

NOTICE OF INVITATION  
TO SUBMIT A PROPOSAL FOR  
EAST AURORA WATER RESOURCE RECOVERY FACILITY  
ELECTRICAL UPGRADES  
CONSTRUCTION INSPECTION  
ENGINEERING CONSULTANT SERVICES

Proposals are requested by the Erie County Department of Environment and Planning, Division of Sewerage Management (DEP/DSM) for engineering consultant services to provide construction inspection services for the East Aurora Water Resource Recovery Facility (WRRF) Electrical Upgrades project. The top rated respondent will be selected to enter into an agreement to provide the services.

In accordance with Local Law No. 6 (1983), proposals are hereby invited for the subject project. Proposals are to be submitted in the exact format detailed in the request for proposals (RFP). Proposals will be due at 12:00 PM on Thursday, September 25, 2025. Proposal shall be delivered to the DEP/DSM, Room 1034, 95 Franklin St., Buffalo, NY 14202.

To obtain a copy of the RFP guidelines, please visit the following website, <http://www3.erie.gov/purchasing/index.php?q=requests-proposals-amp-construction-bids>. Alternatively, you may call 716-858-8383 or e-mail DSM@erie.gov if you would like to request a hardcopy.

This invitation does not commit Erie County, or 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 DEP/DSM

Dated: August 13, 2025  
Published: August 19, 2025



**ERIE COUNTY**

**REQUEST FOR PROPOSAL (RFP)**

**TO PROVIDE**

**CONSTRUCTION INSPECTION SERVICES**

For

**Erie County Sewer District (ECSD) No. 8 – East Aurora Water Resource Recovery**  
**Facility Electrical Upgrades Project – Contract No. 25**

**File 8.3.3.25-CI**

**AUGUST, 2025**

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

**COUNTY OF ERIE, NEW YORK**  
**REQUEST FOR PROPOSALS (“RFP”)**  
**File No. 8.3.3.25-CI**

**TO PROVIDE**        **Erie County Sewer District (ECSD) No. 8 – East Aurora Water Resource Recovery Facility Electrical Upgrades Project - Contract No. 25 Construction Inspection Services**

**I. INTRODUCTION**

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

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

The County reserves the right to amend this RFP. The County reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive 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:                     | Tuesday, August 19, 2025                 |
| Proposals Due:                 | Thursday September 25, 2025              |
| Selection Made:                | Approximately 45 days following due date |
| Contract Signed:               | Following all necessary County approvals |
| Anticipated Notice-To-Proceed: | December 2025                            |

## 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 Thursday September 25, 2025 at 12:00 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](mailto:david.millar@erie.gov) no later than 12 p.m. on Friday, September 12, 2025. Formal written responses will be distributed by the County on or before Thursday, September 18, 2025. NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.
5. Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.
6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.
7. **All proposers submitting proposals must include a cost proposal in a separate sealed envelope clearly labeled with the proposer name, due date of proposal, proposal name (“East Aurora WRRF Electrical Upgrades Construction Inspection”) and “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 a RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;
- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

## **EVALUATION**

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

- Proposer's demonstrated capability to provide the services.
- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing services.
- Proposer's experience to perform the proposed services.
- Proposer's financial ability to provide the services.
- Evaluation of the proposer's fee submission. It should be noted that while price is not the only consideration, it is an important one.
- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.
- An evaluation of the proposer's projected approach and plans to meet the requirements of this RFP.
- The proposer's presentation at and the overall results of any interview conducted with the proposer.
- Proposers MUST sign the Proposal Certification attached hereto as Exhibit "A". Unsigned proposals will be rejected.

- Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.
- No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

## **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 inspection and electrical engineering team you would assign to this project.
- 5) Indicate the percent of minority personnel both at the firm level and on the project team. Females, if identified as minority, must be listed as technical or clerical.
- 6) List any current or anticipated obligations which may affect the project or use of the identified personnel proposed for this project.

### **B. Expertise/Experience**

- 1) Present your special expertise for the project and how your firm's qualifications would best serve the County on this Project. Note how this expertise suits the needs of the County for this particular 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 (5)** 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 through 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 along with a description of your in-house construction inspection procedures and the responsibility of your construction engineers and inspector to those procedures.
- 2) Based on the Scope of Services, Form of Contract, these Guidelines and the expected job duration, indicate the total number of manhours for each of the various employee types (job classification) who will be assigned to the project. The manhours should be listed and totaled by Job Classification and Engineering Phase (if hours General Services (a) are included in your approach). If subcontractors are to be utilized on any phase of the project, provide separate breakdown which displays the number of manhours for each of their employee types who will assist on this project. The above information is to be presented in a format as shown on the enclosed table labeled "Manhour Summary Sheet" (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 as indicated in Exhibit "D", Schedule "C". All manhours must be shown in Exhibit "C".
- 3) Include with your proposal the resume(s) of your inspector(s) and electrical engineer(s) proposed to be utilized for this project.

- 3) Indicate which MBE/WBE subcontractors you would propose to use on this project and why. Show what percentage of work is proposed to be assigned to MBE and WBE subcontractors. 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 phase (Exhibit "D" - Agreement, Schedule A - Item III). Indicate the minimum time required based on Exhibit "D", Schedule "C" and the Consultant's knowledge and approach.

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.

**PRICED 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 L. Fiegl, P.E.," submit one (1) copy of your priced proposal.

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

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

**CONTRACT**

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

**INDEMNIFICATION AND INSURANCE**

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

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

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

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

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

**INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

**NON-COLLUSION**

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

**CONFLICT OF INTEREST**

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

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

**COMPLIANCE WITH LAWS**

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

## CONTENTS OF PROPOSAL

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

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

### **“NOTICE**

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

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

and

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

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

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

## EFFECTIVE PERIOD OF PROPOSALS

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

**EXHIBIT "A"**

**PROPOSER CERTIFICATION**

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

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

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

\_\_\_\_\_  
*Proposer Name*

By: \_\_\_\_\_  
*Name and Title*

**EXHIBIT "B"**  
**QUALIFICATIONS REVIEW RATING SHEET**

DIVISION OF SEWERAGE MANAGEMENT  
 PROPOSAL REVIEW RATING SHEET  
 ERIE COUNTY SEWER DISTRICT NO. 8  
 EAST AURORA WWRF ELECTRICAL UPGRADES CONSTRUCTION INSPECTION

| ITEMS   |            | FIRMS |  |  |  |
|---|------------|-------|--|--|--|
|   |            |       |  |  |  |
| <b>A. <u>Qualifications</u></b>                         |            |       |  |  |  |
| 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/<br>Project Team        | 5          |       |  |  |  |
| 6. Current Obligations (Effect on<br>Project Described) | 10         |       |  |  |  |
| <b>B. <u>Expertise/Experience</u></b>                   |            |       |  |  |  |
| 1. Special Expertise – Personnel                        | 25         |       |  |  |  |
| 2. Professional/Technical<br>Subcontractors In-House    | 5          |       |  |  |  |
| 3. Similar Projects                                     | 30         |       |  |  |  |
| 4. Experience with other County<br>Departments          | NNR        |       |  |  |  |
| 5. Past County Employees                                | NNR        |       |  |  |  |
| <b>C. <u>Project</u></b>                                |            |       |  |  |  |
| 1. Evaluation of Scope of Services                      | 25         |       |  |  |  |
| 2. Manhours   | 15         |       |  |  |  |
| 3. Evaluation of Resumes                                | 30         |       |  |  |  |
| 4. MBE/WBE Subcontractor                                | 15         |       |  |  |  |
| <b>D. <u>Rate</u></b>                                   |            |       |  |  |  |
| 1. Overhead Rate(s)                                     | 20         |       |  |  |  |
| <b>E. <u>Proposer Certification</u></b>                 |            |       |  |  |  |
| E. Proposer Certification                               | NNR        |       |  |  |  |
| <b>TOTAL SCORE</b>                                      | <b>200</b> |       |  |  |  |

|             |  |  |  |  |  |
|-------------|--|--|--|--|--|
| <b>COST</b> |  |  |  |  |  |
| <b>RANK</b> |  |  |  |  |  |

