022

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

COUNTY OF ERIE, NEW YORK
REQUEST FOR PROPOSALS (“RFP”)
RFP# 5.3.2.TR

TO PROVIDE Engineering Services for the Erie County / Erie County Sewer District No. 5, Transit Road Corridor Sanitary Sewer Service Evaluation Report

I. INTRODUCTION

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

It is the County's intent to select the best qualified proposer for this work.

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

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

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

II. PROPOSAL PROCEDURES

A. ANTICIPATED SCHEDULE OF PROPOSAL

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

Issue RFP:	December 15, 2022
Optional Pre-Proposal Meeting:	January 10, 2023
Proposals Due:	January 31, 2023
Contract Signed:	Following all necessary County approvals.

B. GENERAL REQUIREMENTS

1. Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate and reliable presentation.
2. One (1) original and five (5) copies shall be submitted. Proposals MUST include a signed Proposer Certification (Exhibit "A"). Proposals without a signed certification will be rejected.
3. Submission of the proposals shall be directed to:

Joseph Fiegl, P.E., BCEE, 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 January 31, 2023 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 David.Millar@erie.gov no later than 4:00 p.m. on January 17, 2023. Formal written responses will be distributed by the County on or before January 20, 2023. If proposers wish to be included on any responses to requests for clarification, the proposer must submit a request, in writing, to David Millar, P.E. at David.Millar@erie.gov no later than 4:00 p.m. on January 17, 2023. 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 via WebEx on January 10, 2023 at 10:00 AM. The WebEx details are as follows:

Join from the meeting link

<https://erie.webex.com/erie/j.php?MTID=m89297aafbf28027462542be91b681b66>

Join by meeting number

Meeting number (access code): 2496 496 6080

Meeting password: snHTtrng434

Tap to join from a mobile device (attendees only)

[+1716-858-2250](tel:+1716-858-2250).,[24964966080##](tel:+1415-655-0003) United States Toll (Buffalo)
[+1-415-655-0003](tel:+1415-655-0003).,[24964966080##](tel:+1415-655-0003) United States Toll

Join by phone

+1 716-858-2250 United States Toll (Buffalo)
+1-415-655-0003 United States Toll

Join from a video system or application

Dial 24964966080@webex.com
You can also dial 173.243.2.68 and enter your meeting number.

8. **All proposers submitting proposals must include a cost proposal in a separate sealed envelope clearly labeled with the proposer name, due date of proposal, proposal name “Transit Road Corridor Sanitary Sewer Service Evaluation Report”, RFP #5.3.2.TR” - Cost Proposal.**

III. SCOPE OF PROFESSIONAL SERVICES REQUIRED

See Exhibit “D” (Schedule “A” of the Agreement).

IV. STATEMENT OF RIGHTS

UNDERSTANDINGS

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

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Erie and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposer to enter into an agreement with the County of Erie for the required services;
- by submitting a proposal, the proposer agrees and understands that the County of Erie is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- that any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Erie, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by the Erie County Legislature, the Erie County Fiscal Stability Authority (if required), and the Office of the Erie County Attorney.

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

- To reject any or all proposals;
- To issue amendments to this RFP;
- To issue additional solicitations for proposals
- To waive any irregularities in proposals received after notification to proposers affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each proposer;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;
- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor;
- To interview the proposer(s);
- To request or obtain additional information the County deems necessary to determine the ability of the proposer;
- To modify dates;
- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the County for the expenses of preparation. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- While this is an RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;
- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

EVALUATION

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

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

- Proposer's demonstrated capability to provide the services.

- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing services.
- Proposer’s experience to perform the proposed services.
- Proposer’s financial ability to provide the services.
- Evaluation of the proposer’s fee submission. It should be noted that while price is not the only consideration, it is an important one.
- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.
- An evaluation of the proposer’s projected approach and plans to meet the requirements of this RFP.
- The proposer’s presentation at and the overall results of any interview conducted with the proposer.
- Proposers MUST sign the Proposal Certification attached hereto as Exhibit “A”. Unsigned proposals will be rejected.
- Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.
- No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

WRITTEN PROPOSALS

In one envelope, submit six (6) copies of your written proposal to include answers to the questions listed below.

Proposals will be evaluated, generally on your firm’s response to the following questions, (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. (Resumes should be attached at the end of the proposal.)
- 2) Indicate what professional or technical subcontractors you would utilize for the project. Indicate where the subcontractors are located and what services they would provide. Recite any experience or familiarity of the subcontractors which is pertinent to the specific requirements of this project and the basis of your confidence in their ability to perform. If your firm possesses specialty capabilities which allows work normally subcontracted to be performed in-house, present this information here.
- 3) Recite a list of no more than five similar projects within the last five years giving the size of the project in dollars, the client, including the name and phone number of the person to whom you were accountable, whether DEC and/or EPA were involved and if the project was constructed or otherwise completed.
- 4) Recite current and past work experience within the last five year if any, your firm has had with the County outside of the Department of Environment and Planning. Identify the other Department(s) for which the services were provided and the project title.
- 5) Disclosure of any Past County Employees - Indicate any personnel (either as an employee or thru a contractual relationship) who, within the last year prior to the date of this proposal, had been employed by the County of Erie. Also, indicate that person's County work title and the Department for which he/she worked. If any, an explanation of the significance of the employee on the project should be presented.

