

NOTICE OF INVITATION  
TO SUBMIT A PROPOSAL FOR  
PROFESSIONAL ENGINEERING SERVICES

Proposals are requested by the Erie County Department of Environment and Planning, Division of Sewerage Management (DEP/DSM) for consultant services related to the Big Sister Creek Water Resource Recovery Facility Effluent System Upgrades in Erie County Sewer District No. 2. The top-rated respondent will be selected to enter into an agreement for engineering design and/or construction phase services to implement the improvements.

In accordance with Erie County 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 on Thursday August 13, 2026 by 2:00 P.M. An optional online pre-proposal meeting will be held at 10:00 a.m. on Tuesday July 14, 2026.

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

To obtain a copy of the RFP guidelines, please visit the following website on or after June 23, 2026: <https://www3.erie.gov/purchasing/requests-proposals-construction-bids>. Alternatively, you may call 716-858-8383 or email [beth.pfalzer@erie.gov](mailto:beth.pfalzer@erie.gov) if you would like to request a hardcopy.

This invitation does not commit Erie County Sewer District No. 2, Erie County, or its DEP to accept any price 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:6/17/26  
Published:6/23/26



## ERIE COUNTY

REQUEST FOR PROPOSALS (RFP)  
BIG SISTER CREEK  
WATER RESOURCE RECOVERY FACILITY  
EFFLUENT SYSTEM UPGRADES  
Engineering Services

Erie County Sewer District No. 2

**RFP# 2.3.2.BSCWRRF Effluent**

**June 2026**

**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. 2.3.2.BSCWRRF Effluent**

**TO PROVIDE** Engineering Services for the Big Sister Creek Water Resource Recovery Facility (WRRF) Effluent System Upgrades in Erie County / Erie County Sewer District (ECSD) No. 2

**I. INTRODUCTION**

The County of Erie, New York (the “County”) is currently seeking Proposal Statements from qualified Engineering Firms interested in providing design and/or construction phase services for the Big Sister Creek WRRF Effluent System Upgrades project. Proposers interested in providing these engineering services are invited to respond to this request.

It is the County's intent to select the Proposer(s) that provide(s) 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:	<u>Tuesday June 23, 2026</u>
Optional Pre-Proposal Meeting	<u>Tuesday July 14, 2026</u>
Proposals Due:	<u>Thursday, August 13, 2026</u>
Recommendation Made:	<u>Approximately 30 days following due date</u>
Firms Notified:	<u>Following all necessary County approvals</u>

## 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, August 13, 2026 at 2:00 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 Thursday July 30, 2026, at 4:00 p.m. Formal written responses will be distributed by the County on or before Thursday August 6, 2026. NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.
5. Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.
6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.
7. Proposers are encouraged to attend the optional pre-proposal meeting which will be held online at 10:00 a.m. on Tuesday July 14, 2026. Please see the access information below:

**Join from the meeting link**

<https://erie.webex.com/erie/j.php?MTID=mbafb07ef20567b4ca098484ae8905116>

**Join by meeting number**

Meeting number (access code): 2498 030 7804

Meeting password: KAsvVVJp754

**Tap to join from a mobile device (attendees only)**

+1716-858-2250,,24980307804 ## United States Toll (Buffalo)

+1-415-655-0003,,24980307804 ## United States Toll

Join by phone

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

Join from a video system or application

Dial 24980307804@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

8. **All proposers submitting proposals must include a cost proposal in a separate sealed envelope clearly labeled with the proposer name, due date of proposal, and proposal name (“Big Sister Creek WRRF Effluent System Upgrades – Engineering Services”).**

### **III. SCOPE OF PROFESSIONAL SERVICES REQUIRED**

See Exhibit “D” (Schedule “A” and Schedule A-1 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 it 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 deadline stated. 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 the 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.
- 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 for 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 one (1) original and five (5) 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”). Note – even those items that are listed as “NNR” (no numerical rating) are important and must be addressed in your proposal. NNR items that are unanswered may adversely impact your overall ranking.

A. **Qualifications**

- 1) State clearly whether your main office/parent firm is currently authorized to perform professional engineering in New York State.

Indicate if this would be a joint venture proposal with another professional organization. The reasons for a joint venture should be presented. (Please provide documentation for all firms for compliance with New York State Education Law).

- 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 on this project.
- 3) State the number of Employees in the Firm - If a branch office will perform work, indicate the size of the branch office. Also indicate, in relation to this project, how size of firm would relate to performance.
- 4) State the location (municipality) of the design team you would assign to this project. If more than one design team is proposed or if design team support is to be provided by another office, please explain.
- 5) Indicate the workforce demographics at the firm level and on the project team, using the job categories, race/ethnicity, and male/female data presented in

Federal EEOC Standard Form 100 (EEO-1).

- 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 show how your firm's qualifications would best serve the County on this Project. (Resumés should be attached at the end of the proposal.). Also, 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 allow work normally subcontracted to be performed in-house, present this information here.
- 2) Recite a list of no more than five similar projects within the last five years giving the size of the project in dollars, the client, including the name and phone number of the person to whom you were accountable, whether DEC and/or EPA were involved and if the project was constructed or otherwise completed.
- 3) Recite current and past work experience within the last five years, if any, your firm has had with the County of Erie outside of the Department of Environment and Planning. Please note, the Erie County Water Authority is not part of the County of Erie's government. Identify the other Department(s) for which the services were provided and the project title.
- 4) 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 there is any, an explanation of the significance of the employee on the project should be presented.

**C. Project**

- 1) Provide a written evaluation of the "Scope of Services" which indicates your unique approach to performing this project.
- 2) Based on the Scope of Services, Form of Contract, these Guidelines and the expected job duration, indicate the total number of labor hours for each of the various employee types (job classification) who will be assigned to the project. The hours should be listed and totaled by Job Classification and Engineering Phase. If subcontractors are to be utilized on any phase of the project, provide separate breakdowns which display the number of hours for each of their employee types who will assist on this project. All labor hours, including those for subcontractors, must be shown in this part of the proposal.

The above information is to be presented in a format as shown on the enclosed table labeled "Labor Summary Sheet" (Exhibit "C"). You may substitute your

own layout (i.e. spreadsheet printouts) in lieu of using the enclosed form. (Please note the DEP Summary Form, ECDEP-CS-1, is to be utilized in the breakdown of costs in sealed price proposal). Resident engineering is to be assumed for the duration of construction for this project as noted in Schedule "C". Insofar as you propose utilizing County personnel for this project, state clearly the level of effort or task you would expect the County to provide.