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

**EXHIBIT "C"**

**MANHOUR SUMMARY SHEET**

| ENGINEERING TASK                             | PERSONNEL MANHOURS BY JOB CLASSIFICATION |  |  |  |  | TOTALS |
|--|--|--|--|--|--|--------|
|  |  |  |  |  |  |        |
| III General Services During Construction (a) |  |  |  |  |  |        |
| III Resident Engineering (b)                 |  |  |  |  |  |        |
|  |  |  |  |  |  |        |
| 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 **Inspection Services for ECSD No. 8, Contract No. 25, East Aurora WRRF Electrical Upgrades project**, 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. 1-2022
- 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.

**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.

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

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

**THIRD:** For the Work to be performed pursuant to Paragraph “FIRST,” the Consultant shall be paid an amount not-to-exceed [insert amount] (\$[insert numeric amount]) Dollars, in the manner and at the rates set forth in Schedule “D”, which is attached hereto and made a part hereof. Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Consultant for out-of-pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

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

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

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

**FIFTH:** The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to appropriations by the Erie County Legislature. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated

and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by the County Legislature during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

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

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

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

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

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for 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.

**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:

Erie County, DEP Div of Sewerage Management  
95 Franklin Street, Room 1034  
Buffalo, New York 14202  
Attn: Joseph Fiegl, P.E. BCEE

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

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

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

**TWENTY-SECOND:** 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-THIRD:** 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: Joseph Fiegl, P.E., BCEE  
Title: Deputy Commissioner  
Date: \_\_\_\_\_

Authorized by the Erie County Legislature:

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

## SCHEDULE "A"

### SCOPE / SPECIFICATIONS

#### General

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

|                   |   |  |
|-------------------|---|--|
| <u>DEP</u>        | - | <u>Erie County Department of Environment and Planning</u>                                      |
| <u>DEC/NYSDEC</u> | - | <u>New York State Department of Environmental Conservation</u>                                 |
| <u>USEPA/EPA</u>  | - | <u>United States Environmental Protection Agency</u>   |
| <u>ECDSM/DSM</u>  | - | <u>Erie County Department of Environment and Planning/<br/>Division of Sewerage Management</u> |
| <u>ECSD</u>       | - | <u>Erie County Sewer District.</u>   |
| <u>SPDES</u>      | - | <u>State Pollutant Discharge Elimination System</u>  |
| <u>WRRF</u>       | - | <u>Water Resource Recovery Facility</u>  |
| <u>EPG</u>        | - | <u>Engineering Planning Grant</u>  |
| <u>WQIP</u>       | - | <u>Water Quality Improvement Plan</u>  |

#### BACKGROUND

ECSD No. 8 owns and operates the East Aurora WRRF, located at 201 Mill Street, East Aurora, New York. This facility was acquired by Erie County in 2007 as part of an effort to consolidate wastewater treatment in the region. Much of the existing electrical systems and equipment are original to the facility construction from the 1980s and many components have been experiencing operational issues.

In 2020, LaBella Associates was retained by the ECDSM to evaluate the electrical service, emergency power generation, electrical equipment, electricity delivery systems, and power needs. The final report identified that electrical service should be improved, unusable emergency power generation equipment and electrical equipment that had little service life left should be replaced, electricity delivery systems were in questionable condition, and there is little or no power availability for future processes. Most electrical components and systems were recommended for upgrade and replacement.

In 2022, LaBella Associates was retained to prepare and design construction plans and specifications for upgrades to all electrical systems at the East Aurora WRRF in documents entitled: *East Aurora Water Resource Recovery Facility Electrical Upgrades, Contract No. 25-A (General Construction), Contract 25-B (Mechanical Construction), and Contract No. 25-D (Electrical Construction)*. The new electrical equipment and systems will ensure that service and emergency power is continuously provided for all processes and facilities. Bids were received by Erie County for construction of this project on June 25, 2025. Notice of Award was issued to STC Construction, Inc. for Contract 25-A, Quackenbush Co., Inc. for Contract 25-B, and Frey Electric Construction Co., Inc. for Contract 25-D on July 30, 2025. The anticipated commencement of on-site construction is in early 2026.

LaBella Associates (Design Engineer) has been retained by the ECDSM to provide construction management/administration services for this project including shop drawing review, any technical changes to the Construction Documents, technical direction to the Contractor, and development of record drawings. Design Engineer services will be initiated at the commencement of the construction phase of this project to concurrently assist with the services requested in this RFP. Specifically, **Design Engineer scope of services includes:**

- Basic construction administration services during the construction period including:
  - Consultation and advice on construction matters including the preconstruction meeting and periodic visits to the site by Design Engineer to observe the general progress and quality of the executed work. Design Engineer will conduct progress meetings.
  - Review of shop drawings, illustrations, samples and schedules, results of tests and inspections, and other data which the Contractor is required to submit to demonstrate conformance with the design concept of the Project.
  - Complete construction forms and administrative paperwork as necessary.
  - Review, and if necessary, offer opinions on the approval of progress payments to the Contractor.
  - Issue instructions from the ECDSM to Contractor, issue necessary interpretations and clarifications of contract documents.
  - Review the O&M manual to be prepared by the Contractor.
  - Evaluate proposed change orders and negotiate and prepare final documentation for processing by the ECDSM.
  - Furnish a set of full-size record drawings, based on prints marked up by the Resident Project Representative, to show those changes made during construction which the Engineer considers significant.

### **III Construction Phase**

The construction phase services for this proposal are broken up into two (2) separate functions:

- a. General Services During Construction (Optional)
- b. Resident Engineering Services

A. General Services During Construction (Optional)

Proposal can include construction phase services including, but not limited to, the following:

1. The Consultant may provide services of an officer, licensed engineer, and/or other engineers, with electrical engineering expertise, as needed, to assist the Resident Engineer in understanding the requirements of the plans and specifications.
2. The Consultant electrical engineer would coordinate with the Design Engineer, as appropriate.
3. The Consultant may attend project-related meetings as requested by the County and/or as dictated by the project's progress/needs.
4. The Consultant would coordinate the Resident Engineer's activities with the Design Engineer.

If not including this task, insert "0" for hours and costs where requested.