C. **Project**

- 1) Provide a written evaluation of the “Scope of Services” which 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 labor hours for each of the various employee types (job classification) who will be assigned to the project. The labor hours should be listed and totaled by Job Classification and Engineering Phase. If subcontractors are to be utilized on any phase of the project, provide separate breakdown which displays the number of labor hours 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 “Labor Hour Summary Sheet” (Exhibit “C”). 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 sealed price proposal). Resident engineering is to be assumed full time for the duration of construction for this project. 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 labor hours 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 engineer task (Exhibit “D” - Agreement, Schedule A). 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 of signed Proposer Certification will be rejected.

PRICE PROPOSAL

In a separately sealed envelope identifying your firm and the project and marked “CONFIDENTIAL - Pricing Information - To be Opened by the Deputy Commissioner, Joseph Fiegl, P.E., BCEE” submit one (1) copy of your price proposal.

The price 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 price proposal unless clearly described in the written proposal. Respondents are advised that all price proposals are subject to negotiation at the discretion of the 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”.

SELECTION

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

When the evaluation of the written proposals is complete, all price 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, if necessary, approved by the Erie County Legislature, the Erie County Fiscal Stability Authority and the Office of the County Attorney. NO RIGHTS SHALL ACCRUE TO ANY PROPOSER BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE COUNTY FOR SUBMISSION TO THE ERIE COUNTY LEGISLATURE AND/OR THE ERIE COUNTY FISCAL STABILITY AUTHORITY FOR APPROVAL. THE APPROVAL OF SAID LEGISLATURE AND/OR AUTHORITY MAY BE NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.

INDEMNIFICATION AND INSURANCE

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

“In addition to, and not in limitation of the insurance requirements contained herein, the Consultant agrees:

The Consultant agrees: that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Consultant shall defend, indemnify and hold harmless the County, its

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

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

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

INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

NON-COLLUSION

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

CONFLICT OF INTEREST

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

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

COMPLIANCE WITH LAWS

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

CONTENTS OF PROPOSAL

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

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

“NOTICE

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

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

and

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

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

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

EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect (i.e. how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 365 days from the proposal date.

EXHIBIT "A"

PROPOSER CERTIFICATION

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

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

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

Proposer Name

By: _____
Name and Title

EXHIBIT "B"
QUALIFICATIONS REVIEW RATING SHEET

DIVISION OF SEWERAGE MANAGEMENT
 PROPOSAL REVIEW RATING SHEET
 ERIE COUNTY SEWER DISTRICT NO. 5
 Transit Road Corridor Sanitary Sewer Service Evaluation Report

ITEMS		FIRMS			
A. <u>Qualifications</u>					
1. Licensed Firm	NNR				
2. Conflict of Interest	5				
3. Size of Firm vs. Project Size	5				
4. Location of Team(s)	10				
5. Percent Minority within Firm/ Project Team	5				
6. Current Obligations (Effect on Project Described)	10				
B. <u>Expertise/Experience</u>					
1. Special Expertise – Personnel	25				
2. Professional/Technical Subcontractors In-House	15				
3. Similar Projects	25				
4. Experience with other County Departments	NNR				
5. Past County Employees	NNR				
C. <u>Project</u>					
1. Evaluation of Scope of Services	40				
2. Labor Hours Projects Per Phase	25				
3. MBE/WBE Subcontractor	10				
4. Time of Completion	5				
D. <u>Rate</u>					
1. Overhead Rate(s)	20				
E. Proposer Certification	NNR				
TOTAL SCORE	200				

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

EXHIBIT "C"

LABOR HOUR SUMMARY SHEET

**ERIE COUNTY DEPARTMENT OF ENVIRONMENT AND PLANNING
ERIE COUNTY SEWER DISTRICT NO. 5
Transit Road Corridor Sanitary Sewer Service Evaluation Report**

JOB CLASSIFICATION	PERSONNEL HOURS BY JOB CLASSIFICATION					TOTAL
Provide a Draft Report to ECDSM						
Revise draft Report and submit to ECDSM for Review & Acceptance.						
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 **Engineering Services for Erie County/Erie County Sewer District No. 5, Transit Road Corridor Sanitary Sewer Service Evaluation Report**, as more fully described in Schedule “A”, which is attached hereto and made a part hereof (the “Work”). The Work shall be carried out by the Consultant in accordance current industry standards and trade practices.