- 3) Indicate which MBE/WBE/SDVOB subcontractors you would propose to use on this project and why. Show what percentage of work is proposed to be assigned to MBE/WBE/SDVOB subcontractors. If your firm is a certified MBE, WBE, and/or SDVOB firm, please state here and include self-performed work in the calculation of utilization. Please refer to funding and MBE/WBE/SDVOB discussions in Schedule "A".
- 4) State the length of time necessary to complete each engineering phase (Exhibit "D" - Agreement, Schedule A - Items I, II, IIIA, IIIB, IIIC, IIID). Indicate the minimum time required. Please indicate any strategies that may be employed to more expeditiously complete the project.

D. **Proposer Certification:**

Proposals without a signed Proposer Certification will be rejected.

**PRICE PROPOSAL**

In a separately sealed envelope identifying your firm and the project and marked "CONFIDENTIAL - Pricing Information - To be Opened by the Deputy Commissioner, Joseph Fiegl, P.E., BCEE" submit one (1) copy of your price proposal **for each of the project tasks (Items I, II, IIIA, IIIB, IIIC, IIID), along with a summary providing a total for the whole project.**

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

The proposed costs and fees are to be presented on the Erie County Division of Sewerage Management form entitled "Cost Summary Format for Engineering Sub agreements" (ECDEP-CS-1). See Schedule "E" in Exhibit "D". The overhead and profit percentages used for each part of the project should be clearly distinguishable in the information provided.

**SELECTION**

All Proposals, timely received and complete, will be evaluated and ranked by a selection committee. The evaluation is based on the Written Proposals using a numerical score sheet related to the questions posed in the Proposal Guidelines. Interviews may be called where determined to be appropriate for the evaluation.

**When the evaluation of the written proposals are complete, all price proposals will be opened. Total cost will be part of the final selection criteria.**

**CONTRACT**

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

**INDEMNIFICATION AND INSURANCE**

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

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

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

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

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

**INTELLECTUAL PROPERTY RIGHTS**

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

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

The Consultant agrees to indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon the 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 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 a 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 agree 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.

\_\_\_\_\_  
*Firm Name*

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

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

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

DIVISION OF SEWERAGE MANAGEMENT  
 PROPOSAL REVIEW RATING SHEET  
 BIG SISTER CREEK WRRF EFFLUENT SYSTEM UPGRADES

ITEMS		FIRMS			
A. <u>Qualifications</u>					
1. Licensed Firm	NNR				
2. Conflict of Interest	NNR				
3. Size of Firm vs. Project Size	5				
4. Location of Team(s)	5				
5. Percent Minority within Firm/ Project Team	5				
6. Current Obligations (Effect on Project Described)	5				
B. <u>Expertise/Experience</u>					
1. Special Expertise – Personnel	50				
2. Similar Projects	25				
3. Experience with other County Departments	NNR				
4. Past County Employees	NNR				
C. <u>Project</u>					
1. Evaluation of Scope of Services	50				
2. Labor Hours Per Phase	15				
3. MBE/WBE/SDVOB Subcontractors	20				
4. Time of Completion	20				
D. <u>Proposer Certification</u>	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"**

**LABOR SUMMARY SHEET**

ENGINEERING SERVICES	PERSONNEL HOURS BY JOB CLASSIFICATION					TOTALS
<b>PHASE/TASK/ITEM - I</b>						
A. Preliminary Design / Facility Planning / Environmental						
<b>PHASE/TASK/ITEM - II</b>						
A. Design						
<b>PHASE/TASK/ITEM - III</b>						
A. Bid						
B. General Service During Construction						
C. Resident Engineering						
D. Start-Up and Post Operation & Maintenance						
<b>TOTAL</b>						

In the sealed cost proposal provide a separate Cost Estimate Form for each Task. Costs should not be provided on this sheet.

**EXHIBIT “D”**

**AGREEMENT**

**AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

by and between

**THE COUNTY OF ERIE**, a municipal corporation of the State of New York, having an office and place of business at 95 Franklin Street, Buffalo, New York 14202 (hereafter the “County”)

and

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

**WITNESSETH:**

**FIRST:** The Consultant shall provide Engineering Services for the **Big Sister Creek Water Resource Recovery Facility (WRRF) Effluent System Upgrades in Erie County Sewer District (ECS D) No. 2,** 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 B – Standard Insurance Certificate
- Schedule C – Time of Completion
- Schedule D – Detailed Description of Compensation
- Schedule E – Cost Summary Form
- Schedule F-1 – County of Erie Local Law No. 1 (2002)
- Schedule F-2 – County of Local Erie Law No. 3 (2023)
- 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 – Empire State Development OCSD-4 Form

Schedule L – Erie County Legislature Resolution (*not included*)

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

**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”, unless terminated earlier pursuant to the provisions of this Agreement.

The Consultant shall report to the County on its progress toward completing the Work, as the Deputy Commissioner may request, and shall immediately inform the Deputy 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 Deputy Commissioner in writing, subject to any necessary legal approval of such amendment. Timely completion of the Work is of the essence. It is hereby agreed that the Consultant will complete the Work within the time as described in Scheduled C attached hereto and made a part hereof.

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 in words**] (**[\$insert numeric amount]**) Dollars and shall be paid upon completion of the Work. Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Consultant for out-of-pocket expenses or disbursements made in connection with the Work to be performed hereunder.

The Consultant shall submit Monthly requests for payment on a properly executed payment voucher, which must be accompanied by a numbered invoice and include the invoice number where indicated. Payment Terms: 60 days. 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 Commissioner.

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

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

**FIFTH:** The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to appropriations by the Erie County Legislature. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable

constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right upon the occurrence of the adoption of any County Budget by the County Legislature during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impact of any such State Budget on County finances. After such an 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. The same shall be provided to the Buffalo & Erie County Industrial Land Development Corporation, its officers, employees,

and agents. Nothing contained herein shall create or give to third parties any claim or right of action against the County or the Consultant beyond such as may legally exist without regard to this provision.

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

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

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

**ELEVENTH:** The Consultant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Consultant shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subconsultants are subject to all terms and conditions set forth in this Agreement. It

is recognized and understood by the Consultant that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

**TWELFTH:** The Consultant and the County agree that the Consultant and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**THIRTEENTH:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

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

To the County:

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

with a copy to:

County Attorney  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

To the Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FIFTEENTH:** This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

**SIXTEENTH:** Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third-party rights are expressly granted herein.

**SEVENTEENTH:** The Consultant recognizes that this Agreement does not grant the Consultant the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other consultants on an “as needed” basis.