B. Resident Engineering Services

1. The need for part-time versus full-time inspection shall be coordinated with the Owner. The Consultant shall propose number of hours and days per week to be considered "part-time". The Consultant shall also specify how this will be managed (length of advanced notice – if any, communication with all parties, etc.).
2. Pursuant to the needs of the project and for the number of calendar days allowed by the Construction Specifications, the Consultant shall provide an on-site Resident Engineer to coordinate the day-to-day construction. This individual will inspect the construction for conformance with the plans and specifications and observe the Contractor's performance pursuant to approved construction schedule.
3. The Consultant shall monitor the approved construction schedules and provide updated information to the Design Engineer and County for the purpose of overcoming or controlling slippages. In cases where the Contractor is falling behind schedule, the Consultant shall promptly notify the Design Engineer.
4. The Consultant shall maintain a library of approved shop drawings for reference. Approved shop drawings shall be requested from the Design Engineer.
5. The Consultant shall regulate use of site and building area with respect to storage of materials, temporary offices, storage sheds, parking, traffic control, etc.

6. The Consultant shall coordinate all required shutdowns/tie-ins and other tasks involving operational systems with Erie County Sewer District personnel.
7. The Consultant shall observe the daily performance of the contractor(s) to verify compliance with the plans, specifications and applicable permits. It shall include but not be limited to, the installation of the proposed improvements/appurtenances and repair, if need be, of storm sewers, roads, building, existing facilities, and existing utilities damage and/or disturbed during construction.
8. The Consultant shall inspect material/equipment deliveries to the job site to verify compliance with the approved shop drawings.
9. The Consultant shall perform spot grade checks on the installed improvements to verify line and grade.
10. The Consultant shall observe the contractor's construction activities to verify they are conducted within the dedicated areas as shown on the contract plans.
11. The Consultant shall prepare a daily inspection reports, one for each Contract, which will describe, in detail, the contractor's performance for that day, the on-site equipment, size of labor force, etc., on a County or County-approved form. Reports shall be sent to the County no less than once weekly.
12. The Consultant shall review the contractor's plans of operation for compliance with the governing permit conditions.
13. The Consultant shall prepare parallel monthly construction pay estimates which indicate the construction completed to date and certify that the amount of payment does not exceed the value of the work in place.
14. The Consultant shall coordinate and witness the final testing of the in-place improvements as required by the contract specifications.
15. The Consultant shall maintain a detailed daily journal of all on-site activities and visitors.
16. The Consultant shall take digital progress photos during the course of construction. The Consultant will be required to review the photos and place a small description for each photo in a photo log. The photos shall be given to the County at the project's completion in digital format (jpeg).
17. The Consultant shall maintain complete and accurate job records of all correspondence, memoranda, supplemental drawings, field clarification memos, change orders, shop drawings, supplemental equipment brochures and monthly payment estimates together with appropriate backup information.

18. Prepare and maintain a set of marked prints for use in preparing record drawings. If any change from original design is approved during construction, the inspector will record said change on the set of marked prints.
19. The Consultant shall cooperate with local municipal representatives.
20. The Consultant shall review cleanup activities of all Contractors for compliance with provisions in the respective contract documents.
21. The Consultant shall prepare punch-lists and monitor Contractor's activities as required to effect prompt correction of all items listed.

### **AVAILABLE DOCUMENTS**

The ECDSM asks that respondents to this request for proposals review the information listed below and conduct supporting investigations as necessary to develop their own scope of services for this project. The following documents are available for review and can be downloaded from this link <https://www3.erie.gov/dsm/node/1291> (please email [DSM@erie.gov](mailto:DSM@erie.gov) with any problems with the link) or by contacting William Lardo of the ECDSM at (716) 858-8760 or [william.lardo@erie.gov](mailto:william.lardo@erie.gov).

- East Aurora Water Resource Recovery Facility Electrical Upgrades, Contract No. 25-A (General), Contract No. 25-B (Mechanical), and Contract No. 25-D (Electrical) Plans and Specifications, LaBella, May 2025

## SCHEDULE "A-1"

### DEPARTMENT/PROJECT SPECIFIC REQUIREMENTS

#### 1. GENERAL PROVISIONS

##### A. Assistance and Exchange Data

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

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

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

##### B. Equipment Purchases

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

##### C. Limitations

1. It is recognized that the Consultant cannot guarantee the performance or the safety of the construction work by the Contractor nor can it assume any responsibility for the

contractor's failure to perform without defects or deficiencies. Provided, however, that nothing herein shall modify the duties of the Consultant as are set forth herein to observe and review construction of the contract, to require the contractor to conform with the requirements of the Plans and Specifications and to report to the Design Consultant any deviations by the Contractor of which it becomes aware or in the course of reasonable care should become aware.

2. The Consultant shall be responsible only for its decisions or actions during the course of construction of the Project. The Consultant shall not be held responsible for any decision or action made by the Design Engineer or County without the Consultant's prior knowledge and consent.

D. Time Extension

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

E. Compliance with Laws

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

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

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

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

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

**Workers Compensation Forms**

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

**DBL (Disability Benefits Law) Forms**

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

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

**SCHEDULE “C”**

**TIME OF COMPLETION**

A. Time Schedule

The Contractors’ approved construction schedules will determine the schedule for on-site construction completion. It is understood the Engineer’s cost proposal for this contract is based on a Contract Time of 593 days from an estimated Notice to Proceed of September 15, 2025. The Contract Time includes time for submittals, procurement of materials and equipment, and closeout. An accurate schedule is not anticipated until after the Notice to Proceed for this project.

The Consultant is to provide full-time inspection during critical activities. Critical activities include, but are not limited to, trenching; placement of underground facilities or supports; pouring of concrete; placement of structures; installation of equipment; start-up of any component or system; major electrical connections and disconnections; critical project component delivery; when 2 or more Contractors (including Contractor subs) are working in the same area; during testing; when Utility is working on-site; when conflicts are being resolved; and during the final walk through. The timeframe during which full-time inspection is expected is indicated below. Time may not be continuous and depends on actual deliveries and activities.

The Consultant is to provide part-time inspection when one Contractor is on site and non-critical work is being performed. Non-critical work includes, but is not limited to, running above ground/visible electrical conduit; pulling conductors, fiber, data, and control wiring; heater installation in the Centrifuge Building; lighting, wiring device, or lightning system install; demolition of disconnected equipment; access control system install; and some restoration activities. Part-time inspection includes set-up and review of anticipated and completed work with the Contractor. Timing and frequency should be coordinated with the Design Engineer and Owner. The timeframe during which part-time inspection is expected is indicated below. This time will not be continuous. No inspection is needed if work is not being performed.

Part-time inspection shall be provided whenever possible. Coordination with Owner is required for activities not listed above and whenever the Consultant questions whether full-time inspection is needed (listed or not listed). There may be gaps in on-site activity creating gaps in days when inspection is needed. Flexibility with inspection schedule is required.

**Estimated Times:**

|                                   |                                |
|-----------------------------------|--------------------------------|
| a. General Services (Optional)    | To Be Determined by Consultant |
| b. Full Time Resident Engineering | 7 months (1200 hrs)            |
| Part Time Resident Engineering    | 5 months*                      |

\* Part-time hours and days to be proposed by the Consultant. Proposals for extra Construction Inspection will not be considered unless on-site construction exceeds 12 calendar months, or it is requested by the County.