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

- Schedule A – Scope/Specifications
- Schedule A-1 – Department Specific Requirements
- Schedule B – Standard Insurance Certificate
- Schedule C – Time of Completion
- Schedule D – Detailed Description of Compensation
- Schedule E – Cost Summary Form
- Schedule F – County of Erie Local Law No. 9
- Schedule “G” – Certification Regarding Debarment and Suspension
- Schedule “H” – Certification Regarding Drug-Free Workplace
- Schedule “I” – Certification Regarding Lobbying
- Schedule “J” - Erie County Equal Pay Certification
- Schedule “K” - Erie County Legislature Resolution

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

A list of key personnel of the Consultant, who shall be responsible for the implantation 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 the department 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 Work immediately upon written notification from the Department (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 on its progress toward completing the Work, as the Commissioner may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this Agreement.

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

1. Date.
2. Names and titles of employees rendering service.
3. Phase of project worked on.
4. Required time expended.

THIRD: For the Work to be performed pursuant to Paragraph “FIRST,” the Consultant shall be paid an amount not-to-exceed [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 Work and the approval of same by the County.

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

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

FIFTH: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County's receipt of funds from [**Name Source of Funds, e.g. State, Federal or Private**] to operate [**Name of Program**], and that no liability shall be incurred by the County beyond the monies made available from [**Name Source of Funds, e.g. State, Federal or Private**] for this Agreement. The Consultant agrees that the County shall not be liable for any of the payments hereunder unless and until the County has received said funds.

If, for any reason, the full amount of said funds is not paid over or made available to the County by [**Name Source of Funds, e.g. State, Federal or Private**], the County may terminate this Agreement immediately or reduce the amount payable to the Consultant, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Consultant. If the County Subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

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

SIXTH: (a) The County, upon ten (10) days notice to the Consultant, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "D". Upon receipt of notice that the County is

terminating this Agreement in its best interests, the Consultant shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Consultant shall direct any approved subconsultants to do the same.

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

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for five (5) business days after service on the Consultant of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Consultant. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

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

The Consultant agrees: that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Consultant shall defend, indemnify and hold harmless the County, its officers, employees, and agents from and against the Consultant’s proportional share of liability, damage, claim, demand, cost, judgment, fee, attorneys’ fees, or loss which the County may sustain, be subject to, or be caused to incur because of or as a result of (a) any wrongful act, error, or omission of the Consultant or third-parties under the direction or control of the Consultant; or (b) any willful misconduct of the Consultant or third parties under the direction or control of the Consultant; or (c) any

infringement of any claimed copyright or patent right of designs, plans, drawings, or specifications furnished by the Consultant or its subconsultant. Nothing contained herein shall create or give to third parties any claim or right of action against the County or the Consultant beyond such as may legally exist without regard to this provision.

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

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

TENTH: All records or recorded data of any kind compiled by the Consultant in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Consultant may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Consultant are to be considered “works made for hire.” If any of the deliverables do not qualify as “works made for hire,” the Consultant hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be

available. The Consultant agrees to assist the County, if required, in perfecting these rights. The Consultant shall provide the County with at least one copy of each deliverable.

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

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

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

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

To the County:

Joseph Fiegl, P.E., BCEE
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 Work for the County and that the County may enter into similar agreements with other consultants on an “as needed” basis.

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

from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

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

TWENTIETH: The Consultant shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as Schedule “J” and made a part hereof. The Consultant shall make such records available, upon request, to the County’s Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Consultant, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Agency’s compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014), may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Consultant is not qualified to participate in future County contracts.

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: The consultant shall comply with the New York State Revolving Fund (NYSRF) Program Requirements and Guidance Materials, if required.

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

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

THE COUNTY OF ERIE

CONSULTANT

By: _____
Name: Mark Poloncarz/Lisa Chimera
Title: County Executive/Deputy County Executive
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Witness: _____

Approved as to Content

Approved as to Form

By: Electronically Signed
Name: Daniel Castle, AICP
Title: Commissioner
Date: _____

By: Electronically Signed
Name: Richard Stanton
Title: Assistant County Attorney
Doc. No. _____
Date: _____

Recommended:

By: _____
Name: Timothy C. Callan, Ph.D.
Title: Deputy Comptroller
Date: _____

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

On: _____
Item: _____

UNIFORM CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF NEW YORK)
 ss.:
COUNTY OF)

On the _____ day of _____, the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they/ executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

UNIFORM CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF ERIE)ss.:
CITY OF BUFFALO)

On the _____ day of _____, in the year 20_____, before me, the undersigned, personally appeared Mark C. Poloncarz, Erie County Executive/Lisa Chimera, Deputy County Executive, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entity or individual upon behalf of which the individual acted, executed he instrument.

Notary Public

SCHEDULE “A”

SCOPE / SPECIFICATIONS

GENERAL

This invitation does not commit the County of Erie/Erie County Sewer District No. 5 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 engineering 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.