**EIGHTEENTH:** The Consultant hereby represents that, if operating under an assumed name, it has filed the necessary certificate pursuant to New York State General Business Law Section 130. The Consultant further represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working

solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Consultant) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

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

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

## **SCHEDULE “A”**

### **SCOPE / SPECIFICATIONS**

#### **Background**

The Erie County Department of Environment and Planning on behalf of Erie County Sewer District (ECSD) No. 2 retained the services of GHD Consulting Services, Inc. in 2023 to prepare a technical memorandum evaluating options to provide cost-effective capacity increases for the Big Sister Creek Water Resource Recovery Facility (WRRF). This evaluation focused on the hydraulics through the existing facility, identifying the capacity limited components, and developing options to allow for management of higher peak flow rates.

The final memorandum, titled the “ECSD No. 2 – Big Sister Creek WRRF Incremental Capacity Increase Evaluation” (GHD Consulting Services Inc., July 2023) recommended upgrades to the effluent systems at the WRRF that would allow up to 13.1 million gallons per day (mgd) of peak flows to be conveyed through the entire facility. If those upgrades were implemented, a proposed permitted capacity of approximately 8.7 mgd was noted in the memorandum for the Big Sister Creek WRRF – an approximately 1.0 mgd increase when compared to the existing State Pollutant Discharge Elimination System (SPDES) permit. Such a capacity increase would require New York State Department of Environmental Conservation (NYSDEC) approval.

After the July 2023 memorandum, ECSD No. 2 commenced a sampling and testing program upstream of the sand filters at the WRRF. The purpose of this testing program was to confirm there would be no adverse impacts should the upgrades identified in the July 2023 memorandum be implemented. The program included regular sampling upstream of the filters to test for SPDES permit parameters (biochemical oxygen demand (BOD), total suspended solids (TSS), settleable solids, and total phosphorus), along with collimated beam and ultraviolet light transmittance (UVT) analyses upstream of the filters for three (3) peak flow events.

The July 2023 memorandum, pre-filter and WRRF effluent data, a study titled the “Big Sister Creek Water Resource Recovery Facility UV Disinfection System Improvements – Concept Alternatives Report” (CHA Consulting, Inc., June 2022) and record drawings for the existing Big Sister Creek WRRF are available at <https://www3.erie.gov/dsm/form/dsm-rfp-online-bid-retrieval>.

#### **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/ECDEP</u>	-	<u>Erie County Department of Environment and Planning</u>
<u>DEC/NYSDEC</u>	-	<u>New York State Department of Environmental Conservation</u>
<u>DOT/NYSDOT</u>	-	<u>New York State Department of Transportation</u>
<u>DSM</u>	-	<u>Erie County Division of Sewerage Management</u>
<u>ECSD</u>	-	<u>Erie County Sewer District</u>
<u>EFC</u>	-	<u>New York State Environmental Facilities Corporation</u>
<u>Project</u>	-	<u>Big Sister Creek WRRF Effluent System Upgrades Project</u>
<u>SPDES</u>	-	<u>State Pollutant Discharge Elimination System</u>
<u>UV</u>	-	<u>Ultraviolet</u>
<u>WRRF</u>	-	<u>Water Resource Recovery Facility</u>

All Project improvements shall be consistent with the guidelines as established in the latest edition of the Great Lakes - Upper Mississippi River Board (GLUMRB) Recommended Standards for Wastewater Facilities (hereinafter referred to as the Ten State Standards), “TR-16 Guides for the Design of Wastewater Treatment Works” prepared by the New England Interstate Water Pollution Control Commission, and the “DEP’s Construction Specifications”. WRRF structures, channels, wells and conveyance components shall have a minimum of 50-year service life and the mechanical/electrical equipment for a 30-year service life. All new building designs shall comply fully with the requirements of the Americans with Disabilities Act of 1990 and current New York State Building Codes.

The design drawings for the project shall be prepared utilizing the latest version of AutoCAD. At the completion of the design phase and construction phase of the project, the Engineer will be required to provide the owner with one copy of the AutoCAD design file, transmitted electronically, with X-references resolved as part of the drawing, which displays improvements at that stage of the project.

The record drawings of the existing Big Sister Creek WRRF, along with other documents, are available on the website and represent the best information available. Ultimately the Consultant shall field-verify all dimensions, elevations and layouts, as part of the design work for the Project.

Various tasks for the engineering services related to the “Project” are listed below. The ECDEP/DSM in its discretion may select different firms for individual tasks. Each task will be separately authorized by the DEP during the term of the agreement and the ECDEP/DSM may decide, in its sole discretion, not to proceed with a task.

## **Funding**

For the purposes of this RFP, it is assumed the Project will be partially funded through Empire State Development's FAST-NY program via the Buffalo and Erie County Industrial Land Development Corporation (ILDC). Regarding program requirements related to MBE, WBE, and SDVOB utilization, the FAST-NY goals assigned to this project are 30% M/WBE combined and 6% SDVOB. It is not anticipated that waivers will be granted for engineering services. Schedule "K" includes the OCSD-4 form the selected consultant will be required to fill out prior to award. The ILDC shall be listed as an additional insured on policies secured for this project.

Although funding through the Clean Water State Revolving Fund has not been targeted at this juncture, the engineering report must conform to EFC's latest guidelines.

## **ADDITIONAL DETAILS**

The text below presents generalized guidelines for DSM projects, organized by tasks (Items I, II, IIIA, IIIB, IIIC, and IIID), with some specifics to the Project included:

### **I. Preliminary Design / Facility Planning / Environmental**

Complete preliminary design, facility planning, environmental tasks, and other pre-design work.

1. Review of the July 2023 memorandum, the June 2022 concept alternatives report for the UV disinfection system, pre-filter and effluent sampling/testing data, and related documents.
2. Consult with:
  - a. NYSDEC to obtain the latest design standards for the project, including what may be required for a SPDES permit modification to account for the proposed increase in peak flow throughput and a WRRF re-rating.
  - b. Erie County Public Works, the local Building Inspectors, and/or the local municipality to determine if any special local codes may be applicable to this project.
3. The Engineer shall conduct a thorough walk through and review of the entire project area for the proposed upgrades/improvements.
4. Advance survey and other field investigations necessary to complete the evaluations and design work.
5. Evaluate previous recommendations for the proposed upgrades, suggest any modification(s) to the proposed upgrades for consideration (if needed), , and identify any utility or support infrastructure improvements.