**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

The total compensation for all work performed under this Agreement will be based on the actual hours worked.

(1) The General Services costs (if any) are as follows:

|                          | <u>Total</u><br><u>Cost</u> | <u>Cost</u><br><u>Ceiling*</u> | <u>Fixed Fee</u><br><u>(Profit)*</u> |
|--------------------------|-----------------------------|--------------------------------|--------------------------------------|
| (III) Construction Phase |                             |                                |                                      |
| (a) General Services     |                             |                                |                                      |
| During Construction      |                             |                                |                                      |
| Totals                   | _____                       | _____                          | _____                                |

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

(2) The Resident Engineering costs shall be as follows: for each hour worked, the inspector’s hourly rate shall be calculated as direct hourly rate multiplied by an overhead percentage and a percentage for profit.

(3) 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 February 1, 2026. 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, xerox copying, supplies, executive salaries, accounting, legal, clerical support salaries, etc. The following composite overhead rates have been established for this contract:

- a. For the 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 June 30, 2027.

(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 Subagreements":

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

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

(7) Other Costs

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

(8) Profit

(a) 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

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 10%. 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 manhours at the time of billing, subject to the approval of the County.

In the case of the on-site Resident Engineer and Project Inspectors, the 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 General Services During Construction, (if any) as detailed in Schedule A, shall be at cost plus a fixed fee. The total compensation for services rendered for this Phase of the work shall not exceed \$\_\_\_\_\_ which is made up of a cost ceiling in the amount of \$ \_\_\_\_\_ and a fixed fee (profit) in the amount of \$\_\_\_\_\_.
3. It is agreed that the total compensation for services rendered for Resident Engineering as detailed in Schedule A, shall be on an hourly rate basis computed to include direct labor cost, direct/indirect overhead cost and profit. Other direct costs, subcontractors costs and travel costs may be applied to calculate total compensation for this phase but only to the extent that prior written approval has been provided by the County. The hourly rate shall be developed for each employee that provides service for this phase based on actual direct labor cost, direct/indirect overhead cost and profit. The allowable direct/indirect overhead rate and percent profit shall be as defined in Schedule D. The total compensation for services rendered for this phase of the work shall not exceed \$\_\_\_\_\_.
4. The total compensation for any Phase of the project cannot be increased without a formal amendment/change order to the contract. The formula and rates which will be utilized in billing is detailed in Schedule C attached hereto and made part hereof.

\*NOTE: The above listed costs are assuming the Notice to Proceed to the Consultant is issued by

\_\_\_\_\_

## SCHEDULE "E" COST SUMMARY FORM

| 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 |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
| <b>DIRECT LABOR TOTAL</b>                              |                                    |             |                |        |
| 8. INDIRECT COSTS (specify indirect cost pools)        | RATE                               | X BASE      | ESTIMATED COST |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
| <b>INDIRECT COST TOTAL</b>                             |                                    |             |                |        |
| 9. OTHER DIRECT COSTS                                  |                                    |             | ESTIMATED COST |        |
| a. TRAVEL  |                                    |             |                |        |
| <b>TRAVEL SUBTOTAL</b>                                 |                                    |             |                |        |
| b. EQUIPMENT, MATERIALS, SUPPLIES (specify categories) | QTY.                               | COST        | ESTIMATED COST |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
| <b>EQUIPMENT SUBTOTAL</b>                              |                                    |             |                |        |
| c. SUBCONTRACTS  |                                    |             | ESTIMATED COST |        |
|  |                                    |             |                |        |
| <b>SUBCONTRACTS SUBTOTAL</b>                           |                                    |             |                |        |
| d. OTHER (specify categories)                          |                                    |             | ESTIMATED COST |        |
|  |                                    |             |                |        |
|  |                                    |             |                |        |
| <b>OTHER SUBTOTAL</b>                                  |                                    |             |                |        |
| e. OTHER DIRECT COSTS TOTAL                            |                                    |             |                |        |
| 10. TOTAL ESTIMATED COST                               |                                    |             |                |        |
| 11. PROFIT   |                                    |             |                |        |
| 12. TOTAL PRICE  |                                    |             |                |        |



**SCHEDULE "F"**  
**COUNTY OF ERIE LOCAL LAW NO. 1**

Local Law No. 1 of the year 2022

A local law modifying, amending and superseding, to the extent applicable, Local Law Number 12-1978, Local Law Number 1-1983. Local Law Number 6-1987. Local Law Number 5-1994 and Local Law Number 9-2005 which local laws collectively established the requirement for Minority-Owned Business Utilization and a women-Owned Business Utilization

Be it enacted by the County of Erie as follows:

**SECTION 1. LEGISLATIVE INTENT**

A. Erie County, through its legislative amendments referenced above, has embraced the important concept of providing economic opportunity on an equal basis to those traditionally underserved communities often recognized as a minority group.

B. Since 1978, the County has passed a series of local laws to advance the utilization of minority group members and women and construction contracts, supplies and materials, as well as in non-construction professional, consultant and technical services. These local laws were passed in 1978, 1983, 1987, and 1994 and most recently in 2005 respectively. Importantly, and of note, these previously adopted local laws were passed and implemented without substantive or material legal challenges.

C. Understanding this legislative history is crucial, since these efforts have significantly enhanced the opportunities and employment for minority group members and women in Erie County that in turn, has had a substantial positive impact on the economic and developmental health of the community. Presently, Local Law No. 9-2005 requires that the County maintain a goal of awarding 15% of the total cost of contracts for professional, technical or other consultant services to minority business enterprises and 5% goal for women business enterprises.

D. Over the past ten years, New York State, counties within New York, and other municipalities have made strides to improve the racial and gender diversity of the beneficiaries of local government development projects. New York State and other municipalities have modernized minority and women-owned business enterprise utilization goals to strengthen the effort to eliminate racial and gender disparities in economic development spending of public dollars.

E. Since the spring of 2020, our nation has been confronted with an economic and health crisis caused by a once in a generation pandemic and an historic movement seeking justice related to the exposure of the societal costs of systemic racism. While much progress has been made, recent events result in the County's urgent need to promote and modernize progress in including minority and women business enterprises in County contracting and also seeks to achieve greater employment opportunities for minorities and women in the County workforce through efforts to encourage hiring by firms awarded County contracts, This Local Law furthers

the County's legislative intent to encourage and continue the County's historical legislative enactments to support our community's citizens to improve their lives economically.

## SECTION 2. LEGISLATIVE FINDINGS

The Erie County Legislature, in connection with its efforts to modernize and update County policy in this important area of developing equal economic opportunities, makes the following findings and determinations:

A. The County Legislature body hereby acknowledges and finds that Article 15-A of the New York Executive Law ("Article 15-A") enacted in July 1988 and the regulations promulgated thereunder advance an important policy to eliminate barriers for participation of minority and women-owned businesses in government contract opportunities.

B. The County Legislature hereby finds that Article 15-A has been adopted and amended in accordance with applicable law and that the State has conducted disparity studies to support its policies in this area..