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

<u>ECDEP</u>	-	<u>Erie County Department of Environment and Planning</u>
<u>DSM</u>	-	<u>Division of Sewerage Management</u>
<u>ECSD</u>	-	<u>Erie County Sewer District</u>
<u>NYSDEC</u>	-	<u>New York State Department of Environmental Conservation</u>

BACKGROUND – TOWN OF CLARENCE

Sanitary sewer services in the Town of Clarence are provided by ECSD No. 5, by Town of Clarence Sewer Districts 2, 4, 6, 7, 9, & 10, by private septic systems maintained by the respective property owners, or in limited situations by private treatment systems. Outside of a small portion of ECSD No. 5 in the Clarence Research Park area, all public sewer systems in the Town of Clarence are tributary to the Town of Amherst Water Pollution Control Facility. Both the Town of Clarence and ECSD No. 5 have agreements with the Town of Amherst for conveyance and treatment services.

The Town of Clarence has included the provision of sanitary sewer services in various master planning documents. The sanitary sewer prioritization strategy outlined in “Master Plan 2015 Amendments – Sewer Expansion Priorities” (“2015 Sewer Master Plan”) included the following:

1. Full buildout within the current boundaries of existing sewer districts, including Erie County Sewer District # 5 and Clarence Sewer District #2: focusing on utilizing existing infrastructure and directing development within existing sewer districts.
2. Harris Hill Remediation: addressing potential pollution issues in an area referred to as “Harris Hill” where there is a high density of private septic systems.

3. Harris Hill Trunk Line Sewer Extension: allowing for development in a corridor where the infrastructure would be constructed to address Harris Hill area septic systems.
4. Industrial Area in the Gunville/Wehrle Industrial Business Park: longer term initiative concentrating on job growth within the Town.
5. Industrial Area in the County Road Industrial Business Park: longer term initiative concentrating on job growth within the Town.
6. In-Fill to eliminate on-site systems in the identified growth corridor: sewerage additional areas serviced by private septic systems that are in proximity to sewer districts.

In December 2016, the Town of Clarence completed its latest master planning exercise titled “Clarence 2030 – Town of Clarence Comprehensive Plan”. With regard to future sanitary sewer planning efforts, the following two passages from the “Clarence 2030 – Town of Clarence Comprehensive Plan” are highlighted:

- “It is imperative that the sanitary sewer prioritization strategy outlined in Master Plan 2015 is adhered to, as this will maximize existing infrastructure investments and minimize sprawling growth into agricultural areas.”
- An action item: “Review and revise the Sewer Master Plan”, including “Identify(ing) areas where adjustments or additions to sewer districts are necessary or appropriate”

After adoption of the “Clarence 2030 – Town of Clarence Comprehensive Plan”, the Town completed the “Town of Clarence Master Sewer Plan – 2030” (April 2018) to “serve as a supplement to Clarence 2030 Comprehensive Plan, providing a framework for future decision-making and guidance for local leaders adoption of a long range plan for providing sanitary services to selected areas of the Town where pollution abatement is necessary and where commercial and industrial development opportunities exist.” This plan expanded upon the previous efforts and included the following phased approach for infrastructure investments:

1. Implementation of a new 24” diameter Town of Amherst Peanut Line Trunk Sewer (“parallel Peanut Line sewer”): to provide capacity for many of the initiatives outlined in the 2015 Sewer Master Plan
2. Construction of Clarence Hollow Phase 2 (Remainder of Clarence Sewer District #9)
3. Harris Hill / Main Street: to align with Items #2 and #3 from the 2015 Sewer Master Plan
4. Spaulding Lake / Main Street: to address some areas associated with Item #4 from the 2015 Sewer Master Plan