6. Prepare a preliminary site plan layout of the project facilities. It shall display buildings, chambers, piping locations, and the site limits. For WRRF improvements, the site plan shall be prepared using a scale of 1"=10'-0". In the case of collector/interceptor or force main sewers, the Engineer shall prepare a facility layout showing the proposed sewer route on a current planimetric map (Scale 1"=200'). The planimetric shall contain suggested break lines(s) to indicate the limits of the individual contract(s) if more than one (1) contract is proposed.
7. Identify means for maintenance and protection of operations at the WRRF.
8. The Engineer shall prepare a preliminary engineering report following the latest EFC guidelines, which shall summarize all engineering evaluations necessary to identify the final recommendations and establish the criteria for the design basis, and include an updated cost estimate and schedule.
9. Make revision to preliminary layout and report after review by the County.
10. The Engineer shall forward reports to the NYSDEC and other agencies to obtain their approval.
11. The Engineer shall provide a minimum of eight (8) copies of the design report. Four (4) shall be provided initially, after approval by DEP, for submission to the NYSDEC and other agencies. The other four (4) copies shall be provided after all approvals of the report.
12. Preparation of SEQR/SERP application and all documents necessary to meet the requirements of 6NYCRR, Part 617 State Environmental Quality Review.
13. The engineer shall develop a memorandum summarizing, with applicable attachments, all information required for ECSD No. 2 to apply for a modified SPDES permit to request an increased flow rate.
14. Meet all requirements of the FAST-NY grant funding.

## **II. Design Phase**

1. All contract specifications shall be prepared to comply fully with the requirements of New York State Municipal Law. If required by State Law, the Consultant shall prepare a separate contract proposal section for each of the required building trade group(s). The DSM will prepare and provide the front end and Division 1 documents for the project, just prior to 100% Bid Set.

2. County's standard contract documents and detail sheets shall be utilized in the preparation of the project's contract bid documents. The Consultant may modify these standards but such changes are subject to the approval of the County.
3. Prepare for the County's review and approval a list of the Consultant's recommended manufacturers for each major equipment item (i.e., UV disinfection units, electrical equipment, piping, valves/gates, etc.).
4. Prepare a shop drawing submittal schedule. The schedule shall list all items which will require a shop drawing submittal/approval. The listing shall be subdivided by each Division of the specification and contain a cross-reference to the Section and Item Number. The shop drawing schedule should be submitted to the County with the final plans and specifications.
5. Complete 30%, 60%, and 90% design documents for review by the DSM. Conduct coordination meetings as required to prepare final plans and specifications for bidding (Drawing Scale shall be appropriate for equipment and structures). The drawings shall be clear and legible and prepared electronically for production on 24" x 36" documents.
6. Make application and obtain or cause to be obtained all the necessary permits required by NYSDEC, utilities and other public agencies.
7. Forward plans, specifications and a final basis of design report to the NYSDEC and other agencies for the purpose of receiving approvals to construct.
8. Assist the County in securing approval of final plans and specifications by NYSDEC and other affected controlling agencies, if necessary.
9. Make modifications to plans and specifications based upon review by various approving stakeholders and/or final review of the County.
10. Prepare detailed cost estimates based upon final plans and specifications. Such cost estimates shall be made available to the County upon completion of design. The estimate shall be broken down in a manner which individually lists the costs of all major equipment items. Also cost estimates shall be updated one (1) week prior to advertising the project for construction bids.
11. See Schedule A-1 for added project specific requirements.
12. Upon completion of the design phase, furnish the County with copy of AutoCAD design file, with X-refs resolved into the drawings, and the electronic file copy of the bid specifications. Also, include the PCP files and/or pen settings.

### **III. Construction Phase**

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

- A. Bid Phase
- B. General Services
- C. Resident Engineering
- D. Start-Up and Post Operation and Maintenance

A. Bid Phase

1. The County will advertise the project in the County's official newspapers and website.
2. The Engineer shall assist the County during the bid process, i.e., administer the pre-bid meeting, prepare meeting agenda and minutes. Prepare, process, and distribute all contract addenda which may be necessary during the bid period.
3. The County will be bidding this project online. The Engineer will be responsible for providing a \*.pdf copy of the bid sets (plans and specifications for each contract) for the County's online bidding system. A maximum of five (5) bid sets of plans and specifications for each contract shall be provided by the Engineer. Additional copies shall be supplied and distributed at cost.
4. Assist the County in securing bids for this project and make a written recommendation regarding the award.

B. General Services/Construction Administration

Consultant shall provide construction phase services including, but not limited to, the following:

1. A representative of the Engineer, familiar with the project's design, shall be present at and conduct the pre- and progress Construction Meetings. The Engineer shall also prepare and distribute agendas and minutes for each meeting. The Engineer shall hold and chair coordination meetings with all contractors and the County on a bi-weekly basis or as warranted.
2. Obtain from the contractors a construction schedule (Bar Chart Type) which shall indicate his/her complete operation as it pertains to this project. Review said schedule for conformance with the contract documents and engineering services during construction. If additional subsystems are required to further clarify the construction process, the Engineer shall instruct the contractor accordingly. Affix to the schedule a stamp indicating the Engineer's approval/disapproval.
3. Provide services of an officer, licensed engineer, and/or other engineers as needed, who will observe on a bi-weekly basis the construction to see that it conforms to the requirements of the plans and specifications. The engineer shall promptly report the findings of his/her observation to the County in writing.

4. Prepare a shop drawing submittal, review and acceptance schedule. Maintain the shop drawings acceptance schedule daily. Any delay on the part of the Contractors shall be recorded with a written notification to the contractor sent out immediately.

5. Review all shop drawings submitted by the contractor and manufacturer of equipment and affix to the shop drawings a stamp indicating the results of the review (approved/disapproved). If equipment suppliers/contractors propose changes from those specified in the bid documents, investigations by the Engineer shall be made to evaluate proposed changes, including visits to the site(s) where similar equipment is in operation.

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

6. Review the contractor's requests for substitutions of equipment and materials with the County and make appropriate recommendations to the County.

7. Witness and/or review appropriate tests for materials and equipment as submitted by contractor for acceptance and reject those that fail to meet the specification or standards of quality required by the contract documents.

8. Assemble all guarantees, warranties and similar items required by the contract documents.

9. Coordinate with the Contractor to confirm they utilize the design control points when they perform contractor's survey and stakeout.