C. The County Legislature hereby finds and determines that the two most recently completed disparity studies commissioned by the New York Department Of Economic Development in 2010 and the most recent 2016 disparity study published June 30, 2017 ("2016 Disparity Study") respectively, provide evidentiary support that significant statistical disparities exist with respect to awarding prime contracts and subcontracts to Minority and Women Owned firms statewide. [A copy of the 2016 Disparity Study has been filed with the Legislative Clerk's office,]

D. The County Legislature hereby adopts and accepts the findings of disparities contained in the 2016 Disparity Study including the relevant data set forth in the Appendices annexed thereto in Volume 1 p. 302, Table A. 37, A. 38, A. 39 and A. 41 related to Western New York and the referenced Business Community Meetings held In Buffalo, New York in Table 9, 1, p. 214, (Copies of the relevant excerpts have been filed with the Legislative's Clerk's office).

E. The County Legislature hereby adopts, acknowledges and accepts the findings in the local wealth and income disparity study contained in the Racial Equity Dividend Report produced by the Greater Buffalo Racial Equity Roundtable issued in 2016,

F. County Legislature recognizes that the State goal for WWBE is 30% for construction and commodities and services,

G. The County Legislature recognizes that its County Seat, City of Buffalo, has an M/WBE goal of 30% for its construction and commodities and services.

H. The County Legislature hereby finds and determines that the two studies referenced above in paragraphs D and E of this Section establish that disparities exist in Erie County as to economic opportunity for minority group members and women in the award of County contracts.

I. The Erie County Legislature further establishes the desire to conduct an Erie County disparity study and as such, directs the Division of Equal Employment Opportunity to initiate a study in accordance with section 7(G) of this local law.

In summary, both the legislative history as set forth in Section 1 of this law and the legislative findings contained in this Section 2 provide factual predicates to support the policy to serve the best interests of the citizens of Erie County.

### SECTION 3. DEFINITIONS

A. As used in this section Of the law, the *Minority Business Enterprise* ("MBE") Shall mean a for-profit business, which performs a commercially useful function, which is at least fifty one percent (51%), owned by a minority group member, or in the case of a publicly owned business, at least 51% of all stock is owned by minority group members. For the purposes of this provision, a minority group member is a person Who is a citizen or permanent resident alien Of the United States Who is African-American, Hispanic, Latino, Asian-American, or Native American.

B. *Women Business Enterprise* ("WBE") shall mean a for-profit business, which performs a commercially useful which is at least fifty one percent (51%), owned by a woman or women, or in the case of a publicly owned business, at least a woman or women own of all stock of the entity.

C. *Minority or Women Business Enterprise* ("MWBE") shall mean a for-profit business which performs a commercially-useful function, which is at least fifty one percent (51 %) owned by a minority group member or members, woman or women, or in the case of a publicly-owned business, at least 51% of all stock of the entity is owned by a minority group member or members, a woman or women. Such ownership shall be certified by either the New York State Department of Economic Development, M/WBE Division or the Ene County Division of Equal Employment Opportunity after review of appropriate documents and investigation.

D. *Subcontract* shall mean those contracts tiered under a prime-contract for County contracts awarded for construction, modification, supplies and material, professional, technical and service work contracted by the contractor in the execution of the work for the County.

E. *Certified Business* shall mean a business verified as an MBE or WBE pursuant to Erie County local certification or under the provisions of Article 15-A of NY Executive Law,

F. *Contractor* shall mean an individual. a business enterprise including a sole proprietorship, a corporation, partnership or a limited liability company or any party with an award of a County contract or State contract.

G. *Department* shall mean an office, department or division of Erie County government.

H. *MWUAB* shall mean the Erie County Minority and Women Utilization Advisory Board.

I. *Large County* shall mean Erie County or a county having a population in excess of 285,000 according to the most recent federal census,

J. *Utilization Plan* shall mean a plan in a prescribed schedule format prepared by a Contractor and submitted in connection with a County procurement, The Utilization plan shall identify those MBE and WBE firms committed to perform work,

K. *Erie County Disparity Study* shall mean a study commissioned by Erie County for the purposes of analyzing participation by MBEs and WBEs in Erie County contracts to determine what inequities, if any, exist. Such study shall be commenced within one hundred eighty (180) days of the passage Of this Local Law and every five (5) years thereafter.

L. *Diversity Practices* shall mean the Contractor practices, actions and policies related to the following:

- (1) Compliance with the MBE and WBE goals;
- (2) Efforts at employment of minority and women members in the community;
- (3) Mentoring Of MBE and WBE firms with a goal of developing such firms to become prime contractors;
- (4) Entering into partnerships, joint ventures or Other similar arrangements with certified minority and women-owned businesses;
- (5) Participation in an apprenticeship program, if applicable; and
- (6) Compliance with The Erie County Workforce Development and Diversification New York State Certified Worker Training Program. also known as the "Apprenticeship Bill of 2018" [referencing (Local Law No. 3-2018)], if applicable.

SECTION 4. MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION  
COMMITMENT FOR CONSTRUCTION CONTRACTS BY THE  
DEPARTMENTS OF PUBLIC WORKS, PARKS, RECREATION AND  
FORESTRY, AND ENVIRONMENT AND PLANNING

The following provisions shall be inserted in, and made a condition of all bid specifications or requests for proposals prepared or administered by the Erie County Department of Public Works, Ene County Department of Parks, Recreation and Forestry, and/or the Erie County Department of Environment and Planning (including its Division of Sewage Management) and advertised the effective date this local law for any contract estimated by the County to exceed \$100,000 in cost (the "Construction Provision").

A. Minority and Women Business Enterprise Utilization Commitment:

Contractors awarded a contract by the County in a value of \$100,000 or greater shall take action to create equal economic opportunity by utilizing bona fide MBEs and/or WBEs for subcontracting on County projects.

Such equal economic opportunity action shall include, but not be limited to:

- (1) Utilizing a source list of MBEs and WBEs compiled by the County or the State of New York;
- (2) Solicitation of bids from MBEs and WBEs, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties;
- (3) Giving MBEs and WBEs sufficient time to submit proposals in response to County solicitations;
- (4) Maintaining records showing MBEs and WBEs and specific efforts to identify and award contracts to these entities; and
- (5) A goal of awarding a certain percentage of the total dollar value of the contract to MBEs and WBEs, which shall be promulgated by the Director Of the Division of Equal Employment Opportunity ("Director Of EEO") In accordance with the findings of the Erie County Disparity Study and In accordance with Section 11 of this local law.

B. Where the MBE or WBE is a supplier, a credit of sixty percent (60%) of the dollar value of the subcontract between the MBE or WBE and the contractor Shall be awarded towards the fulfillment of the appropriate goal as set forth above, unless the supply budget for the overall project accounts for seventy-five percent (75%) or more Of the total project budget, and that instance a credit of one hundred percent (100%) of the dollar value of the subcontract between the MBE or WBE and the contractor shall be awarded towards the fulfillment of the appropriate goal. For the purposes of this provision, an MBE or WBE shall be considered a 'supplier' when it assumes actual and contractual responsibility to furnish supplies or materials and is the manufacturer of those supplies materials; or is recognized by the manufacturer involved as a distributor of its supplies or materials; and owns or leases a facility which is necessary and customary to carry out the purported function of the business; and distributes, delivers and services the supplies or materials with its own employees.