BACKGROUND – EASTERN HILLS MALL SITE

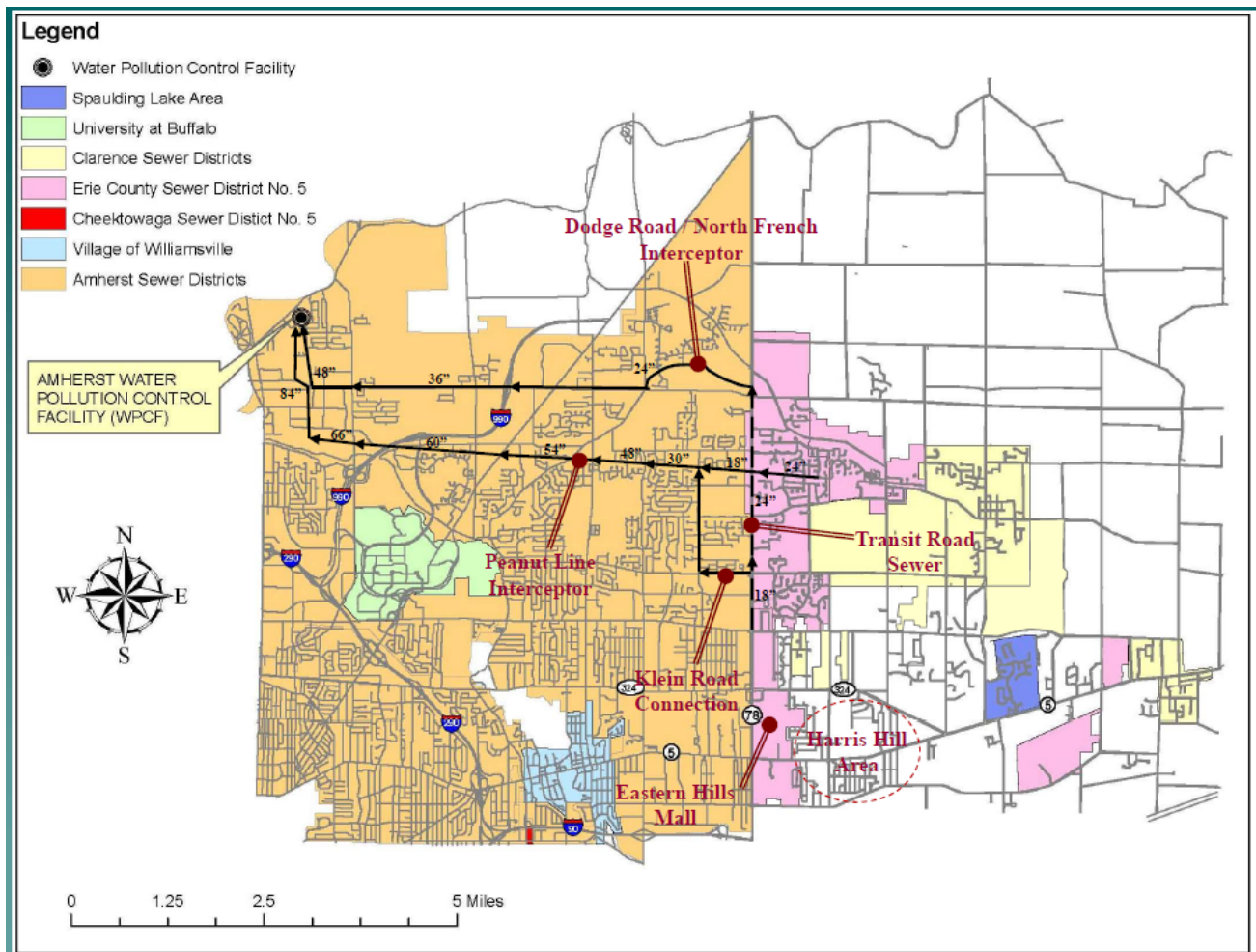
The Eastern Hills Mall site is located in the Town of Clarence. Wastewater generated from the Eastern Hills Mall parcel is tributary to the ECSD No. 5 Eastern Hills Pumping Station. Flows from this station are conveyed through a force main and discharged to an ECSD No. 5 gravity sewer along Transit Road. Sewers along Transit Road convey wastewater in a northerly direction and ultimately transmit flows to the Town of Amherst at metering locations at Klein Road or Dodge Road. All flows are tributary to Amherst Pollution Control Facility.

With regard to the existing ECSD No. 5 infrastructure servicing the Eastern Hills Mall parcel, the ECSD No. 5 pumping station, force main, and sewers have sufficient capacity to serve the

current needs. The Town of Amherst has some capacity constraints in portions of its sewer system downstream of ECSD No. 5’s connection at Dodge Road during peak wet weather flows.

In 2021, the Town of Clarence received a Conceptual Master Plan Application for the redevelopment of Eastern Hills Mall parcel. Uniland Development Company, as owner of this parcel, has proposed converting the site into a mixed-use “Town Center” through the construction of new residential, commercial, hospitality, and entertainment/recreational uses. These proposed changes to the Eastern Hills Mall parcel were not contemplated in the Town of Clarence master plans.

Preliminary analysis indicates the proposed peak wastewater flows from full implementation of the Conceptual Master Plan Application for the redevelopment of Eastern Hills Mall parcel exceed the current capacity of ECSD No. 5’s downstream sewer system on Transit Road. Further, additional flows from the Eastern Hills Mall parcel would exacerbate existing capacity constraints in the Town of Amherst’s system downstream of ECSD No. 5’s connection at Dodge Road.