10. Prepare a draft electronic Operation and Maintenance (O&M) Manual. After reviewing the Manual by the ECDEP-DSM, the Engineer shall make the necessary revisions and resubmit. Furnish the County one (1) printed copy of the final manual along with the electronic file. Said manual shall include manufacturer's information and shop drawings in electronic format.

11. Assist the Contractor and Resident Engineer in preparing bid breakdown for purposes of subsequent payment requisitions. Check monthly estimates for payment to the Contractor as prepared by the Contractor and checked by the Resident Engineer and certify the same for payment. In certifying for payment, the Engineer ensures that no payment is for more than the value of the work already completed.

12. Review and make appropriate written recommendations to the County with respect to Contractor claims relating to a design change, differing site conditions and/or additional compensation due to alleged delays.

13. Advise, review and recommend, where applicable, any change order(s) to the contract that are in the best interest to the County or requested by the Contractor.
14. The Engineer shall prepare written parallel estimates to substantiate costs with respect to change orders and/or cost breakdowns furnished by the Contractor.
15. Prepare and process, with the assistance of the County, all change orders.
16. Prepare and distribute agendas and minutes for regular progress/coordination meetings to all concerned parties.
17. Issue supplemental drawings to further explain the intent of plans and specifications when necessary.
18. Prepare and distribute written responses to all RFI's, field clarifications, memos and bulletins that may be required.
19. Attend other project-related meetings as requested by the County and/or as dictated by the project's progress/needs and provide minutes thereof.
20. Make recommendations to the County pertaining to special consultants and specialty inspection.
21. The consultant shall retain the services of subconsultants to perform environmental/hazardous materials testing, if needed. Consultant will be reimbursed after services are performed. The County shall retain the services of third-party consultants to perform any other specialty inspection required.
22. Cooperate with Erie County Department of Public Works, NYSDOT, local municipal, NYSDEC, and similar representatives.
23. Review retention money clauses of contracts and make recommendations to the County with respect to release any retained funds.
24. Receive, review and forward to the County with recommendations, all relevant documents such as release of liens, claims, etc., prior to preparation and the issuance of the certificate of final completion.
25. Establish procedures and coordinate arrangements between the County and the Contractors with respect to the start-up of constructed facilities, operation and maintenance, protection of existing utilities, contractual insurance, right-of-entry(s), start of guarantee period, etc., including but not limited to the following matters:
  - a. Owner occupancy and/or use upon substantial completion of an active construction contract.

b. Owner occupancy and/or use upon completion of separate contract work prior to completion of total project.

26. Provide services to assist the Contractors and Resident Engineer in checking out the completed facilities for ready-to-serve status and commencement of testing. Also provide services for assisting the contractor and the County to perform hydraulic and process tests of the completed facilities. No training of plant personnel is included under this item.

27. The Engineer shall maintain an accurate record of all design changes made during construction. (NOTE: The Engineer shall not be dependent on any information from the contractors to complete this work task.) At the end of construction, the Engineer shall utilize this information and revise the contract drawings to show the improvements as finally constructed. Provide the ECDEP-DSM with one complete e-file of AutoCAD set of as-built drawings (Record Drawings) along with all applicable external referenced drawings, images and Pen Settings. A flash drive or similar media is acceptable. The as-built drawings shall be signed and stamped by a NYS licensed professional, see sample certification at the end of SCHEDULE "A".

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

C. Resident Engineering

1. 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 and Assistant(s) to coordinate the day-to-day construction. These individuals will inspect the construction for conformance with the plans and specifications and observe the Contractor's performance pursuant to approved construction schedule.

2. The Engineer shall monitor the approved construction schedules and provide updated information to the County and assistance to the contractors for the purpose of overcoming or controlling slippage. In cases where the Contractor is falling behind schedule, the Consultant shall promptly issue a written notice to the Contractor advising him/her of this fact.

3. Act as the County's advisor and liaison and monitor the activities of all Contractors for conformance with the construction schedule which has been accepted by the Contractors, the County and the Engineer. This will include monitoring the Contractor's personnel and equipment in relation to the progress in accordance with the schedule and making of recommendations for actions when required.

4. The Engineer shall maintain a shop drawing acceptance schedule daily. Approved shop drawings shall be duly recorded on the schedule with a copy of the approved drawing placed in a construction file for future reference.
5. If necessary, regulate use of site and building area with respect to storage of materials, temporary offices, storage sheds, parking, traffic control, etc.
6. Coordinate all required shutdowns/tie-ins and other tasks involving operational systems with Erie County Sewer District personnel.
7. Monitor the daily performance of the contractor(s) to verify compliance with the plans, specifications and applicable permits. Observation will involve all aspects, directly or indirectly associated with the project. It shall include but not be limited to, the installation of the proposed improvements/appurtenances and repair, if need be, of storm sewers, roads, lawns, driveways, water lines and other existing utilities damage and/or disturbed during construction.
8. Inspect material/equipment deliveries to the job site to verify compliance with the approved shop drawings.
9. Perform spot grade checks on the installed improvements to verify line and grade.
10. Monitor the Contractor's method of construction to ensure his/her construction activities are conducted within the dedicated rights-of-way and/or easement areas as shown on the contract plans.
11. Prepare a daily observation report(s) which will describe, in detail, the Contractor's performance for that particular day, the on-site equipment, size of labor force, etc.
12. Monitor the contractor's plans of operation for compliance with the Maintenance and Protection of Traffic Section of the specification and governing permit conditions.
13. Prepare parallel monthly construction pay estimates which indicate the construction completed to date. Certify that the amount of payment does not exceed the value of the work in place.
14. Coordinate all required shutdowns/tie-ins and other tasks involving operational systems with Erie County Sewer District personnel.
15. Coordinate and witness the final testing of the in-place improvements as required by the contract specifications.
16. Maintain a detailed daily journal of all on-site activities and visitors.

17. The Engineer shall take digital progress photos during the course of construction. The Engineer will be required to review the photos and place a reference station or small description for each photo in a photo log. The file name of each photo shall be the reference station for each photo. The photos shall be given to the County via an electronic transfer from either a County or Consultant supplied web sharing site.

18. Maintain complete and accurate job records of all correspondence, memoranda, supplemental drawings, field clarification memos, change orders, shop drawings, supplemental equipment brochures and monthly payment estimates together with appropriate backup information. At the end of the project, one copy of all material will be submitted to the County for its records. In addition, the Consultant shall provide a copy in digital format sent electronically, in both Portable Document Format (PDF) and Tagged Image File Format (TIFF) image formats.