C. Where the MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, the credit shall be the exact dollar value of the broker fees the exact percentage Of the markup on the product on a subcontract between the MBE or WBE and the contractor. The sales credit will be awarded toward the fulfillment of the appropriate goal, Where the MBE or WBE performs a function or service, which is commercially unnecessary, such as acting as a passive conduit in the supply process, or duplicating a service provided by others in the same supply chain from manufacturer to purchaser, no credit will be granted toward the appropriate goal.

D. Each Contractor bidding on a County contract shall submit to the County, with the bid, a list of all MBEs and/or WBEs with whom the Contractor has signed a binding contractual agreement, or is presently negotiating an agreement, for the purposes of meeting the

minority and women business enterprise utilization goal provided for in section A(5) of this law- Such a list must be signed by the MBEs and/or WBEs with whom the Contractor is seeking to utilize. A Contractor's bid shall not be considered where the contractor fails to submit such a signed list of MBEs and/or WBEs as provided herein. A Contractor's bid shall not be considered where examination of said list of MBEs or WBEs evidences failure by the contractor to comply with the equal economic opportunity action requirements provided for herein, except that the County may, upon written request by the contractor, grant a complete or partial waiver of the provisions when the availability of MBEs or WBEs in the market area of the project is less than the goals above. Upon written request by the Contractor, the County; through its Erie County Division of Equal Employment Opportunity, may grant a complete or partial waiver Of the requirement for subcontracting with an MBE or WBE when an MBE or WBE for the project is not available.

E. As evidence of compliance with the goals set forth in this law, within 15 business days of the bid opening, the contractor shall submit to the County a schedule for MBE or WBE participation, including the name(s) of the MBEs and/or WBEs with whom the contractor intends to subcontract, specifying the agreed-upon price to be paid for such work, and identifying in detail the Contractor item(s) or parts to be performed by each MBE or WBE. A letter of intent to enter into a subcontract or purchase agreement, contingent upon contract award by the County, and indicating the agreed-upon price and scope of work shall be provided, signed by both the contractor and the MBE or WBE.

F. As evidence of compliance with the goals set forth in this law, the Contractor shall provide to the County copies of all subcontracts and/or purchase agreements with MBEs or WBEs for the contract within 15 business days of the contract award. A notice to proceed with construction shall not be issued until the County receives such documentation.

G. As evidence of compliance with the goal set forth in this law, when the project is thirty percent (30%) complete, the Contractor shall submit a list of the MBEs or WBEs with whom the contractor has entered into a binding agreement for subcontracting under this contract to the County. The same information is required when the project is at seventy five percent (75%) completion and a final accounting must accompany the final payment request to the County.

H. Failure to comply in good faith with the provisions set forth herein shall constitute a breach of the contract; subject to all remedies available to the County, including but not limited to the assessment of liquidated damages or other contractual penalties, as reasonable and appropriate.

I. In the event of non-compliance with subparagraphs D, E, and F provisions by a successful low bidder Contractor, the County has the discretion to proceed with negotiations with the next two lowest or qualified bidders.

J. All appropriate goals, ownership status, and compliance with the provisions of this law shall be certified by the Enc County Division of Equal Employment Opportunity after review of appropriate documents and investigation.

## SECTION 5. MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION COMMITMENT FOR SUPPLIES, MATERIALS AND EQUIPMENT, ACQUIRED VIA THE DIVISION OF PURCHASE

The following provisions shall be made a condition of all bid specifications or requests for proposals prepared or administered by Erie County for supplies, materials and/or equipment purchased by Erie County involving an expenditure of more than \$20,000 (the "Supplier Provision").

A. Contractors awarded purchase contracts by the County involving an expenditure of more than \$20,000 for supplies, materials and equipment purchases fitting within this section shall take action to create economic opportunity by utilizing MBEs and WBEs on all contracts with the County, Consistent with Section 3, MBE and WBE {inns are business entities operated for-profit.

Such equal economic opportunity action Shall include, but not be limited to:

- (1) Utilizing a source list of MBEs and WBEs compiled by the County or the State of New York;
- (2) Solicitation of bids from MBEs and WBEs, particularly those located in Eric, Niagara, Cattaraugus and Chautauqua Counties;
- (3) Giving MBEs and WBEs sufficient time to submit proposals in response to County solicitations;
- (4) Maintaining records showing MBEs and WBEs and specific efforts to identify and award contracts to these entities; and
- (5) A goal of awarding a certain percentage of the total dollar value of the contract to MBEs and WMBEs, which shall be promulgated by the Director of EEO in accordance With the findings of the Erie County Disparity Study and in accordance with Section 11 of this local law-

B. All bidders on each contract subject to this supplier provision shall submit to the Eric County Division of Equal Employment Opportunity, with the bid, a list of all MBEs and WBEs in the form of a Utilization Plan with whom the supplier has solicited bids or with whom the supplier has signed a binding contractual agreement, or with whom the supplier is presently negotiating an agreement, for the purposes of meeting the MBE and/or WBE utilization goals of this section. Such a list must be signed by the MBEs and/or WBEs with whom the supplier is seeking to utilize, A supplier's bid shall not be considered where the supplier fails to submit such a signed list of MBEs and/or WBEs as provided herein. A supplier's bid shall not be considered where examination of said list of MBEs or WBEs evidences failure by the supplier to comply with the equal economic opportunity action requirements provided for herein, except that the County may, upon written request by the supplier, grant a complete or partial waiver of the provisions when the availability of MBEs or WBEs in the market area of the project is less than the specified MBE and WBE goals in this section.

C. As evidence of compliance with the goals set forth in this law, within 15 business days of the bid opening, the supplier shall submit to the County's Division of Purchase and Division of Equal Employment Opportunity a Utilization Plan for MBE or WBE participation, including the name(s) of the MBEs and/or WBEs with whom the supplier intends to utilize,

specifying the agreed-upon price to be paid for such goods and services, and identifying in detail the contract item(s) or items to be supplied by each MBE or WBE- A letter of intent to enter into a purchase agreement, contingent upon contract award by the County, and indicating the agreed-upon price and scope of work shall be provided, signed by both the supplier and the MBE or WBE. As evidence of compliance with the goals set forth in this law, the supplier shall provide to the County copies of all purchase agreements with MBEs or WBEs for the contract within 15 business days of the contract award.

D. Failure to comply in good faith with the provisions set forth herein shall constitute a breach of the contract, subject to all remedies available to the County, including but not limited to the assessment of liquidated damages, or other contractual penalties as reasonable and appropriate.

E. All appropriate goals, ownership status, and compliance with the provisions of this law shall be certified by the Erie County Division of Equal Employment Opportunity after review of appropriate documents and investigation,

F. If the expenditure is less than the County must follow the policies and procedures as adopted in accordance with Gen. Municipal Law §104-8.

#### SECTION 6. MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION COMMITMENT FOR PROFESSIONAL SERVICES, TECHNICAL SERVICES, CONSULTANT SERVICES, AND INSURANCE PROCURED BY COUNTY DEPARTMENTS

The following provisions shall be made a condition of all bid specifications or requests for proposals prepared or administers by Erie County for professional services, technical services, consultant services, and/or insurance procured by Erie County involving an expenditure of more than \$100,000 (the "Service Provider Provision").