BACKGROUND – PARALLEL PEANUT LINE SEWER ANALYSIS

The Town of Amherst, in an effort to analyze solutions to address existing capacity issues within its own system – as well as the long-term needs within the Town of Clarence –advanced a study to evaluate implementation of the parallel Peanut Line sewer from Transit Road to Paradise Road within the Town. The parallel Peanut Line sewer in concept would divert some flow from ECSD No. 5 to relieve constraints in the Town of Amherst’s sewer system and provide capacity for key priorities in “Town of Clarence Master Sewer Plan – 2030.” In light of the aforementioned Conceptual Master Plan Application, the Town of Amherst also analyzed increased flows expected from the potential redevelopment of the Eastern Hills Mall parcel. Preliminary evaluations indicate that the parallel Peanut Line sewer could be designed and constructed such that the sanitary sewer capacity needs of both Towns and the Eastern Hills Mall “Town Center” redevelopment project, as proposed in 2021, could be met [note: Uniland Development Company is anticipated to be submitting updated information to the Town of Clarence with increased sanitary sewer flows for the proposed redevelopment project; those increased flows have not yet been analyzed]. The Town of Amherst’s design of the parallel Peanut Line sewer is presently in a draft form and will ultimately require approval by the NYSDEC.

Assuming the parallel Peanut Line sewer garners NYSDEC approval, it is important to note that due to the significant increase in flows anticipated from the Eastern Hills Mall “Town Center” redevelopment project, capacity constraints would be created in ECSD No. 5’s infrastructure. Specifically, constraints would be found in the Transit Road corridor for those facilities needed to convey flows to the parallel Peanut Line sewer or to the existing sewer connections to the Town of Amherst.

PROJECT

The County of Erie is interested in securing professional services to prepare a report evaluating options to address the future sanitary sewer system needs for ECSD No. 5 along the Transit Road corridor.

For the purposes of this evaluation, it shall be assumed that the parallel Peanut Line in the Town of Amherst will be constructed as detailed in the preliminary draft design plans for the Parallel Peanut Line sewer. The basis of design and analyses supporting the preliminary plans will be made available to the engineering consulting firm retained for these services.

The ECDSM asks that respondents to this request for proposals review the information in this RFP, available documents, and develop their own scope of services for the project. At a minimum, the following must be included in the final report (see Schedule A-1 for additional report requirements):

- Review of all available information pertaining to this project (*i.e.*, past reports, flow/monitoring data, and record drawings).
- Summary of interviews conducted with the Town of Amherst Engineering Department, Town of Clarence Engineering Department, and the ECDSM to better understand the

provision of sewer services within their sewer districts, current challenges, and future needs.

- Tabular and/or narrative summary of current and future capacities for sanitary sewer services within the Town of Clarence and ECSD No. 5 based on existing documentation.
- Listing of feasible options for future sanitary sewer system needs for ECSD No. 5 along the Transit Road corridor, including but not limited to, the following:
 - Rehabilitation/upgrade/relocation of the existing ECSD No. 5 Eastern Hills pumping station based on future capacity needs for the full build-out of the tributary basin and construction of a new force main and gravity sewer to convey flows along Transit Road to the Peanut Line sewer.
 - Rehabilitation/upgrade/relocation of the existing ECSD No. 5 Eastern Hills pumping station based on future capacity needs for the full build-out of the tributary basin and construction of a new force main along Transit Road directly to the Peanut Line sewer.
 - Rehabilitation/upgrade/relocation of the existing ECSD No. 5 Eastern Hills pumping station based on future capacity needs for the full build-out of the tributary basin, with a force main and/or gravity sewers constructed in areas outside of the Transit Road corridor. Alternative alignments should consider ECSD No. 5 infrastructure in the vicinity such as the Bryant and Stratton pumping station, priorities in the Town of Clarence master planning documents such as the Harris Hill area, and other relevant factors.
 - Other feasible options based on the engineer’s analysis.
- Summary of feedback from stakeholders that may have jurisdiction over construction related to various options, such as the Town of Clarence, Erie County Highways, and the New York State Department of Transportation.
- Description of publicly available topographic and subsurface information, along with any field work conducted by the engineer to gather additional data necessary for planning level investigations.
- Detailed information regarding the engineer’s analysis of the impact(s) of the options on the existing sanitary sewer systems – specifically Klein Road & Dodge Road in the Town of Amherst and Transit Road in ECSD No. 5 – including hydraulic model output data.
- Planning level construction cost estimates and life cycle cost estimates for each option identified (include land acquisition cost where applicable).
- Listing of recommendations and next steps.

A draft report shall be submitted to the ECDSM for review. The engineer shall assume the report will require one round of revisions to address ECDSM and other stakeholder comments.

AVAILABLE DOCUMENTS

The following documents are available for review while engineers are developing their proposals:

- “Town of Clarence, New York Master Plan 2015” (Town of Clarence Planning and Zoning Department, August 2001; Amended February 2007)

- “Master Plan 2015 Amendments – Sewer Expansion Priorities” (Town of Clarence Planning Board, May 2007)
- “Clarence 2030 – Town of Clarence Comprehensive Plan” (Steinmetz Planning Group, December 2016)
- “Town of Clarence Master Sewer Plan – 2030” (Wm. Schutt and Associates, et al, April 2018)
- “Flow Monitoring and Inflow and Infiltration Quantification Report, Erie County Sewer District No. 5 and Town of Clarence Sewer Districts 2, 4, 6, 7, 9 & 10” (Arcadis, April 2021)
- DRAFT drawings – “Peanut Line Parallel Interceptor Sewer Project” (Greenman-Pedersen, Inc., December 2022)
- Sewer base map for ECSD No. 5
- Eastern Hills Mall Redevelopment Application (see Town of Clarence website: <https://www2.erie.gov/clarence/>)

SCHEDULE:

As detailed in Schedule “C”.