19. Prepare a monthly construction report for the County detailing all activities that took place during the prior month.

20. Cooperate with local municipal representatives.

21. Review cleanup activities of all Contractors for compliance with provisions in the respective contract documents.

22. Prepare punch-lists and monitor Contractor's activities as required to effect prompt correction of all items listed.

D. Start-Up and Post Operation and Maintenance

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

1. Provide services to assist the County with understanding the operational features of the completed facilities after start-up. The Consultant shall provide and/or schedule training services.
2. After start-up and within the first year of operation, conduct two on-site tours with the Owner to observe the operation and performance of the facilities. The dates and time of the scheduled tours will be determined at a later date.
3. Based on the Consultant's observations, make recommendations to the Owner and, where applicable, amend the Operation and Maintenance Manual.
4. One year after initial start-up, certify to the Owner whether the facilities meet the intended design performance standards.

## **APPENDIX “A”**

### **RECORD DRAWING SUBMITTAL SAMPLE CERTIFICATION LETTER**

Erie County Division of Sewerage Management  
95 Franklin Street, Room 1034  
Buffalo, New York 14202-3973

RE: Erie County Sewer District No. \_\_\_\_\_

To Whom It May Concern:

The \_\_\_\_\_  
NAME OF CONSULTING AND/OR CERTIFYING ENGINEER / SURVEYOR

License No. \_\_\_\_\_ certifies that the information contained on the  
attached CD or flash drive and saved as \_\_\_\_\_ reflects the record  
drawings of \_\_\_\_\_  
FILE NAME

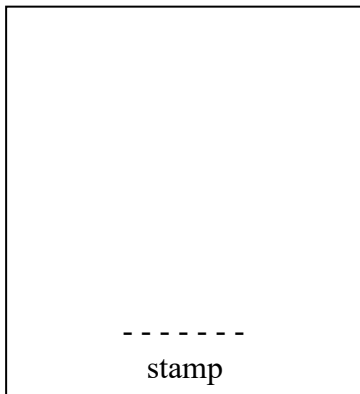
\_\_\_\_\_ as of \_\_\_\_\_  
PROJECT NAME DATE

No alteration to this record drawing file can be made except as permitted by Section  
7209, Subdivision 2 of the New York State Education Law.

This project was designed by \_\_\_\_\_  
FIRM'S NAME

If you have any questions, please contact me at \_\_\_\_\_  
PHONE

or \_\_\_\_\_  
E-MAIL



Very truly yours,

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
STAMP AND SIGNATURE

## SCHEDULE "A-1"

### DEPARTMENT/PROJECT SPECIFIC REQUIREMENTS

#### 1. GENERAL PROVISIONS

##### A. Engineer Licensed

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

##### B. Plans and Files

1. All approved original drawings prepared by the Consultant shall become the property of the County. The Consultant shall retain an electronic copy.
2. Plans, if required under this Agreement, are to be prepared utilizing an agreed upon version of AutoCAD or compatible. Other computer software enhancements of AutoCAD, (eg. DCA) shall be subject to prior approval of the County.
3. The Consultant shall supply as many sets of Plans and Specifications for review by the DEP and to gain approval from various regulatory agencies. In addition, the County will be bidding projects online. The Engineer will be responsible for providing a \*.pdf copy of the bid sets (plans and specifications for each contract) for the County's online bidding system. A maximum of five (5) bid sets of plans and specifications for each contract shall be provided by the Engineer. Additional copies shall be supplied and distributed at cost.
4. The Consultant shall make available at the County's place of business, on request, its complete design file including all computations related to the Project.

##### C. Assistance and Exchange Data

1. The County shall direct its officers, agents and employees to render all reasonable assistance and provide available data to the 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. The Parties hereto agree to furnish to the other Party copies of previous reports, data and drawings which may be available and as may be pertinent to the Project. All such data,

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

3. Information provided to the 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 information provided by the County for this project with subcontractors, other consultants, manufacturers and potential suppliers or vendors shall not be done without the express advance written authorization of the County.
4. The Consultant shall not reproduce or copy information supplied to the firm by the County for this project without expressing 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.

D. Design/Construction Survey

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

E. Progress Reports

The Consultant shall submit written progress reports to the County on a monthly basis during the project. The written reports shall summarize the work completed in the previous month, provide an indication of the percentage of completion of the various project tasks, provide budget consumption data, and other useful information. More informal oral and/or written (e-mail) reports shall be made on request. The County may amend the reporting schedule upon written notice to the Consultant should progress on the project warrant it, except that the frequency of submitting written progress reports shall not be made more frequent than weekly.

F. Release of Data

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

G. Equipment Purchases

1. The 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.

H. Limitations

1. Since it is recognized that the Consultant has no control over the cost of labor, materials or equipment, or over Construction Contractor(s) method of determining prices, or over competitive bidding or market conditions, the estimates of probable Project Cost of Construction provided for herein are to be made on the basis of experience and qualifications and represent the Consultant's best judgement as a design professional familiar with the construction industry, but the Consultant shall not be required to guarantee Construction Cost.
2. 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 County any deviations by the contractor of which it becomes aware or in the course of reasonable care should become aware.
3. 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 County without the Consultant's prior knowledge and consent.

I. Time Extension

1. 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, including waiver by

the County of the liquidated damages provisions as set forth in paragraph B of Schedule C.

J. 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.

K. Minority Business Enterprise (MBE), Women Business Enterprise (WBE) Participation and Service-Disabled Veteran-Owned Business (SDVOB)

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

**2. SPECIAL PROVISIONS**

A. Facilities Performance

1. Capacity

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

- a. The pumping station and force main shall be designed to properly manage the identified existing and future flows consistent with the February 2025 evaluation, along with additional capacities identified during Task I of this project.

2. Proof of Performance

The Consultant shall provide a suggested methodology to test the facilities under design conditions.

3. Penalties

If as a result of inadequate design, the installed facilities do not meet the applicable performance standards, then any money that may be due the Engineer will be withheld under either a satisfactory bond that guarantee corrective measures are undertaken to make the facilities meet the design condition is provided and, if the bond is not available, the same corrective measures are undertaken by the Engineer. All costs of further testing shall be borne by the Consultant. As soon as all the facilities have been tested to meet the

conditions specified herein, the County shall issue a certificate of acceptance and release the retained funds.