A. Contractors awarded contracts by the County involving an expenditure of more than \$100,000 for services fitting within this section shall take action to create economic opportunity by utilizing MBEs and WBEs on all contracts with the County. Consistent with Section 3, MBE and WBE firms are business entities operated for profit.

Such equal economic opportunity action shall include, but not be limited to:

- (1) Utilizing a source list of MBEs and WBEs compiled by the County or the State of New York;
- (2) Solicitation of bids from MBEs and WBEs, particularly those located in Erie, Niagara, Cattaraugus and Chautauqua Counties;
- (3) Giving MBEs and WBEs sufficient time to submit proposals in response to County solicitations;
- (4) Maintaining records showing MBEs and WBEs and specific efforts to identify and award contracts to these entities; and

(5) A goal of awarding a certain percentage of the total dollar value of the contract to MBEs WMBEs shall be promulgated by the Director of EEO. In accordance with the findings of the Erie County Disparity Study and in accordance with Section 11 of this local law.

B. All professional, technical, or consultant providers subject to this provision shall submit to the Erie County Division of Equal Employment Opportunity, with the proposal, a list of all MBEs and WBEs in the form of a Utilization Plan with whom the provider has solicited bids or with whom the provider has signed a binding contractual agreement, or with whom the provider is presently negotiating an agreement, for the purposes of meeting the MBE and/or WBE utilization goals of this section. Such a list must be signed by the MBEs and/or WBEs with whom the provider is seeking to utilize. A proposal shall not be considered where it fails to include such a signed list of MBEs and/or WBEs as provided herein. A proposal shall not be considered where examination of said list of MBEs or WBEs evidences failure to comply with the equal economic opportunity action requirements provided for herein, except that the County may, upon written request by the provider, grant a complete or partial waiver of the provisions when the availability of MBEs or WBEs in the market area of the project is less than the specified MBE and WBE goals in this section.

C. As evidence of compliance with the goals set forth in this law, within 15 business days of the notice of award, the provider shall submit to the applicable County Department and Division of Equal Employment Opportunity a Utilization Plan for MBE or WBE participation, including the name(s) of the MBEs and/or WBEs with whom the provider intends to utilize, specifying the agreed-upon price to be paid for such goods and services, and identifying in detail the contract item(s) or items to be supplied by each MBE or WBE. A letter of intent to enter into an agreement, contingent upon contract award by the County, and indicating the agreed-upon price and scope of work shall be provided, signed by both the provider and the MBE or WBE. As evidence of compliance with the goals set forth in this law, the provider shall provide to the County copies of all agreements with MBEs or WBEs for the contract within 15 business days of the contract award.

D. Failure to comply in good faith with the provisions set forth herein shall constitute a breach of the contract, subject to all remedies available to the County, including but not limited to the assessment of liquidated damages, or other contractual penalties as reasonable and appropriate.

E. All appropriate goals, ownership status, and compliance with the provisions of this law shall be certified by the Erie County Division of Equal Employment Opportunity after review of appropriate documents and investigation.

## SECTION 7. REPORTING REQUIREMENTS FOR COUNTY DEPARTMENTS

In furtherance of Local Law Number 9-2005, the following provisions shall update, modify and amend such Local Law as set forth herein.

A. Upon completion of the Erie County Disparity Study, every County Department shall annually prepare and implement a written MWBE Utilization Plan for the utilization goals for minority and women owned business participation on County contracts, excluding any not-for-profit contracting procurements, let by or on behalf of such Department. The Plan shall be submitted to the Erie County Division of Equal Employment Opportunity for review and approval by September 15 annually.

B. The County Division of Equal Employment Opportunity shall submit a summary of each Department's annual written plan to the Legislature and MWUAB simultaneously With the annual proposed Budget. The plans are not to be considered as a part of the proposed annual budget process.

C. The Erie County Legislature shall hold an annual hearing in its Minority and Women Business Enterprise Committee concerning the annual written plans submitted by Departments.

D. The Division of Equal Employment Opportunity shall also prepare a bi-annual report on each Department's goal achievement, including each Department's good faith efforts to reach those goals. The bi-annual report shall be submitted to the County Executive, the Legislature, and the MWUAB.

E. Each Department shall make good faith efforts to achieve the goal(s) as set forth by the Director of EEO in accordance with the findings of the Erie County Disparity Study.

F. Failure by any Department to submit any reports required by this Local Law shall be grounds for discipline by the County Executive, except for those Departments whose heads are elected, and in that instance, the County Legislature shall determine the appropriate remedy for non-compliance with the provisions of this Law.

G. No later than one-hundred eighty (180) days after the passage of this Local Law, the Division of Equal Employment Opportunity; in consultation with the MWUAB shall advertise a Request for Proposals to conduct a County-wide Disparity Study and shall do so every five (5) years thereafter.

H. The County Legislature and County Executive shall mutually determine the necessary funding to accomplish the purposes of this Local Law during the annual budget process, including but not limited to the costs of any Disparity Studies contemplated herein.

## SECTION 8. WORKFORCE DIVERSITY PROGRAM

A. Definitions: As used in this law under this Section, the following terms are defined below:

(1) *Minority Group Member* shall mean a United States Citizen or permanent resident alien who can establish and demonstrate membership in the following group:

- (a) Black or African-American having origins in any of the Black African racial groups;
- (b) Hispanic Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian, African or Hispanic origin;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America;
- (d) Asian and Pacific Islander persons having origins in any of the Far East Countries, South-East Asma or Pacific Islands; and
- (e) Women from all racial groups,

(2) *Executive Order No. 18* shall mean that certain Executive Order entitled "*Erie County Construction Bid Documents shall include Local and Disadvantaged Worker Requirements*" signed by County Executive Mark C, Poloncarz on September 27, 2017.

(3) *Disadvantaged Groups* shall mean collectively "disadvantaged workers" as that term is defined in Executive Order No. 18 at par. 1(c), for the purposes of including such individual groups for this Section. Specifically, a disadvantaged worker is a resident who has a household income below 50% of the Area Median Income ("AMI"); or has been released from prison within the last 10 years; or participates in the Temporary Assistance for Needy Families program; or participates in the Supplemental Nutrition Assistance Program; or has been unemployed for at least 12 consecutive months. The applicable zip codes as referenced in Executive Order No. 18 as cited above will be determined annually by Erie County Division of Equal Employment Opportunity.

B. As evidenced by the history of local laws in this subject matter area as recited previously in Section I hereof and the Executive Order No. 18 signed by County Executive Poloncarz for Construction, the County encourages aspirational goals for the utilization of disadvantaged groups inclusive of minority group members and women in construction, supplier industry, professional, technical and occupations. To further that policy goal and Incorporate the spirit and intent of Executive Order No. 18 into this law, there shall be Workforce Participation goals in the award of County Contracts established by the County Department for contracts in excess of \$250,000 for construction and related supplies and \$100,000 for the professional, technical and occupations.

(1) Each Department shall strive to meet aspirational goals as set forth in par. 2 below and such goals be set forth in its invitation bids, request for proposals and other solicitations that will result In an award of \$250,000 for construction and \$100,000 for the provision of goods and services shall set forth the expected degree of workforce participation by minority group members, women and those individuals described in the Executive Order No, 18 issued by County Executive Poloncarz related to construction services specifically.