SCHEDULE "A-1"

DEPARTMENT/PROJECT SPECIFIC REQUIREMENTS

1. GENERAL PROVISIONS

A. Engineer Licensed

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

B. Report

Although it is not anticipated that this report will be funded by the New York State Environmental Facilities Corporation (NYSEFC), the Engineering Report shall follow and meet all of the requirements of the latest NYSEFC report outline:

<https://efc.ny.gov/system/files/documents/2022/10/er-outline-ffy2023.pdf>

C. Construction Documents

Work to provide Construction Documents including Design Report, Engineering Drawings, Specifications, and other services would be performed under a separate project.

SCHEDULE "B"
STANDARD INSURANCE PROVISIONS

INSTRUCTIONS FOR COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE

- I. Insurance shall be procured and certificates delivered before commencement of work or delivery of merchandise or equipment.
- II. CERTIFICATES OF INSURANCE
 - A. Shall be made to the "County of Erie, 95 Franklin St, Buffalo NY, 14202"
 - B. Coverage must comply with all specifications of the contract.
 - C. Must be executed by an insurance company, agency or broker, which is licensed by the Insurance Department of the State of New York. If executed by a broker, notarized copy of authorization to bind or certify coverage must be attached.
- III. Forward the completed certificate to: County of Erie, (Department or Division) responsible for entering into the agreement for construction, purchase, lease or service.
- IV. Minimum coverage with limits are as follows:

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

- V. Construction contracts require excess Umbrella Liability limits of \$5,000,000.
- VI Coverage must be provided on a primary-non contributory bases.
- VII. Designated Construction Project General Aggregate Limit Per Project Endorsement CG 25 03 is required.
In the event the concessionaire is required to have a N.Y.S. license to dispense alcoholic beverages an endorsement for liquor liability is VIII. required.
- IX. Waiver of Subrogation: Required on all lines unless noted
- X Transportation of people in buses, vans or station wagons requires \$5,000,000 excess liability.
- XI. Workers Compensation: State Workers' Compensation / Disability Benefits Law
Use Applicable Certificates Below:

Workers Compensation Forms

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

DBL (Disability Benefits Law) Forms

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

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

SCHEDULE "C"

TIME OF COMPLETION

A. Time Schedule

The Engineer is expected to complete the work as listed in Schedule A of this Agreement according to the following target dates:

- Provide the draft report to ECDSM within 6-9 months after issuance of the Notice to Proceed.
- Revise the draft reports and submit to ECDSM one (1) month after receipt of ECDSM comments

SCHEDULE "D"

DETAILED DESCRIPTION OF COMPENSATION

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

I. Total Compensation Breakdown

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

(1) The task costs are as follows:

	<u>Total Cost</u>	<u>Cost Ceiling*</u>	<u>Fixed Fee (Profit)*</u>
(a) Draft Report			
(b) Finalize Report (DSM comments addressed)			
Totals	_____	_____	_____

NOTE:

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

(2) The costs listed above assume that the Notice to Proceed for the earliest phase of the project as listed above is given by the County to the Consultant by May 1, 2023. In the event the Notice to Proceed is given after the date, the Consultant is to notify the County within two weeks if the delayed Notice to Proceed will result in increased engineering costs. Any increase in costs as a result of a delayed Notice to Proceed is subject to negotiations.

II. Cost Computation Method

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

(1) Direct Labor Cost

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

Officers*
Engineers
Technicians
Surveyors
Draftsmen
Secretarial Staff

***NOTE:**

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

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 Consultant'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 Consultant'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, copying, supplies, executive salaries, accounting, legal, clerical support salaries, etc. The following composite overhead rates have been established for this contract:

- a. For the Consultant's employees whose basic work assignments are in the offices of the Consultant, the Consultant'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 Consultant's employees whose basic work assignments are not in the offices of the Consultant, such as at the County's offices or at the construction field offices supplied by a Contractor (resident engineering services), the Consultant's overhead shall be computed at a rate of _____ percent of the actual wages paid to employees associated with the project.
- c. For the Consultant's employees on overtime (defined as work time exceeding 40 hours per employee per given week), if prior approval in writing has been granted by the County, the cost shall be computed at the employee's hourly rate, multiplied by the total hours over 40 in a week, and then multiplied by the overtime premium provided to the employee (not to exceed 1.5). Overhead will not be applied to the overtime hours. The maximum profit for the overtime shall not exceed 5%.