B. Additional Notes

-NONE-

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



**INSTRUCTIONS FOR COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE**

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

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

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

**Workers Compensation Forms**

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

**DBL (Disability Benefits Law) Forms**

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

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

**SCHEDULE “C”**

**TIME OF COMPLETION**

A. Time Schedule

Assuming a “Notice to Proceed” (NTP) is issued in the fourth quarter of 2026, the consultant shall complete the work as listed in Schedules “A” and “A-1” of the Agreement according to the following schedule:

**Task/Phase I**

Preliminary Design / Facility Planning / Environmental 9-months from NTP

**Task/Phase II**

Design 1 year

**Task/Phase III**

Bid	3 months
General Services	Full Duration
Resident Engineering	Est. 12-months full time, 3-months part time
Start-Up and Post-Construction	For a period of 1-year after completion

Each time period noted above shall be considered maximums and shall begin from the County’s Notice to Proceed or the Consultant’s first date of work on that date if no formal notice is given. In the case of Phase III, administration shall be from the date the Contractor begins submittals and resident engineering, and other services shall be from the date the Contractor first enters the project site.

B. Liquidated Damages

Time is of the essence on this project. If through the actions of omissions of the Consultant, the Design Phase work is not completed (as defined by the DEP) within 48 months of the date of Notice to Proceed, the Consultant shall refund the County an amount equal to ten percent (10%) of the total amount budgeted for the work included as part of this Agreement. Furthermore, if the work above is not approved by the New York State Department of Environmental Conservation due to a negligent error or omission of the Engineer, the same liquidated damages may apply.

**SCHEDULE "D"**

**DETAILED DESCRIPTION OF COMPENSATION**

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

I. Total Compensation Breakdown

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

(1) The contract phase costs are as follows:

	<u>Total</u> <u>Cost</u>	<u>Cost</u> <u>Ceiling*</u>	<u>Fixed Fee</u> <u>(Profit)*</u>
(I) Preliminary Design / Facility Planning / Environmental			
(II) Design			
(III) Construction			
(A) Bid			
(B) General Services			
(C) Resident Engineering			
(D) Start Up and Post Operation			
Totals	_____	_____	_____

**NOTE:**

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

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

- (2) The costs listed above assume that the Notice to Proceed for the earliest phase of the project as listed above is given by the County to the Consultant by: 11/1/2026 at the latest. 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, copying, supplies, executive salaries, accounting, legal, clerical support salaries, etc. The following composite overhead rates have been established for this contract:

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

(3) Overhead Rates

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

The overhead rate(s) contained in the attached cost summaries are for the period from \_\_\_\_\_ to \_\_\_\_\_.

(4) Other Direct Costs

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

Travel, Auto                      at current Erie County rate

Travel, Other                      at cost

(5) Travel

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

(6) Subcontracts

The following County approved subcontracts to this Agreement will be paid by the Consultant and billed to the County at cost plus mark-up as listed in the attached "Cost Summary Format for Engineering 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) Profit for Preliminary & Final Design and General Services During Construction

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

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

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

(c) Special Conditions for Profit on All Contract Phases

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

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

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

(d) Total

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

(9) Lump Sum Method

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

(10) Per Diem Rate Method

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

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

The Consultant’s approved miscellaneous expenses such as mileage or specialty subcontractors will be handled in a fashion as described in Section II of Schedule “D”.

III. Project Costs/Total Compensation

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

Total Compensation

1. The total amount of compensation to be paid by the Owner, and which the Consultant agrees to accept as full compensation for all services under this Agreement is \_\_\_\_\_. The above compensation shall be subdivided as indicated below.
2. It is agreed that the total compensation for services rendered for Phases I, II, IIIA, IIIB, and IIID, 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 Phase IIIC 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

December 2026

## 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-1"**  
**COUNTY OF ERIE LOCAL LAW NO. 1**



**MEMORANDUM  
COUNTY OF ERIE  
DEPT. OF THE  
COUNTY EXECUTIVE**

**TO:** Department Heads  
**FROM:** Trek Fulater, Esq., Director of Policy  
**DATE:** March 5, 2026  
**RE:** Minority or Women Business Enterprise ("MWBE") goals update

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In January of 2022, the Erie County legislature passed Local Law 1, recognizing the importance of providing "economic opportunity" on an equal basis to those traditionally underserved communities often recognized as minority groups. Further, Local Law 1 established that, as part of the effort to provide such "economic opportunities", and "[u]pon the completion of the Erie County Disparity Study ... 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 ... based upon the findings of the Erie County Disparity Study."

Based on the recently completed disparity study, the MWBE aspirational goals have been updated. Each division is expected to comply with the updated aspirational goals as set forth below:

**MBE Aspirational Goals**

- Construction: 6%
- Architecture & Engineering: 9%
- Professional Services: 2%
- Other Services: 2%
- Goods: 1%

**WBE Aspirational Goals**

- Construction: 5%
- Architecture & Engineering: 11%
- Professional Services: 3%
- Other Services: 4%
- Goods: 3%

The SDVOB goal will remain unchanged at 6%.

The new goals are as follows and will take effect on **February 1, 2026**. Please ensure all relevant staff are informed and that necessary adjustments are implemented accordingly. If you have any questions reach out to DEEO at 716-858-7452.

## Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one.)

of Erie

Local Law No. 1 of the year 2022

A local law modifying, amending and superseding, to the extent applicable, Local Law Number 12-  
(Insert Title)  
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 Erie County Legislature of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Erie as follows:

### SECTION 1. LEGISLATIVE INTENT

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

B. Since 1978, the County has passed a series of local laws to advance the utilization of minority group members and women on 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 five 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 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.

(If additional space is needed, attach pages the same size as this sheet, and number each.) 1 of 17

- 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. 40 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. The County Legislature recognizes that the State goal for M/WBE is 30% for construction and commodities and services.
- G. The County Legislature recognizes that its County Seat, The 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 function, 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 51% 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,

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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 Erie 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 N.Y. 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, Erie 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 after the effective date of 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 WMBEs, 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 in 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 or 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 or 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

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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 Erie 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 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 and WBEs, 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 Erie 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 \$20,000, the County must follow the policies and procedures as adopted in accordance with Gen. Municipal Law §104-B.

**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 administered 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 and WBEs 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 the 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 Asia 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

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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 the 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 1 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 shall be set forth in its invitation for 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 20% 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 M/WBE 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

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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 non-monetary 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.