(2) Based on the Executive Order No. 18, par. 1(c), a Workforce Participation goal of 20% of total work hours performed during the contract award period for the provision of goods and services is hereby determined to be applicable to this Section.

Notwithstanding this Section, Executive Order No. 18 is not repealed, amended or modified by this law.

(3) Departments seeking to meet the aspirational workforce participation goals of Shall consider factors including but not limited to the following;

(a) the findings in the 2016 Disparity Study with specific references to the Buffalo and Western New York Region and the 2016 Greater Buffalo Racial Equity Study;

(b) United States Census Bureau data; and

(c) Local unemployment and poverty level data.

(4) Every Contractor responding to an invitation for bids, request for proposals or other solicitation resulting in a contract award from a County Department shall agree to the workforce participation goals in this Section and make good faith efforts to achieve the workforce participation goal or request a waiver from such goal.

(a) Contractor shall sign a certification prepared by the Erie County Division of Equal Employment Opportunity as to the good faith efforts.

(b) Any Contractor may submit a waiver request to this Section in writing to the Division of Equal Employment Opportunity. Each waiver request must be supported by appropriate documentation evidencing good faith efforts as to compliance.

(c) In the event that a Contractor is not able to meet the M/WBE goals, the Director of EEO may permit the workforce participation efforts to be credited towards any shortfalls in meeting the M/WBE participation goals, as deemed appropriate and with documented evidence of good faith compliance. The degree to which the workforce participation efforts may be counted towards the MWBE goals shall be promulgated by the Rules and Regulations as described in Section 11 herein.

## SECTION 9. MINORITY AND WOMEN UTILIZATION ADVISORY BOARD

Erie County Charter Section 1703 establishes the Minority and Women Utilization Advisory Board ("MWUAB"), whose mission, among other matters, is to evaluate and review the adequacy of the County's efforts on behalf of Minority and Women's Business Enterprises.

A. To the extent necessary and applicable, Local Law Number 1-1983, Section 2, thereof, shall be modified, amended and updated as follows:

(1) MWUAB is hereby tasked with reviewing program administration and implementation of this law including handling of any administrative appeals for non-compliance sanctions and shall submit an annual report to the Erie County Legislature.

(2) MWUAB shall appoint, among its members, a designated hearing committee for administrative appeals involving the subject matter of diversity compliance.

(3) MWUAB shall have its members appointed by the County Executive, consistent with Local Law Number 1-1983. The County Executive shall provide a copy of the appointees to the County Legislature within thirty days of appointment.

(4) MWUAB shall retain, after consultation with and approval by the Department of Law; outside consultants and professionals as required to accomplish its mission and shall be empowered to promulgate rules for the administration of this Section 9.

## SECTION 10. SANCTIONS FOR NON-COMPLIANCE

As set forth in Section 1 of this law, the County has expressed a strong policy objective and Intent to provide opportunity for meaningful participation in County contract awards. Further, as set forth in Section 2, the County has made certain legislative determinations in support of the policy directives contained herein.

A. To accomplish that objective, each County contracting Department shall include a provision in its respective contracts that any Contractor who willfully and intentionally fails to comply with the MBE and WBE provisions of this law shall be liable to the County Department contracting entity for liquidated or other appropriate damages on account of such contractual breach, Any such assessment of liquidated damages, other appropriate contractual sanction or alternative nonmonetary sanction and penalty, such as a designation as a non-responsible bidder, shall be considered as a relevant factor in future County procurement opportunities,

B. Each Contractor shall agree and consent upon acceptance of an award of a County contract to be bound by terms of compliance with the law including any associated sanctions.

C. Not less than five days after receipt of a written provisional determination by a County Department that the Contractor has failed to comply with this Local Law, the Contractor shall receive a notice setting forth the rationale for the provisional determination, along with the time, date, and place for the Contractor to appear and be heard on the provisional determination.

D. At the designated time and place set forth in the notice, the Contractor may challenge the reasons for the County Department's provisional determination in person, with or without counsel, by appearing before the MWUAB's designated hearing committee as described in Section 9, No member of the designated hearing committee shall be an elected legislator.

E. The MWUAB shall render its decision and make a recommendation to the Erie County Division of Equal Employment Opportunity and the Erie County Department of Law on whether or not to issue sanctions within forty-five (45) days after the presentation by the Contractor and the Department who made the provisional determination.

F. The County Department of Law will review the recommendation of the MWUAB in consultation with the Erie County Division of Equal Employment Opportunity and institute proper proceedings for the imposition of sanctions.

G. If a County contractor/vendor/supplier asserts or claims a MWBE or workforce diversity status that is accurate during its contract with the County, the County will note this factor and consider the non-compliance as a relevant factor in evaluating the vendor in future procurement opportunities. Said non-compliance may be a factor in determining that the vendor is not a responsible bidder for purposes of County contracting.

H. The sanctions set forth in this Section are imposed if there is willful conduct and intentional conduct or a lack of having obtained necessary waivers and other evidence of good faith compliance.

## SECTION 11. RULES AND REGULATIONS

A. Upon the completion of the Erie County Disparity Study and pursuant to paragraph 7(G) herein, the Division of Equal Employment Opportunity, in conjunction with the County Law Department, shall promulgate Rules and Regulations related to the implementation, guidance and enforcement of this Local Law. The Rules and Regulations shall also establish the MBE and WBE utilization goals to be awarded MWBEs in each of the respective areas (construction, supplies and professional services) based upon the findings of the Erie County Disparity Study.

B. The Director of EEO shall file a copy of the Rules and Regulations with the Clerk of the County Legislature within sixty (60) calendar days of the completion of each Erie County Disparity Study. At the time of filing, any updated MWBE participation goals shall go into effect and remain as such unless and until the findings of a future disparity study warrants further changes.

## SECTION 12. SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or business shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its specific application.

## SECTION 13. EFFECTIVE DATE

This Local Law shall take effect thirty (30) days after the filing with the Secretary of State, in accordance with Section 27 of the New York State Municipal Home Rule.

**SPONSORS:**

April N.M. Baskin

Howard Johnson

Jeanne Vinal

Lisa Chimera

Timothy J. Meyers

**SCHEDULE "G"**

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

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

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

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

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

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

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

Date: \_\_\_\_\_

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Organization**

## **SCHEDULE "H"**

### **Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals**

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

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

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

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

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

and,

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

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

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

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

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

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

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

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

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

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

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Organization

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Authorized Signature

Title

Date

**SCHEDULE "I"**

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

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

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

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

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Organization

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Authorized Signature      Title                      Date

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

**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

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

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

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

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

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

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

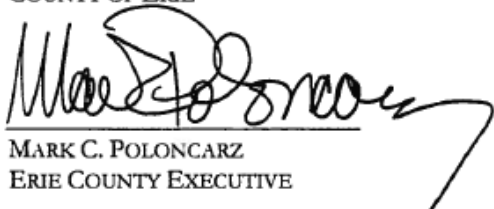
5. Further ordered that the Law Department prepare an Erie County Equal Pay Certification for use by Erie County offices, departments and administrative units and assure compliance with this Executive Order in the contract approval process; and it is,

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

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



COUNTY OF ERIE

BY:   
MARK C. POLONCARZ  
ERIE COUNTY EXECUTIVE