(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 Consultant's Office and/or the inspector's home to the work site/field office, will not be a billable item under the terms of this agreement. Also, mileage associated with the personal travel and mileage to and from lunch is NOT billable under this agreement.

(6) Subcontracts

The following County approved subcontracts to this Agreement will be paid by the Consultant and billed to the County at cost plus mark-up as listed in the attached “Cost Summary Format for Engineering Sub agreements”:

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

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

(7) Other Costs

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

(8) Profit

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

For these specific phases of the Agreement, profit, sometimes called a fixed fee, shall be a fixed amount. In the billing for profit, the Consultant 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 Consultant may bill for the profit remaining in that specific contract phase.

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

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

(c) Special Conditions for Profit on All Contract Phases

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

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

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

(d) Total

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

(9) Lump Sum Method

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

(10) Per Diem Rate Method

Whenever the Per Diem Rate method of compensation is stipulated in Schedule "D", of the Agreement, the Consultant shall submit monthly invoices for the services rendered. The invoices shall be based upon the actual accrued engineering labor hours 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 Consultant will be compensated at the per diem rate of _____ for the Resident Engineer, and _____ for the Project Inspectors. To establish the payroll record, the Consultant 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 Consultant's approved miscellaneous expenses such as mileage or specialty subcontractors will be handled in a fashion as described in Section II of Schedule "D".

III. Project Costs/Total Compensation

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

Total Compensation

1. The total amount of compensation to be paid by the Owner, and which the Consultant agrees to accept as full compensation for all services under this Agreement is _____. The above compensation shall be subdivided as indicated below.
2. It is agreed that the total compensation for services rendered for Tasks (a) and (b), as detailed in Schedule A, shall be at a cost-plus fixed fee. The total compensation for services rendered for these tasks shall not exceed \$_____ which is made up of a cost ceiling in the amount of _____, a fixed fee (profit) in the amount of _____ and a contingency amount of _____ N/A _____. The contingency may only be applied to services rendered during these tasks.
3. The total compensation for the project cannot be increased without a formal amendment/change order. The formula and rates which will be utilized in billing is detailed in Schedule C attached hereto and made part hereof.

*NOTE: The above listed costs are assuming the Notice to Proceed to the Consultant is issued by May 1, 2023.

COST SUMMARY FORMAT FOR ENGINEERING SUBAGREEMENTS

PART I - GENERAL

1. OWNER	2. PROJECT NO.
3. NAME OF CONSULTANT	4. DATE OF PROPOSAL
5. ADDRESS OF CONSULTANT (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					
SUBCONTRACTORS SUBTOTAL					
d. OTHER (specify categories)			ESTIMATED COST		
OTHER SUBTOTAL					
e. OTHER DIRECT COSTS TOTAL					
10. TOTAL ESTIMATED COST					
11. PROFIT					
12. TOTAL PRICE					

PART III - PRICE SUMMARY

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

PART IV - CERTIFICATIONS

14. CONSULTANT

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

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

14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

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

(3) _____
 DATE OF EXECUTION

(4) _____
 SIGNATURE OF PROPOSER

 TITLE OF PROPOSER

15. OWNER

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

 DATE OF EXECUTION

 SIGNATURE OF REVIEWER

 TITLE OF REVIEWER

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

RECEIVED
ERIE COUNTY LEGISLATURE

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

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

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

Section 5. Reporting

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

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

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

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

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

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

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

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

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

GEORGE A. HOLT, JR.

DEMONE SMITH

ALBERT DEBENEDETTI

LYNN M. MARINELLI

SCHEDULE "G"

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

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

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

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

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

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

Date: _____

Signature

Title

Organization

SCHEDULE "H"

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

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

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

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

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

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

and,

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

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

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

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

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

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

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

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

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

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

Organization

Authorized Signature

Title

Date

SCHEDULE "I"

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member or Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Organization

Authorized Signature Title Date

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

SCHEDULE "J"

Erie County Equal Pay Certification

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

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

Signature

Verification

STATE OF _____)
COUNTY OF _____) SS:

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

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

Sworn to before me this _____
Day of _____, 20__



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

Executive Order #13 Pay Equity Certification on County Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

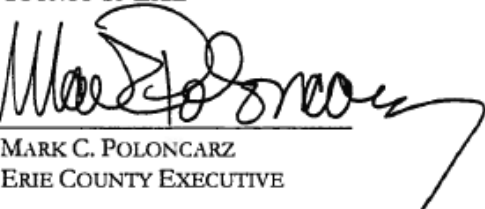
5. Further ordered that the Law Department prepare an Erie County Equal Pay Certification for use by Erie County offices, departments and administrative units and assure compliance with this Executive Order in the contract approval process; and it is,

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

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



COUNTY OF ERIE

BY: 
MARK C. POLONCARZ
ERIE COUNTY EXECUTIVE