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- 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 not 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 "F-2"**  
**COUNTY OF ERIE LOCAL LAW NO. 3 (2023)**

## Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one.)

of Erie

Local Law No. 3 of the year 20 23

A local law (Insert Title) in relation to ensuring that service-disabled veterans have greater participation in Erie County contracts.

Be it enacted by the Erie County Legislature of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Erie as follows:

### SECTION 1. LEGISLATIVE INTENT

Erie County is home to many men and women who have faithfully served their country as members of military and national guard, some of whom became disabled during their service. It is the intent of the Erie County Legislature to honor this service and sacrifice for our nation by promoting and encouraging the continued economic development of service-disabled veteran-owned businesses by ensuring greater participation in County contracts.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Pg 1 of 5

## SECTION 2. DEFINITIONS

The following terms shall have the meanings indicated:

1. "State-Certified Business" shall mean a business that is a certified service-disabled veteran-owned business under the New York State Service-Disabled Veteran-Owned Business Act.
2. "Departments and Offices" shall mean
  - a) Any County department; or
  - b) Any division, office or bureau of any County department, or Erie County Community College; or
  - c) A board, a majority of whose members are appointed by the County Executive or who serve by virtue of being County officers or employees.

## SECTION 3. OUTREACH

The Erie County Office of Equal Employment Opportunity (the "EEO") shall be responsible for outreach to State Certified Businesses in order to encourage participation in public contract bidding opportunities.  
The EEO shall maintain a data base of all State-Certified Businesses.

## SECTION 4. PARTICIPATION

All Departments and Offices of Erie County shall make good faith efforts to ensure State-Certified Businesses have greater participation in County contracts by aiming for at least a six percent participation rate of State-Certified Businesses on County contracts.

## SECTION 5. RECORDS

All Departments and Offices of Erie County shall maintain documents reflecting the good faith efforts made by their Department.

## SECTION 6. SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or part of the Local Law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of 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 Local Law or in its application to the

person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

#### SECTION 4. EFFECTIVE DATE

This Local Law shall take effect upon filing with the New York Secretary of State.

**Sponsors:**  
John Gilmour

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 23 of the (County)(~~City~~)(~~Town~~)(~~Village~~) of Erie was duly passed by the Erie County Legislature on June 8 2023, and was (approved)(~~not approved~~)  
*(Name of Legislative Body)*  
(~~repassed after disapproval~~) by the Erie County Executive and was deemed duly adopted  
*(Elective Chief Executive Officer\*)*  
on June 26 2023, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
*(Name of Legislative Body)*  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.  
*(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
*(Name of Legislative Body)*  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 above.

\_\_\_\_\_  
Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

(Seal)

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

A Public Hearing was held on the foregoing **Local Law Intro. No. 5-1-2023** on May 31, **2023** due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 26 day of **June, 2023**.

  
Mark C. Poloncarz

A Public Hearing was held on the foregoing **Local Law Intro. No. 5-1-2023** on \_\_\_\_\_, **2023** due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this \_\_\_\_ day of **June, 2023**.

\_\_\_\_\_  
Mark C. Poloncarz

**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

**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,

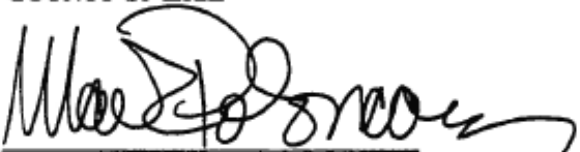
5. Further ordered that the Law Department prepare an Erie County Equal Pay Certification for use by Erie County offices, departments and administrative units and assure compliance with this Executive Order in the contract approval process; and it is,

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

**SCHEDULE "K"**

**Empire State Development**  
**OCSD-4 Form**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-4**

MWBE AND SDVOB UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE and SDVOB Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and/or Service Disabled Veteran Owned Business (SDVOB) under the contract. Attach additional sheets if necessary.

**\* indicates mandatory fields**

**\* Contractor Name:** \_\_\_\_\_ **Address:** \_\_\_\_\_  
**\* Representative Name:** \_\_\_\_\_ **Town, State & Zip:** \_\_\_\_\_  
**\* Phone:** \_\_\_\_\_ **\* ESD Contract/Project Number:** \_\_\_\_\_  
**\* Fax:** \_\_\_\_\_ **RFP/RFQ/Solicitation Number:** \_\_\_\_\_  
**\* Email:** \_\_\_\_\_ **\* MWBE Goal:** MBE \_\_\_\_\_ % + WBE \_\_\_\_\_ % = MWBE GOAL \_\_\_\_\_ %  
**\* Total Dollar Value of Contract/Grant:** \$ \_\_\_\_\_ **\* SDVOB Goal:** \_\_\_\_\_ %

1. <b>* Certified MWBE or SDVOB Firm Name, Contact Person's Name, Address, Phone and Email.</b>	2. <b>* Check All That Apply</b>	3. <b>* Federal ID No.</b>	4. <b>* Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)</b>	5. <b>* Check Firm Type That Applies for Work Completed on this Project</b>	6. <b>* Dollar Value of Contract</b>
<b>A.</b> _____ _____ _____ _____	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	
<b>B.</b> _____ _____ _____ _____	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-4**

MWBE AND SDVOB UTILIZATION PLAN

7. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

<p><b>PREPARED BY (Signature):</b> _____ <b>DATE:</b> _____</p> <p><b>Preparer's Name (Print or Type):</b> _____</p> <p><b>Preparer's Title:</b> _____</p> <p><b>Date:</b> _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p> <p>The MWBE Certification status of the firms listed on this form <b>MUST</b> be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.  <b>This directory is available at <a href="https://ny.newnycontracts.com">https://ny.newnycontracts.com</a>.</b></p> <p>The SDVOB Certification status of the firms listed on this form <b>MUST</b> be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses.  <b>This directory is available at <a href="https://online.ogs.ny.gov/SDVOB/search">https://online.ogs.ny.gov/SDVOB/search</a>.</b></p>	<p><b>TELEPHONE NO.:</b> _____ <b>EMAIL ADDRESS:</b> _____</p> <p><b>Policy Regarding Use of MWBE Suppliers and Brokers</b>            Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p><b>FOR CONSTRUCTION/CAPITAL PROJECTS –</b> The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p><b>FOR ALL OTHER PROJECTS -</b> The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p>
<b>** FOR OCSD USE ONLY **</b>	
<b>REVIEWED BY:</b> _____	<b>DATE:</b> _____
<b>UTILIZATION PLAN APPROVED?</b> <input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____	